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HUMAN RIGHTS COMMITTEE
Seventy-seventh session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OVERSEAS TERRITORIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Addendum

Comments by the Government of the United Kingdom of Great Britain and Northern Ireland on the reports of the United Kingdom (CCPR/CO/73/UK) and the Overseas Territories (CCPR/CO/73/UKOT)

[7 November 2002]

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I. INITIAL RESPONSE TO THE CONCLUDING OBSERVATIONS (CCPR/CO/73/UK), ON THE REPORT OF THE UNITED KINGDOM (CCPR/C/UK/99/5)

A. Introduction

1. In paragraph 40 of its concluding observations (adopted on 29 October 2001) on the United Kingdom's fourth and fifth combined report, the Human Rights Committee asked the United Kingdom to provide, within 12 months, information on matters referred to in paragraphs 6, 8, 11 and 23 of the concluding observations. The information requested by the Committee is set out below. At the same time, the United Kingdom takes this opportunity to provide information also on two other points which were raised by the Committee in relation to the Overseas Territories and which can appropriately be dealt with now rather than being left to be covered in the sixth periodic report. Information on the remainder of the points raised by the Committee will, as the Committee has requested, be included in the United Kingdom's sixth periodic report.

B. Paragraph 6 - Compatibility of new anti-terrorist legislation with human rights guaranteed in the Covenant

1. Background

2. The Anti-terrorism Crime and Security Act 2001 ("the Act") received Royal Assent on 14 December 2001. We believe the measures contained in this Act both respect and meet the United Kingdom's international human rights obligations.

3. Terrorism represents a grave and fundamental threat to the national security of the United Kingdom and the safety of its citizens. This is a threat that needs to be addressed without compromising the integrity of those international obligations.

4. Article 4 of the International Covenant on Civil and Political Rights permits States to derogate under certain conditions from certain of their obligations under the Covenant in time of public emergency which threatens the life of the nation the existence of which is officially proclaimed.

2. Article 4 (1) of the Covenant

(a) Is there a public emergency?

5. We believe that there is a public emergency threatening the life of the nation. On 30 July 2002, the Special Immigration Appeals Commission in the case of *A and others v. Secretary of State for the Home Department* found it was

> "satisfied that what has been put before us in the open generic statements and the other material in the bundles which are available to the parties does justify the conclusion that there does exist a public emergency threatening the life of the nation within the terms of

> Article 15 [of the European Convention on Human Rights]. That the risk has been heightened since 11 September is clear, but we do not regard that description as in any way inconsistent with the existence of an emergency within the meaning of article 15 ECHR. The United Kingdom is a prime target, second only to the United States of America, and the history of events both before and after 11 September 2001 as well as on that fateful day does show that if one attack were to take place it could well occur without warning and be on such a scale as to threaten the life of the nation."

6. As regards the closed evidence also before the Special Immigration Appeals Commission, the Commission said: "We have considered the closed material. Suffice to say that it confirms our view that the emergency is established."

(b) Are the measures strictly required by the exigencies of the situation?

7. We believe that they are. This was something considered by the Special Immigration Appeals Commission in the case referred to above, in which it considered the argument on behalf of A and others that other, less intrusive, alternative measures were available to the Government. In the course of considering the lawfulness of the United Kingdom's derogation from article 15 of the European Convention on Human Rights and whether the measures taken were strictly required by the exigencies of the situation, the Commission, having considered the arguments, said: "Bearing that guidance [of the European Court of Human Rights and by the Canadian Supreme Court] and noting and accepting the Government's assertion that there are individuals against whom the provisions (or proposed provisions) identified by the appellants would not be effective, the position is that, even applying the most intrusive scrutiny, we are satisfied that the existence of possible alternative measures does not of itself harm the Government's argument". The Commission further confirmed that they accepted the submissions on behalf of the Government that the provisions for judicial and democratic supervision contained within the Anti-terrorism, Crime and Security Act are both appropriate and sufficient.

(c) Are the powers discriminatory?

8. The decision of the Special Immigration Appeals Commission referred to above is currently under appeal and cross-appeal to the Court of Appeal, and judgement from the Court of Appeal is pending.

9. The Special Immigration Appeals Commission found that the derogation from article 15 of the European Convention on Human Rights was discriminatory for the purposes of article 14 of the European Convention on Human Rights "on the grounds of national origin". This point is under appeal by the Government to the Court of Appeal and we believe that SIAC were wrong.

10. In outline summary, given the pending appeal, we believe that for the purposes of article 4 of the International Covenant on Civil and Political Rights: (a) it is legitimate for a State to distinguish in the field of immigration control (of which the detention measures in Part 4 of the Anti-terrorism, Crime and Security Act form part) between United Kingdom nationals and others; and (b) there are objective reasons for focusing the powers on foreign nationals.

3. Domestic law powers of detention

11. The Government has powers under the Immigration Act 1971 ("the 1971 Act") to remove or deport persons on the grounds that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation, including deportation on the grounds that their presence in the United Kingdom is contrary to the public good. The courts in the United Kingdom have ruled that this power of detention only persists for so long as the person's removal remains a real possibility. If there were no such real possibility (for example, because removal would result in torture or inhuman or degrading treatment) the power of detention would fall away. The person would have to be released, and would be at large within the United Kingdom.

4. Article 9 (1) of the Covenant

12. Article 9 provides, amongst other things, that everyone has the right to liberty and security of person, and that no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

13. It became clear, however, before, during and since the passage of the Anti-terrorism, Crime and Security Act 2001 ("the Act") that the balance between respecting these fundamental civil liberties and safeguarding them from exploitation by those who would destroy them for the wider public is profoundly delicate.

14. The Government was, and remains, of the view that the only practicable way to protect and maintain this equilibrium was to derogate from article 5 (1) of the European Convention on Human Rights and from article 9 (1) of the International Covenant on Civil and Political Rights in respect of the detention powers contained in the Act.

15. The measures in Part 4 of the Act were introduced in particular to deal with the situation where an alien would in normal circumstances be removed or deported from the United Kingdom in the exercise of immigration powers, on grounds that his presence here is contrary to the public good, but where removal or deportation to his country of origin would given rise to a serious risk of torture or inhuman or degrading treatment. There are cases in which a suspected terrorist, even though not a United Kingdom national, cannot be removed from the United Kingdom.

16. The measures were rigorously considered and scrutinized at the time and were and continue to be judged to be a necessary and proportionate response to the "public emergency threatening the life of the nation".

5. The Anti-terrorism, Crime and Security Act 2001

(a) Legislative Powers

17. Part 4 of the Act recognizes that a suspected terrorist should not be returned to a country where there is a serious risk that he might be tortured or killed, but at the same time he should not be allowed to be at large in the United Kingdom. Given the public emergency threatening the life of the nation, Part 4 of the Act strikes a balance between the interests of the individual suspected terrorist and the general community. It extends the period for which a suspected terrorist may be detained in the United Kingdom, in cases where his removal is precluded, so as to overcome the limitations discussed above on the powers to detain under the Immigration Act 1971.

18. Under section 21 (1) of the Act, the Secretary of State may issue a certificate in respect of a person if the Secretary of State reasonably: (a) believes that the person's presence in the United Kingdom is a risk to national security; and (b) suspects that the person is a terrorist. Under section 22 of the Act, various immigration measures, for example, making a deportation order, may be taken in relation to a suspected international terrorist, notwithstanding that his actual removal will be incompatible with the United Kingdom's international obligations. By virtue of section 23 (1) of the Act, a suspected international terrorist may be detained under the detention powers contained in the Immigration Act 1971 despite the fact that his removal or departure from the United Kingdom is prevented (whether temporarily or indefinitely) by a point of law relating to an international agreement or a practical consideration.

(b) Legislative safeguards

19. This certificate is subject to an appeal to the Special Immigration Appeals Commission, established under the Special Immigration Appeals Commission Act 1997, which has the power to cancel it if it considers that the certificate should not have been issued. In addition, SIAC is obliged to review the certificate after six months after the appeal is finally determined (if there is one) or after the date on which the certificate was issued (if there is no appeal). Subsequent reviews will occur three monthly intervals thereafter (section 26 of the Act). There is the possibility of appeals from SIAC on points of law to the higher courts. SIAC is also able to grant bail, where appropriate, subject to conditions. It is open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

20. Sections 21-23 of the Act are temporary provisions which automatically expire after 15 months, subject to renewal for periods not exceeding one year at a time if both Houses of Parliament are in agreement (sect. 29 (1)). This ensures periodic review by the legislature, in addition to continuing review by the executive. Further, the detention provisions will end with

the final expiry of sections 21-23 of Part 4 of the Act on 10 November 2006 (sect. 29 (7)). If, in the Government's assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order under section 29 (2), discontinue the provision.

6. Review procedures and sunsets

21. The operation of the detention powers (sects. 21-23) in the Act are being reviewed specifically by Lord Carlile of Berriew QC, who is also the independent reviewer of the Terrorism Act 2000. He has been appointed by the Secretary of State under section 28 of the Act and is required to conduct a review of the operation of the detention powers not later than 14 months after the passing of the Act. He is required to send a report of his review as soon as is reasonably practicable to the Secretary of State, who is in turn required to lay the report before Parliament as soon as is reasonably practicable.

22. The provisions of the Act, as a whole, are being reviewed by a Committee of nine Privy Counsellors in accordance with sections 122 and 123. This Committee is obliged to provide a report on their findings and conclusions to the Secretary of State by 14 December 2003.

7. Developments since Royal Assent 14 December 2001

(a) Individuals detained

23. Eleven individuals have been detained in total since the Act received Royal Assent. Two of these have since left the United Kingdom voluntarily. The nine remaining in detention have all lodged appeals against the certification and against the decision to deport. All have brought actions challenging the lawfulness of the derogation that underpins the detention power in the Act.

(b) The SIAC hearings

24. These were heard at the end of July and the SIAC judgement on 30 July recognized that, in the light of the 11 September attacks, there is a public emergency threatening the United Kingdom. SIAC also held that the powers of detention in the Anti-terrorism, Crime and Security Act 2001 are a necessary and proportionate response to that emergency in ECHR terms.

25. SIAC made an initial ruling, however, that the detention powers discriminate "on the grounds of national origin". An appeal against this ruling and a cross appeal against other parts of the SIAC decision were heard in the Court of Appeals in the week beginning 7 October and we await the judgement.

C. Paragraph 8 - Violation of the right to life in Northern Ireland

26. The Government is determined that, where allegations of collusion between State forces and paramilitaries in Northern Ireland have been made, the truth should emerge. That is why, in line with commitments made at Weston Park in August 2001, the British and Irish Governments

recently appointed the Canadian judge Peter Cory to investigate six high-profile cases where there are serious allegations of collusion. These include the murders of the lawyers Patrick Finucane and Rosemary Nelson. Both the British and Irish Governments are committed to implementing Mr. Justice Cory's recommendations, including a public inquiry if that is recommended.

D. Paragraph 11 - Racial violence and racial tension

27. The Government notes the Committee's comments on the disturbances that took place in some English cities in 2001. These disturbances were taken extremely seriously by the Government - they involved hundreds of individuals, caused injuries to both police and members of the public and resulted in millions of pounds' worth of criminal damage. Investigation of criminal acts is a matter for the police and the prosecution authorities. Within the statutory framework created by Parliament, it is for the courts to determine the appropriate sentence in individual cases, taking into account all mitigating and aggravating features.

28. Following the July disturbances in Bradford, the Home Secretary announced the establishment of an interdepartmental Ministerial Group on Public Order and Community Cohesion. It was asked to report to the Home Secretary on what the Government could do to minimize the risk of further disorder and to help build stronger and more cohesive communities. A review team (the Independent Community Cohesion Review Team) was also established. Its terms of reference were:

(a) To obtain the views of local communities, including young people, local authorities and voluntary and faith communities, in a number of representative multi-ethnic communities on the issues that need to be addressed in developing confident, active communities and social cohesion;

(b) To identify good practice and to report this to the Ministerial Group and also to identify weaknesses in the handling of these issues at the local level.

29. The reports of the Ministerial Group and the Independent Community Cohesion Review Team were published in December 2001. The Government believes it is essential to pursue policies and programmes that will build community cohesion and encourage interaction between different groups, rather than to attempt to integrate minorities into one dominant culture.

30. The Government is pursuing comprehensive policies to build community cohesion, which are set out in detail in the ministerial report and which include the following:

> **Strengthening legislation** to promote equality and protect minorities, for example through the implementation of positive duties to promote race equality under the Race Relations (Amendment) Act 2000; the implementation of the European Race and Employment Directives; strengthening the law on incitement to racial hatred and racially and religiously aggravated offences in the Anti-terrorism, Crime and Security Act 2001.

Strengthening local community leadership, for example by disseminating good practice guidance to local authorities, publishing proposals to increase local authorities' democratic legitimacy and help develop responsive and accountable local government, appointing community facilitators in areas of community conflict and supporting local voluntary and community organizations.

Strengthening civic identity and sense of citizenship by leading a national debate on citizenship, civic identity, shared values, rights and responsibilities.

Delivering improvements in housing policy, for example by ensuring that minority ethnic groups are not concentrated in the worst housing stock through fear or discrimination. In November 2001, the Government published an action plan for addressing the housing needs of black and minority ethnic people, which brings together the full range of housing policies that tackle ethnic minority issues in housing and has 70 specific action commitments, including on allocations policy.

Promoting inclusiveness in education, for example by revising guidance for specialist schools to include specific examples of cross-cultural activities between schools, setting local targets to narrow gaps in achievement of pupils from different ethnic groups and increasing the number of ethnic minority teachers.

Engaging young people and children, particularly by encouraging the interaction of children and young people of different faiths and cultures. In July 2001, the Government funded a £7-million programme of additional summer activities, benefiting 200,000 mainly young people. The Government is committed to rebuilding youth services and supporting voluntary sector organizations working with young people.

Rebuilding local economies, increasing the employment rate of people from ethnic minorities and narrowing the gap between the employment rate of ethnic minorities and the overall employment rates.

Tackling poverty and deprivation, for example through the National Strategy for Neighbourhood Renewal, launched in January 2001, which places strong emphasis on local agencies.

More effective policing, for example by assisting the development of effective Crime and Disorder Partnerships, increasing ethnic minority recruitment to the police, and publishing guidance to police forces on hate crime and best practice in policing ethnic minority communities.

31. The Government notes the Committee's suggestion that it should consider facilitating inter-party arrangements to ensure that racial tension is not inflamed during political campaigns. Political parties - like everyone else - are subject to the laws on incitement to racial hatred, which apply during election times as at any other time. However, any inter-party initiatives beyond that are matters for the political parties themselves, rather than the Government of the day.

II. INITIAL RESPONSE TO THE CONCLUDING OBSERVATIONS (CCPR/CO/UKOT/5) ON THE FOURTH/FIFTH REPORT IN RESPECT OF THE OVERSEAS TERRITORIES (CCPR/C/UKOT/5)

A. Introduction

32. In paragraph 40 of its concluding observations (adopted on 29 October 2001) on the United Kingdom's fourth and fifth combined report, the Human Rights Committee asked the United Kingdom to provide, within 12 months, information on certain matters which were identified in that paragraph. So far as concerns the United Kingdom's Overseas Territories - to which the present response to the Committee's request solely relates - the matters so identified are those referred to in paragraph 23 of the concluding observations. The information thus requested by the Committee in respect of the Overseas Territories is set out below. At the same time, the United Kingdom takes this opportunity to provide information also on two other points which were raised by the Committee in relation to the Overseas Territories and which can appropriately be dealt with now rather than being left to be covered in the sixth periodic report. Information on the remainder of the points raised by the Committee will, as the Committee has requested, be included in the United Kingdom's sixth periodic report.

33. The matters referred to in paragraph 23 of the concluding observations, as the United Kingdom understands that paragraph, are, first, the question whether the provisions of the Covenant should be incorporated into the domestic legal order of the various Overseas Territories so that they can be directly invoked before, and applied (as such) by, the courts of the Territories; and, second, "the questions not dealt with by the delegation". The United Kingdom understands this latter formula to refer to the questions (or some of them) that were posed, in the course of the oral examination of the report, by Mr. Yrigoyen. The Committee will recall that, for the reasons referred to more fully below, the delegation suggested that it would be more helpful if its reply to some of Mr. Yrigoyen's questions were made in writing and at a later date, and that the Chairman agreed that that should be the procedure to be followed. The United Kingdom understands the Committee's request in paragraph 40, read together with paragraph 23, to reflect that exchange.

B. Incorporation

34. In respect of the incorporation of the Covenant into the domestic law of the Overseas Territories, the position of the United Kingdom Government is as follows. In the absence of a requirement to that effect in the instrument concerned - and no such requirement is imposed by the Covenant - it is not the general practice of the United Kingdom Government to give effect to treaties by incorporating them, verbatim, in domestic legislation so that their provisions operate as if they were the provisions of a domestic statute. Though there have been some cases, in limited and special circumstances (for example, in relation to the Conventions on Diplomatic and Consular Relations), where it has proved convenient to do that, the general practice of the United Kingdom Government, both for the metropolitan territory and for the Overseas Territories, has been simply to introduce such specific new legislation on particular topics, and to make such changes in existing legislation and in existing administrative practice as appears necessary to ensure that the relevant treaty obligations are indeed fully implemented. This new

legislation, or these amendments to existing legislation, can of course be framed in terms that are consonant with local legislative drafting practice, and that are directly applicable to local institutions and to local legal structures and practices, in a way that the direct incorporation of the relevant treaty into the domestic legal order would not usually permit. This mode of proceeding, it is considered, generally enhances the clarity and certainty of the relevant domestic law and thus facilitates the task of the local courts in ensuring that the rights and obligations flowing from the underlying treaties are properly enforced.

35. The United Kingdom's Human Rights Act 1998, which did largely effect the incorporation of the European Convention on Human Rights into the domestic law of the United Kingdom's metropolitan territory, was undoubtedly an important departure from this general practice. The Committee is of course correct in noting that the provisions of that Act do not apply to the Overseas Territories (except, to a limited extent, St. Helena and Pitcairn). However, the Committee is, with great respect, not correct in believing (see paragraph 23 of the concluding observations) that "the protection of Covenant rights in the Overseas Territories is weaker and more irregular than in the metropolitan area". In this respect, the Committee appears not to have given adequate weight to the Bills of Rights (though that is not their formal designation) which now form part of the Constitutions of most of the Overseas Territories: see the United Kingdom's written response to issue No. 1 in the Committee's list of issues arising on the fourth/fifth report.

36. In the first place - and treating all the various bills of rights as essentially similar, as indeed they are, though there are some variations in their detailed terms to accommodate variations in local circumstances - the range of rights guaranteed and protected by such a bill of rights is in some respects wider than those protected by the 1998 Act: again see the response to issue No. 1. To the limited extent that there may be rights (or aspects of rights) covered by the Act which are not adequately protected by the standard Overseas Territory bill of rights, it is expected that this deficiency will be remedied in due course when the study referred to at the end of the United Kingdom's response to issue No. 1 has been taken into account.

37. Second, and again as noted in the response to issue No. 1, the status which a bill of rights has as part of the constitution of the Overseas Territory concerned gives it a legal force in the law of that Territory which is superior to that enjoyed in the law of the metropolitan territory by the 1998 Act. The constitution is, for that Territory, the "supreme law of the land", and the provisions of the bill of rights which it contains, as well as setting norms with which all executive action must comply on pain of being held unlawful and invalid, will automatically override any locally enacted law, whether existing or future, which is inconsistent with them. As the Committee will appreciate, this goes further than - because of the constraints imposed in the United Kingdom by the principle of the supremacy of Acts of Parliament - it was possible for the 1998 Act to go.

38. Third, the enforcement provisions which are contained in the standard Overseas Territory bill of rights give the local Supreme Courts virtually unlimited powers to provide the appropriate and effective remedy for any breach or threatened breach of the guaranteed rights: again see the response to issue No. 1. It is considered that these powers are at least as extensive as those conferred on the United Kingdom courts by the 1998 Act.

39. The Committee has correctly noted that the Constitutions of the British Virgin Islands, the Cayman Islands, St. Helena and Pitcairn do not yet contain a bill of rights. As regards the first three of those territories, the Committee will be pleased to know that proposals to remedy the deficiency are currently under active consideration in each Territory, and it is hoped that it will shortly be possible to report concrete progress in this matter. As regards Pitcairn, it has to be remembered that the territory has a very small population - the latest available count, in October 2001, showed a total population of 48 persons, including the externally recruited teacher, pastor and nurse and their respective families - and its governmental and administrative arrangements are correspondingly simple. In these circumstances, and though the question will be kept under review, it is not currently considered realistic to incorporate a bill of rights into Pitcairn's rather elementary Constitution. But the Committee is reminded that, as previously reported and as noted above, the Human Rights Act 1998 of the United Kingdom could in certain circumstances be invoked before the local courts as part of the basic law of the territory.

C. Mr. Yrigoyen's questions

40. The Committee will recall the circumstances relating to the handling of these questions. Briefly, these were as follows. In the course of his general comments on the fourth/fifth report, Mr. Yrigoyen elaborated a number of detailed questions relating to various Overseas Territories. The delegation could, and did, give its response to some of these when responding to the remainder of the questions posed, or comments made, by members of the Committee. However, in the case of some of Mr. Yrigoyen's questions, the delegation found itself unable to give an immediate response, either because the relevant information would need to be sought from the individual territory concerned or, in many instances, because it had proved impossible for adequate note of Mr. Yrigoyen's questions or concerns to be taken as he raised them. (The delegation was of course attempting to follow Mr. Yrigoyen remarks in translation.) It was in these circumstances that the delegation suggested, and the Chairman kindly agreed, that these outstanding questions should be answered subsequently and in writing. It was assumed that the secretariat would be able, for this purpose, to supply the delegation with an authentic English translation of Mr. Yrigoyen's questions.

41. Accordingly, the Permanent Mission of the United Kingdom to the United Nations Office at Geneva has, on more than one occasion after the conclusion of the Committee's session, requested the secretariat to provide such an authentic English translation so that the delegation's undertaking to the Committee could be honoured - and indeed so that the Committee's request in paragraph 40 of the concluding observations could be complied with. However, though the secretariat was able to provide what appears to be the original Spanish text of Mr. Yrigoyen's questions, it has to date been unable to produce the requested English version. (It should be emphasized that no criticism of the secretariat is intended here: the pressures on its technical services are well appreciated.) The United Kingdom has therefore had to resort to procuring its own translation of the secretariat's Spanish text, and the following questions and answers are based on that "unofficial" translation.

1. Bermuda

Q. (a) *Why were only two questions asked in the referendum on self-determination?*

42. This question appears to indicate a misunderstanding of what was said in paragraph 7 of the fourth/fifth report. The referendum put only one question to the people of Bermuda, i.e. whether they wished Bermuda to proceed to full independence as a sovereign State or whether they did not. The answer given to that question was as reported.

Q. (b) *What measures have been taken to combat discrimination?*

43. The United Kingdom Government interprets this question as referring to racial discrimination, but will give that term the very broad connotation which it has for the purposes of, for example, the International Convention on the Elimination of All Forms of Racial Discrimination.

44. Bermuda has for many years maintained a wide range of measures and policies aimed at prohibiting and preventing racial discrimination in both the public and the private sectors and at promoting understanding and good relations between races. These measures and policies, which have been amended and brought up to date from time to time, are vigorously implemented and enforced. They are as follows.

Substantive measures

45. The principal substantive measure is the Constitution itself. Section 12 (1) of the Constitution prohibits any law which, either of itself or in its effect, discriminates between persons by reference to their race, place of origin, political opinion, colour or creed. Section 12 (2) similarly prohibits discriminatory action in the public sphere, that is, by any person acting by virtue of a written law or in the performance of the functions of any public office or public authority. Section 12 (7) prohibits discriminatory treatment in respect of access to places of public resort, e.g. shops, hotels, restaurants, places of entertainment, etc.

46. These provisions of the Constitution have been supplemented by various provisions of the Human Rights Act 1981 (as amended) and by various amendments to the ordinary criminal law.

47. The provisions of the Human Rights Act that deal with racial discrimination are broadly similar to those of the United Kingdom's Race Relations Acts. They render unlawful discriminatory acts or practices by private persons or bodies in the areas of the supply of goods, facilities or services; accommodation; contracts; public notices; employment; and membership of organizations.

48. The Human Rights Act 1981 also prohibits harassment of an employee in the workplace by his or her employer or by the employer's agent or by another employee if the harassment is based on race, colour, ancestry or place of origin. The same Act makes it a criminal offence to publish threatening, abusive or insulting words in a public place or at a public meeting if that is

done with intent to excite or promote ill-will or hostility against any section of the public by reference to its colour, race, or national or ethnic origins. It is also a criminal offence for any person to do any act calculated to excite or promote such ill-will or hostility if he/she does it with intent to incite a breach of the peace or if he/she has reason to believe that that is the likely result. In addition, the Criminal Code has now been amended so as to recognize the separate offences of racial harassment and racial intimidation, in each case constituted by specific acts committed with the intention of causing another person distress, fear or alarm and with the motivation of antipathy to that other person on grounds of race, colour or place of origin.

49. The Human Rights Act 1981 established a Human Rights Commission as the principal agency for promoting and securing enforcement of its anti-discrimination provisions. The Commission is empowered to approve special programmes which are designed to promote the equality of opportunity of disadvantaged persons or groups or to increase the employment of members of a class or group because of their race, colour, nationality or place of origin.

50. A further, and very important, measure is the Commission for Unity and Racial Equality Act 1994. This established the Commission for Unity and Racial Equality (CURE) whose principal functions are:

> "(a) to promote equality of opportunity and good relations between persons of different racial groups; and
>
> "(b) to work towards the elimination of racial discrimination and institutional discrimination."

51. One of the specific functions of CURE is the issuance, with the approval of the Minister and of both Houses of the Bermuda Legislature, of codes of practice in relation to employment. In the exercise of this function, in September 1997 CURE produced and disseminated its "Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality in Employment". In 1999, the Act of 1994 was amended to require all employers with 10 or more employees to register with CURE and provide CURE with the racial demographics of their employees. In January 2000, the CURE Registration and Return Regulations 2000 specified the information that CURE required to ensure equality of opportunity in the workplace. In addition to information on the racial background of each employee, the race-related information collected included information on salaries/wages, on compensation packages, on new hirings and on promotions.

Enforcement machinery

52. The enforcement of the anti-discrimination provisions of section 12 of the Constitution (described above) is provided for by section 15 of the Constitution. This enables any person who alleges that those provisions have been, are being or are likely to be contravened in relation to him to apply for redress direct to the Supreme Court. In such a case the Supreme Court has the power to "make such orders, issue such writs and give such directions as it may consider appropriate" to secure the enforcement of the relevant provisions.

53. The Human Rights Act 1981 establishes its own machinery for the enforcement of its anti-discrimination provisions. Any person who alleges that he/she is the victim of a contravention of those provisions may make a complaint to the Human Rights Commission. The Commission must investigate the complaint - it has wide powers for this purpose - and, if possible, settle it by its good offices. If a settlement is not possible, it may in certain circumstances institute criminal proceedings or, if that is not appropriate, it may refer the case to the Minister who may then refer it to a board of inquiry. If such a board finds that there has indeed been unlawful discrimination, it may order full compliance with the contravened provision of the Act and may also order rectification of the injury thereby caused and the payment of financial compensation for such injury, including financial compensation for injured feelings. A victim of unlawful discrimination may also pursue an ordinary claim for damages in the courts; these damages, too, may include damages for injured feelings.

54. In addition to these particular remedies for unlawful discrimination, the ordinary criminal law of course provides penal sanctions for offences such as racial harassment and racial intimidation and for the offences (described more specifically above) involving the stirring up of racial hostility or ill-will.

Promotion of good race relations

55. In the field of the positive promotion of good race relations, the Bermuda Government, either directly or through various public bodies, organizes, sponsors or encourages a number of programmes and events aimed at combating racial discrimination and racial prejudices and at enhancing understanding and goodwill among different racial and ethnic groups. For example, the Human Rights Commission, in partnership with Amnesty International, hosts special programmes for schools on 10 December each year to celebrate the Universal Declaration of Human Rights. Similarly, but in this case in partnership with CURE, it hosts public programmes on 21 March each year to celebrate the International Day for the Elimination of Racial Discrimination. The Department of Cultural Affairs hosts a programme each year to commemorate Emancipation Day (1 August) and it also sponsors island-wide events in May of each year in celebration of Bermuda's divers heritage. In the non-governmental field, Amnesty International, the National Association for Reconciliation and the organization known as "Beyond Barriers" are active in the community with programmes of their own to combat racial discrimination and to promote good community relations.

Q. (c) *Can statistics be provided for cases of harassment, domestic violence and rape - do they all constitute offences? Has there been an increase in the number of cases of domestic violence?*

Racial harassment

56. There have so far been only three recorded cases of racial harassment. These all occurred in 1999.

Domestic violence

57. Domestic violence is not recognized as a separate offence in the law of Bermuda. Most cases of what may be regarded as domestic violence would, of course, involve the commission of some form of assault or, in some instances, a more serious criminal offence and would be classified as such. But they are not classified as cases of "domestic violence" and no relevant statistics are therefore available.

Rape

58. Rape no longer exists as a separate offence in the law of Bermuda. Cases which would formerly have been classified as cases of "rape" now fall into the general classification of "sexual assault". In 1999 there were 42 cases of sexual assault, in 2000 there were 35 cases and in 2001 there were 38 cases. But it is not possible to identify which of these cases might, under the previous law, have been treated as cases of rape.

2. Virgin Islands

Q. (a) *What measures have been taken to combat discrimination? If the bill was approved, can statistics be provided regarding its implementation?*

59. The bill referred to in paragraph 34 of the fourth/fifth report was indeed enacted as the Anti-Discrimination Act 2001. However, it has not yet been brought into force and there are therefore no statistics, as yet, relating to its implementation.

Q. (b) *Please confirm whether the difference between men and women in connection with acquiring Belonger status has been removed.*

60. It can be confirmed that this difference was removed by the Virgin Islands (Constitution) (Amendment) Order 2000.

Q. (c) *[Is there] segregation in prisons between remand and convicted prisoners, adult and juvenile and male and female prisoner?*

61. It can be confirmed that there is proper segregation between remand and convicted prisoners, juvenile and adult prisoners and male and female prisoners.

Q. (d) *Have all differences between legitimate and illegitimate children been removed? In which cases do illegitimate children born within the territory acquire Belonger status?*

62. The previous distinction between legitimate and illegitimate children with respect to the acquisition of Belonger status has now been removed by the Virgin Islands (Constitution) (Amendment) Order 2000. Some other disadvantages of illegitimate birth, deriving from the common law, have been removed by the Legitimacy Act (Cap. 271 of the Revised Laws of the

British Virgin Islands). In particular, this Act provides for a person who was born illegitimate to be legitimized by the subsequent marriage of his or her parents. But a person who was born illegitimate and who is not legitimated in this way remains subject to certain disabilities deriving from common law, in particular those that relate to inheritance of property.

3. Cayman Islands

Q. (a) *What are the problems regarding the implementation of the Covenant in the Islands?*

63. The Cayman Islands Government are not aware of any problems regarding the implementation of the Covenant in the Territory other than as indicated from time to time in the periodic reports. If and when such problems arise in the future, the Cayman Islands Government will of course endeavour to ensure that they are resolved in ways that fully respect the relevant provisions of the Covenant.

Q. (b) *When a deportation order is made against a resident who may forfeit his/her Caymanian status, can such a person appeal and before whom?*

64. As was explained in paragraph 72 of the fourth/fifth periodic report, no deportation order can be made against a person who possesses Caymanian status. Nor can such an order be made against a non-Caymanian who has been granted by the Immigration Board, and still enjoys, the right to reside permanently in the Islands. However, as was also so explained, if a person who possesses Caymanian status by grant from the Immigration Board (as distinct from by birth or descent) is convicted of a criminal offence in certain circumstances, the court which convicted him/her may recommend to the Immigration Board that it should consider ordering that he/she should forfeit Caymanian status; and if the Board, in its discretion, acts on that recommendation, he/she will then lose the previous immunity from deportation. Similarly, a person to whom the Immigration Board has granted the right to reside permanently in the Islands may, in certain limited circumstances (also specified in paragraph 72 of the fourth/fifth report), be deprived of that right by the Board in its discretion and, if that happens, he/she will then lose previous immunity from deportation. In neither case, however, is a deportation order the automatic consequence of the Immigration Board's depriving a person of Caymanian status or the right to reside permanently in the Islands. Deportation orders are made not by the Board but by the Governor in Council and are made only in the circumstances described in paragraph 73 of the fourth/fifth report. The Immigration Law does not provide for a formal right of appeal against a deportation order but representations may always be made by or on behalf of the person concerned and the Immigration Law does permit the Governor in Council to revoke, vary or modify an order which has been made.

Q. (c) *May an employed person's residence permit be revoked on account of the reasons indicated in the report, i.e. becoming destitute or having engaged in subversive activity and, in the latter case, what is the meaning of "to engage in subversive activity"?*

65. This question appears, with respect, to be based on a misunderstanding of the system which operates under the Immigration Law: there is no such thing, under that Law, "as an employed person's residence permit".

66. In essence, the position as regards the relationship between a person's immigration status and his right to engage in employment in the Cayman Islands is as follows. There are of course no restrictions on that right in the case of a person who possesses Caymanian status. There are similarly no such restrictions applicable to a non-Caymanian who enjoys the right of permanent residence. Any other non-Caymanian who wishes to engage in employment while in the Islands must obtain a work permit. Any such work permit is revocable and the law does not specify or limit the grounds upon which this may be done. However, it is, in practice, only in rare cases that the question of revoking a work permit arises for decision, and care is then taken to ensure that the rules of natural justice are respected.

67. The passage in the fourth/fifth report that was cited in the question and that referred to action against a person on grounds of his/her having become destitute or having engaged in subversive activities was a reference not to the revocation of a residence permit or a work permit but to a decision to deprive a person (whether or not engaged in employment) of *the right to permanent residence*. As for the meaning of the term "subversive activities", it is suggested that, while its applicability in any given case must depend on the precise facts of that case, it would typically embrace activities that were aimed at the overthrow of the lawful government of the Territory, including activities that were seditious or treasonable.

Q. (d) *Is it an offence to remain illegally in the Islands? What is the punishment for that offence?*

68. A person who remains unlawfully in the Cayman Islands is guilty of an offence and is liable, on conviction for a first offence, to a fine of up to $2,000 and/or to imprisonment for up to six months. For a second or subsequent offence, the penalty is a fine of up to $4,000 and/or imprisonment for up to 12 months.

4. Gibraltar

Q. (a) *What standing does the Covenant have in Gibraltar?*

69. The Covenant has the same standing in Gibraltar as it has in other Overseas Territories and indeed in the United Kingdom's metropolitan territory itself. That is to say, it is recognized and respected as enunciating rights and obligations under international law that must be scrupulously observed and, in appropriate cases, positively implemented by domestic legislation and/or administrative policies and practices. However, the Covenant does not itself have the force of law in the domestic legal order and cannot be invoked as such in the municipal courts (except as a possibly relevant factor in the resolution of an ambiguity in domestic law). See also what is said on this topic in paragraphs 34-39 above, under "Incorporation". Gibraltar is, of course, one of the Overseas Territories whose Constitution contains a bill of rights.

Q. (b) Is *there discrimination on grounds of nationality against Spanish citizens as regards purchasing property, acquiring permanent residency, inheriting immovable assets or voting and being elected?*

70. There is no discrimination on grounds of nationality against Spanish citizens as regards purchasing property or inheriting property, whether movable or immovable.

71. Under the Immigration Control (European Economic Area) Ordinance 2000, Spanish citizens are treated equally with other European Union nationals as regards the right to reside in Gibraltar and the right to remain in Gibraltar indefinitely. The provisions of that Ordinance relating to the grant of certificates of permanent residence (i.e. to the children and husbands of Gibraltarian women) do not impose any nationality qualification.

72. So far as concern voting for and being elected to the House of Assembly, only British nationals are qualified. But there is no discrimination against Spanish nationals as such (i.e. as distinct from other non-British nationals).

Q. (c) *In what circumstances may non-Gibraltarians lawfully present in Gibraltar have their residence permits cancelled and be deported, and is there any legal recourse against such a measure? Moreover, can statistics be provided in respect of recent deportation orders and decisions in cases in which the right of appeal to the Governor, mentioned in the report, has been exercised?*

73. In relation to this question, a distinction must be drawn between persons who are European Union nationals and persons who are not. European Union nationals who are "qualified persons", as defined in the Immigration Control (European Economic Area) Ordinance 2000 in conformity with the requirements of European Union law, (and also family members of a "qualified person") may have their residence permits (or, as the case may be, their residence documents) revoked either on grounds of public policy, public security or public health (again as defined and determined in conformity with European Union law), or if they cease to be "qualified persons" (or, as the case may be, family members of a "qualified person"). European nationals who are not "qualified persons" but who do not need residence permits in order to reside as seasonal workers or workers employed for less than six months may also be required to leave Gibraltar either on grounds of public policy, public security or public health or if they cease to be such workers.

74. Persons who are not European Union nationals may be declared by the Principal Immigration Officer to be prohibited immigrants, or may have their residence permits cancelled by him, on a wide variety of grounds and may then be removed from Gibraltar by order of the Governor or of the Magistrates Court (in the latter case with a right of appeal to a higher court). The Governor may also order the removal of a person on the recommendation of a court by which he has been convicted of a criminal offence in certain circumstances. A person who has been declared a prohibited immigrant or whose residence permit has been cancelled may appeal to the Governor against that declaration or cancellation. There have been no cases in the past five years in which a person lawfully resident in Gibraltar has appealed to the Governor against such a decision.

5. Montserrat

Q. (a) *Was a state of emergency declared as a result of volcanic eruptions and, if so, what rights under the Covenant were suspended?*

75. It was indeed necessary, at the height of the volcanic emergency, for the Governor of Montserrat, acting in consultation with the Chief Minister, to make various orders under his domestic emergency powers to speed through urgent legislation that was required to deal with the immediate situation. At no time, however, was any provision of the Constitution suspended nor was there any derogation from any of the provisions of the Bill of Rights which the Constitution contains. Nor was it necessary to give notice of derogation under any international human rights instrument, e.g. the Covenant or the European Convention on Human Rights.

Q. (b) *What is the scope of the rights under the Covenant and what does "to the fullest extent possible" mean in respect of the observance of the rights mentioned in the report?*

76. As explained above, at no time during the volcanic eruption crisis (which still exists) has any provision of the Bill of Rights contained in the Constitution been suspended or derogated from, nor has there been any derogation from or failure to respect any of the provisions of the Covenant. The phrase "to the fullest extent possible" was intended to refer to the fact that, at various times, restrictions have had to be imposed, *in the interests of public safety and public health*, on entry into areas considered to be unsafe. This is expected to continue to be the case for the foreseeable future. The Committee will also recall that the destruction of Montserrat's prison in the early phase of the volcanic eruptions caused problems in relation to the provision of suitable accommodation for prisoners, and in particular in relation to the segregation of different categories of prisoners, but that these problems are now being overcome.

6. Pitcairn

Q. *Please explain what the elders of the Church are and whether women are admitted.*

77. The population of Pitcairn largely adheres to the Seventh-Day Adventist Church. The organization of the individual churches belonging to the Seventh-Day Adventist Church varies from place to place according to local circumstances, including the size of the congregation. In addition (in most cases) to a minister or pastor, there are usually a number of elders (who may be of either sex and who often include a Head Elder) and a number of deacons and deaconesses. Both elders and deacons and deaconesses are chosen by their own local congregation and are ordained. The primary function of the elders, who are responsible to their local church, is to help care for the spiritual welfare of the congregation, and their duties may include preaching, visitation, care of the sick, admonition of the wayward, etc. Deacons and deaconesses are more concerned with the practical working of their local church. It will be seen that there is no impediment to a woman becoming an elder of her church, though this does not appear to have happened in Pitcairn in recent years. In fact, because of Pitcairn's very small population and even smaller current practising membership of the congregation, its local church has recently been given the status only of a "company" and the local organization has been accordingly

simplified: there are at present no elders as such, but there is a "Company Leader" (equivalent to a Head Elder) and a Treasurer, and local authority in relation to the church is at present largely exercisable by the Pastor acting in conjunction with the parent Union of the Seventh-Day Adventist Church.

7. St. Helena

Q. *Can statistics illustrating cases of racial discrimination be provided, and is it punishable as an offence in the same way as racial harassment and racial intimidation?*

78. Under St. Helena's Race Relations Ordinance 1997, it is a criminal offence to discriminate on racial grounds in any of the ways specified for that purpose by the Ordinance. The penalty prescribed for such an offence is a fine not exceeding £500. Happily, however, there have been no cases in which it has been necessary to prosecute any person for such an offence.

8. Turks and Caicos Islands

Q. (a) *Specific measures to combat discrimination. Do laws exist to prohibit racial discrimination and, if so, could an example be given of their implementation?*

79. The core of the measures currently in force in the Turks and Caicos Islands to prevent or discourage racial discrimination, and to provide effective redress for any discrimination that may occur, is to be found in the relevant provisions of the "Bill of Rights" in the Constitution of the territory. These provisions relate not only to discriminatory laws and discriminatory action committed by persons acting under the authority of any law or by public officers or public authorities but also to discrimination by private persons or bodies in respect of places to which the general public has access - that is to say, shops, hotels, restaurants, eating houses, licensed premises, places of entertainment or places of resort. The Committee will remember that the Constitution gives very wide powers to the courts of the territory to remedy any breach or apprehended breach of the provisions of the "Bill of Rights". In addition to these provisions in the Constitution, the Government of the Turks and Caicos Islands has for some time been contemplating the introduction of legislation dealing more generally with racial discrimination by private persons or bodies. The thinking has been that the United Kingdom's Race Relations Act 1976 (as amended) may serve as an appropriate model in its essential features, and this is still likely to be the case. But the current assessment is that that Act would need adaptation in a number of respects to fit it to the particular circumstances of the Turks and Caicos Islands and that significant further work is required for this purpose. That work is being pursued. It may be added that the competent authorities of the territory are of the view that, even in the absence of specific legislation of this kind, the provisions of Employment Ordinance relating to "unfair dismissal" could be invoked to provide a remedy in the case of a dismissal which was racially motivated.

Q. (b) *Are marriage gratuities still awarded to female public officers and not to male public officers?*

80. It remains the position that, as stated in paragraph 183 of the fourth/fifth report, General Orders provide for the payment of a marriage gratuity to female public officers but not to male public officers. However, it is no longer the position that female officers are required to retire on marriage. Moreover, marriage gratuities are awarded only if the officer in question resigns from the public service on marriage (or intended marriage) to a foreign national and intends to relocate to her husband's country. The last previous occasion when such a gratuity was in fact paid was in July 1985.

D. Other points

81. There are two other points arising from the Committee's concluding observations which, though the Committee has not asked for an early response, it seems helpful to deal with now.

1. Turks and Caicos Islands - death penalty

82. In paragraph 37 of the concluding observations the Committee expressed concern at the retention of capital punishment for treason and piracy in the Turks and Caicos Islands and urged that it should be abolished.

83. As was explained to the Committee during the oral examination of the fourth/fifth report, the (purely nominal) retention of the death penalty for treason and piracy in the Turks and Caicos Islands is, in effect, an historical curiosity which is now being remedied. It results from fact that the relevant statutory provision is contained in an old Act of the United Kingdom Parliament which originally applied to The Bahamas at a time when the Turks and Caicos Islands constituted a dependency of The Bahamas (as they did for much of the eighteenth and nineteenth centuries) and which, having automatically continued to apply as part of the law of the Turks and Caicos Islands after they were separated from The Bahamas in the mid-nineteenth century, has technically remained in force there ever since. However, the Committee can be assured that the necessary legislative processes to update the law of the Territory by expressly replacing the death penalty for treason and piracy by a penalty of life imprisonment are currently in train and are expected to be completed in the very near future. In the meantime, there is of course no question of the death penalty actually being carried out.

84. It is therefore now the position in practice, and will very shortly be the position in strict law also, that the death penalty has been abolished for all offences in all Overseas Territories.

2. British Indian Overseas Territory (BIOT)

85. With respect, the Committee's comment and recommendation in paragraph 38 of the concluding observations seem to rest on a misunderstanding of the explanation which the delegation gave in reply to a factual inquiry by Mr. Scheinin. The present response therefore seeks to clarify the position.

86. The delegation did indeed confirm to Mr. Scheinin that the High Court in England had recently held that an Ordinance of BIOT (the Immigration Ordinance 1971) which had the effect of excluding the llois from any part of the Territory unless in possession of a permit to enter was, to that extent, unlawful. The delegation also confirmed that the United Kingdom Government accepted that decision. The 1971 Ordinance had therefore already been replaced by a new Ordinance which recognized that the llois had the right of unrestricted entry to any part of the Territory except (for defence and security reasons) Diego Garcia - for entry to which a permit was still required.

87. It is also correct that the delegation explained that the fact that there was no resident population in BIOT meant, in the opinion of the United Kingdom, that the Covenant could have no practical relevance to the Territory. The delegation went on to note that that position might change in the future if, in the light of certain feasibility studies which the United Kingdom had commissioned, it was found that resettlement was viable and if a settled population was then again established. But, it was made clear, that was not the situation which currently fell to be considered.

88. However, it is *not* correct that the delegation gave the absence of a settled population as the reason why the Covenant does not apply to BIOT. On the contrary, when explaining the facts of the situation, the delegation expressly drew the Committee's attention to the crucial fact that when, in 1976, the United Kingdom ratified the Covenant in respect of itself and certain of its Overseas Territories, it did *not* ratify it in respect of BIOT. It is for this reason, and irrespective of - but of course in full consistency with - the practical considerations which the delegation explained, and which have again been explained above, that the Covenant does not apply, and never has applied, to BIOT. Accordingly, and while taking respectful note of the Committee's suggestions in paragraph 38 of the concluding observations, the United Kingdom must again make clear that it is not bound in respect of BIOT by any of the obligations which arise from the Covenant, including any obligation to report to the Committee in respect of that Territory.
