



**International covenant
on civil and
political rights**

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**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

1. The Committee considered the sixth periodic report submitted by the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/6) at its 2541st, 2542nd and 2543rd meetings, held on 7 and 8 July 2008. The Committee adopted the following concluding observations at its 2558th and 2559th meetings, held on 18 July 2008.

A. Introduction

2. The Committee welcomes the State party's detailed sixth periodic report and commends the inclusion in the report of a comprehensive account of action taken to follow up on each of the Committee's concluding observations on the consideration of the previous report. It appreciates the written replies provided in advance by the delegation, as well as the frank and concise answers given by the delegation to the Committee's written and oral questions.

B. Positive aspects

3. The Committee welcomes the adoption of the Racial and Religious Hatred Act 2006.

4. The Committee welcomes the adoption of the Criminal Justice and Immigration Act 2008 abolishing the common law offences of blasphemy in England and Wales.

5. The Committee welcomes the adoption of the Civil Partnership Act 2004, the Gender Recognition Act 2004, the Equality Act 2006 and the Sex Discrimination (amendment of Legislation) Regulations 2008.

C. Principal subjects of concern and recommendations

6. The Committee notes that the Covenant is not directly applicable in the State party. In this regard, it recalls that several Covenant rights are not included among the provisions of the European Convention of Human Rights which has been incorporated into the domestic legal order through the Human Rights Act 1998. The Committee also notes that the State party is the only Member State of the European Union not to be a party to the Optional Protocol. (art.2)

The State party should ensure that all rights protected under the Covenant are given effect in domestic law and should make efforts to ensure that judges are familiar with the provisions of the Covenant. It should consider, as a priority, accession to the Optional Protocol.

7. The Committee regrets that the State party intends to maintain its reservations. It notes in particular that the general reservation to exempt review of service discipline for members of the armed forces and prisoners is very broad in scope.

The State party should review its reservations to the Covenant with a view to withdrawing them. In particular, the State party should reconsider its general reservation concerning service discipline for members of the armed forces and prisoners.

8. The Committee notes that, despite recent improvements, the proportions of women and ethnic minorities in the judiciary remain at low levels. (art.3 and 26)

The State party should reconsider, with a view to strengthening, its efforts to encourage increased representation of women and ethnic minorities in the judiciary. The State party should monitor progress in this regard.

9. The Committee remains concerned that, a considerable time after murders (including of human rights defenders) in Northern Ireland have occurred, several inquiries into these murders have still not been established or concluded, and that those responsible for these deaths have not yet been prosecuted. Even where inquiries have been established, the Committee is concerned that instead of being under the control of an independent judge, several of these inquiries are conducted under the Inquiries Act 2005 which allows the government minister who established an inquiry to control important aspects of that inquiry. (art.6)

The State party should conduct, as a matter of particular urgency given the passage of time, independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland.

10. The Committee is concerned at the slowness of the proceedings designed to establish responsibility for the killing of Jean Charles de Menezes and at the circumstances under which he was shot by police at Stockwell underground railway station (art.6)

The State party should ensure that the findings of the coronial inquest, due to begin in September 2008, are followed up vigorously, including on questions of individual responsibility and on question of intelligence failures and police training.

11. The Committee is concerned with the use of Attenuating Energy Projectiles (AEPs) by police and army forces since 21 June 2005 and emerging medical evidence that they may cause serious injuries. (art.6)

The State party should closely monitor the use of Attenuating Energy Projectiles (AEPs) by police and army forces and consider banning such use if it is established that AEPs can cause serious injuries.

12. The Committee notes with concern that until the recent decision of the European Court of Human Rights in *Saadi v. Italy*, the State party was defending the position that persons suspected of terrorism could under certain conditions be returned to countries without the appropriate safeguards to prevent treatment prohibited by the Covenant. Furthermore, while the State party has concluded a number of Memoranda of Understanding on Deportation with Assurances, the Committee notes that these do not always in practice ensure that the affected individuals will not be subject to treatment contrary to article 7 of the Covenant, as acknowledged in the recent decisions of the Court of Appeal in *DD and AS v. Secretary of State for the Home Department* and *Omar Othman (aka Abu Qatada) v. Secretary of State for the Home Department* (2008). (art.7)

The State party should ensure that all individuals, including persons suspected of terrorism, are not returned to another country if there are substantial reasons for fearing that they would be subjected to torture or cruel, inhuman or degrading treatment or punishment. The State party should further recognise that the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. The State party should exercise the utmost care in the use of such assurances and adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported, as well as effective means to monitor the fate of the affected individuals.

13. The Committee notes with concern that the State party has allowed the use of the British Indian Ocean Territory as a transit point on at least two occasions for rendition flights of persons to countries where they risk being subjected to torture or ill-treatment. (arts. 2, 7 and 14)

The State party should investigate allegations related to transit through its territory of rendition flights and establish an inspection system to ensure that its airports are not used for such purposes.

14. The Committee is disturbed about the State party's statement that its obligations under the Covenant can only apply to persons who are taken into custody by the armed forces and held in British-run military detention facilities outside the United Kingdom *in exceptional circumstances*. It also notes with regret that the State party did not provide sufficient information regarding the prosecutions launched, the sentences passed and reparation granted to the victims of torture and ill-treatment in detention abroad. (art.2, 6, 7 and 10)

The State party should state clearly that the Covenant applies to all individuals who are subject to its jurisdiction or control. The State party should conduct prompt and independent investigations into all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel (including commanders), in detention facilities in Afghanistan and Iraq. The State party should ensure that those responsible are prosecuted and punished in accordance with the gravity of the crime. The State party should adopt all necessary measures to prevent the recurrence of such incidents, in particular by providing adequate training and clear guidance to its personnel (including commanders) and contract employees, about their respective obligations and responsibilities, in line with articles 7 and 10 of the Covenant. The Committee wishes to be informed about the measures taken by the State party to ensure respect of the right to reparation for the victims.

15. The Committee notes with concern that, in order to combat terrorist activities, the State party is considering the adoption of further legislative measures which may have potentially far-reaching effects on the rights guaranteed in the Covenant. In particular, while it is disturbed by the extension of the maximum period of detention without charge of terrorist suspects under the Terrorism Act 2006 from 14 days to 28 days, it is even more disturbed by the proposed extension of this maximum period of detention under the Counter-Terrorism Bill from 28 days to 42 days. Recalling the withdrawal of the notification of the State party's derogation from article 9 of 18 December 2001 on 15 March 2005, the Committee notes that article 9 is therefore now fully applicable again in the State party. (art.9 and 14)

The State party should ensure that any terrorist suspect arrested should be promptly informed of any charge against him or her and tried within a reasonable time or released.

16. The Committee remains concerned that negative public attitudes towards Muslim members of society continue to develop in the State party. (art.18 and 26)

The State party should take energetic measures in order to combat and eliminate this phenomenon, and ensure that the authors of acts of

discrimination on the basis of religion are adequately deterred and sanctioned. The State party should ensure that the fight against terrorism does not lead to raising suspicion against all Muslims.

17. The Committee is concerned about the control order regime established under the Prevention of Terrorism Act 2005 which involves the imposition of a wide range of restrictions, including curfews of up to 16 hours, on individuals suspected of being “involved in terrorism”, but who have not been charged with any criminal offence. While control orders have been categorized by the House of Lords as civil orders, they can give rise to criminal liability if breached. The Committee is also concerned that the judicial procedure whereby the imposition of a control order can be challenged is problematic since the court may consider secret material in closed session, which in practice denies the person on whom the control order is served the direct opportunity to effectively challenge the allegations against him or her. (art.9 and 14)

The State party should review the control order regime established under the Prevention of Terrorism Act 2005 in order to ensure that it is in conformity with the provisions of the Covenant. In particular, it should ensure that the judicial procedure whereby the imposition of a control order can be challenged complies with the principle of equality of arms, which requires access by the concerned person and the legal counsel of his own choice to the evidence on which the control order is made. The State party should also ensure that those subjected to control orders are promptly charged with a criminal offence.

18. The Committee remains concerned that, despite improvements in the security situation in Northern Ireland, some elements of criminal procedure continue to differ between Northern Ireland and the remainder of the State party’s territory. In particular, the Committee is concerned that, under the Justice and Security (Northern Ireland) Act 2007, persons whose cases are certified by the Director of Public Prosecutions for Northern Ireland are tried in the absence of a jury. It is also concerned that there is no right of appeal against the decision made by the Director of Public Prosecutions for Northern Ireland. The Committee recalls its interpretation of the Covenant as requiring that objective and reasonable grounds be provided by the appropriate prosecution authorities to justify the application of different rules of criminal procedure in particular cases. (art.14)

The State party should carefully monitor, on an ongoing basis, whether the exigencies of the situation in Northern Ireland continue to justify any such distinctions with a view to abolishing them. In particular, it should ensure that, for each case that is certified by the Director of Public Prosecutions for Northern Ireland as requiring a non-jury trial, objective and reasonable grounds are provided and that there is a right to challenge these grounds.

19. The Committee notes with concern that, under Schedule 8 to the Terrorism Act 2000, access to a lawyer can be delayed for up to 48 hours if the police conclude that such access would lead, for instance, to interference with evidence or alerting another suspect. The Committee considers that the State party has failed to justify this power, particularly

having regard to the fact that these powers have apparently been used very rarely in England and Wales and in Northern Ireland in recent years. Considering that the right to have access to a lawyer during the period immediately following arrest constitutes a fundamental safeguard against ill-treatment, the Committee considers that such a right should be granted to anyone arrested or detained on a terrorism charge. (art.9 and 14)

The State party should ensure that anyone arrested or detained on a criminal charge, including persons suspected of terrorism, has immediate access to a lawyer.

20. The Committee is concerned that despite anti-social behaviour orders (ASBOs) being civil orders, their breach constitutes a criminal offence which is punishable by up to five years in prison. The Committee is especially concerned with the fact that ASBOs can be imposed on children as young as 10 in England and Wales and 8 in Scotland, and with the fact that some of these children can subsequently be detained for up to two years for breaching them. The Committee is also concerned with the manner in which the names and photographs of persons subject to ASBOs (including children) are frequently widely disseminated in the public domain. (art.14(4) and 24)

The State party should review its legislation on anti-social behaviour orders (ASBOs), including the definition of anti-social behaviour, in order to ensure that it complies with the provisions of the Covenant. In particular, the State party should ensure that young children are not detained as a result of breaching the conditions of their ASBOs and that the privacy rights of children and adults subjects to ASBOs are respected.

21. The Committee remains concerned that the State party has continued its practice of detaining large numbers of asylum-seekers, including children. Furthermore, the Committee reiterates that it considers unacceptable any detention of asylum-seekers in prisons and is concerned that while most asylum-seekers are detained in immigration centres, a small minority of them continue to be held in prisons, allegedly for reasons of security and control. It is concerned that some asylum-seekers do not have early access to legal representation and are thus likely to be unaware of their right to make a bail application which is no longer automatic since the enactment of the Nationality, Immigration and Asylum Act 2002. The Committee is also concerned by the failure to keep statistics on persons subject to deportation who are removed from Northern Ireland to Great Britain, as well as their temporary detention in police cells. (art.9, 10, 12 and 24)

The State party should review its detention policy with regard to asylum-seekers, especially children. It should take immediate and effective measures to ensure that all asylum-seekers who are detained pending deportation are held in centres specifically designed for that purpose, should consider alternatives to detention, and should end the detention of asylum-seekers in prisons. It should also ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection. It should provide appropriate detention facilities in Northern Ireland for persons facing deportation.

22. The Committee regrets that, despite its previous recommendation, the State party has not included the British Indian Ocean Territory in its periodic report because it claims that, owing to an absence of population, the Covenant does not apply to this territory. It takes note of the recent decision of the Court of Appeal in *Regina (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No 2)* (2007) indicating that the Chagos islanders who were unlawfully removed from the British Indian Ocean Territory should be able to exercise their right to return to the outer islands of their territory. (art.12)

The State party should ensure that the Chagos islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard. It should consider compensation for the denial of this right over an extended period. It should also include the Territory in its next periodic report.

23. The Committee remains concerned that while the Governor of the Cayman Islands has not recently exercised his power to deport any person who is “destitute” or “undesirable”, section 89 of the Immigration Law (2007 Revision) has not been amended. (art.17 and 23)

The State party should review the law on deportation in the Cayman Islands in order to bring it into conformity with the provisions of the Covenant.

24. The Committee remains concerned that powers under the Official Secrets Act 1989 have been exercised to frustrate former employees of the Crown from bringing into the public domain issues of genuine public interest, and can be exercised to prevent the media from publishing such matters. It notes that disclosures of information are penalised even where they are not harmful to national security. (art.19)

The State party should ensure that its powers to protect information genuinely related to matters of national security are narrowly utilized and limited to instances where the release of such information would be harmful to national security.

25. The Committee is concerned that the State party's practical application of the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as "libel tourism." The advent of the internet and the international distribution of foreign media also creates the danger that a State party's unduly restrictive libel law will affect freedom of expression world-wide on matters of valid public interest. (art.19)

The State party should re-examine its technical doctrines of libel law, and consider the utility of a so-called "public figure" exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures, as well as limiting the requirement that defendants reimburse a plaintiff's lawyers fees and costs

regardless of scale, including Conditional Fee Agreements and so-called "Success Fees", especially insofar as these may have forced defendant publications to settle without airing valid defences. The ability to resolve cases through enhanced pleading requirements (e.g., requiring a plaintiff to make some preliminary showing of falsity and absence of ordinary journalistic standards) might also be considered.

26. The Committee notes with concern that the offence of “encouragement of terrorism” has been defined in section 1 of the Terrorism Act 2006 in broad and vague terms. In particular, a person can commit the offence even when he or she did not intend members of the public to be directly or indirectly encouraged by his or her statement to commit acts of terrorism, but where his or her statement was understood by some members of the public as encouragement to commit such acts. (art.19)

The State party should consider amending section 1 of the Terrorism Act 2006 dealing with “encouragement of terrorism” so that its application does not lead to a disproportionate interference with freedom of expression.

27. The Committee notes with concern that corporal punishment of children is not prohibited in schools in Bermuda, the British Virgin Islands, Gibraltar, Montserrat and the Crown Dependencies. (art.7 and 24)

The State party should expressly prohibit corporal punishment of children in all schools in all British Overseas Territories and Crown Dependencies.

28. The Committee remains concerned at the State party’s maintenance of section 3(1) of the Representation of the People Act 1983 prohibiting convicted prisoners from exercising their right to vote, especially in the light of the judgment of the European Court of Human Rights in *Hirst v. United Kingdom* (2005). The Committee is of the view that general deprivation of the right to vote for convicted prisoners may not meet the requirements of article 10, paragraph 3, read in conjunction with article 25 of the Covenant. (art.25)

The State party should review its legislation denying all convicted prisoners the right to vote in light of the Covenant.

29. While the Committee notes that the State party is currently investigating the practice of stop and search in order to ensure that it is applied fairly and appropriately to all communities, it remains concerned about the use of racial profiling in the exercise of stop and search powers and its adverse impact on race relations. (art.26)

The State party should ensure that stop and search powers are exercised in a non-discriminatory manner. To that end, the State party should undertake a review of stop and search powers under section 44 of the Terrorism Act 2000.

30. The State party should publicize widely the text of its sixth periodic report, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations.

31. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the assessment of the situation and the implementation of the Committee's recommendations in paragraphs 10, 13, 15, 16.

32. The Committee requests the State party to provide in its next report, due to be submitted by 31 July 2012, information on the remaining recommendations made and on the Covenant as a whole.
