

**RACIAL DISCRIMINATION: REPORT
AND RECOMMENDATIONS**

**Lodged au Greffe on 19th November 1996
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

to receive the report of the Policy and Resources Committee dated 15th October 1996 on the extent of racism and racial discrimination in Jersey, and to charge the Committee -

- (a) to take the necessary steps to enable legislation to be assessed for priority for inclusion in the States legislation programme -
 - (i) to render racial discrimination unlawful;
 - (ii) to prevent the dissemination of ideas and propaganda based on racial superiority;
 - (iii) to prevent activities inciting racial discrimination or hatred which falls short of constituting a breach of the peace or other contravention of existing Jersey law;
 - (iv) to proscribe organisations promoting or inciting racial discrimination, and of participation in the membership of such organisations;
- (b) to encourage more enlightened attitudes through education and a promotional campaign, which will incorporate the Island's response to the proclamation by the European Union of the year 1997 as "European year against racism".

POLICY AND RESOURCES COMMITTEE

REPORT

Introduction

1. This report sets out to inquire into the extent of racism and racial discrimination present in the Island community and to identify the remedies that presently exist against such conduct; it is proposed to offer recommendations for additional measures to combat racism and racial discrimination. This report has been produced in response to a proposition lodged au Greffe on 25th April 1995 by Deputy G. Matthews of St. Brelade. (Ref: P. 53/95) That proposition read -

“THE STATES are asked to decide whether they are of the opinion -

to request the Policy and Resources Committee -

- (a) to set up a working party to inquire into the extent of racism and racial discrimination present in the Island community and to identify the remedies that presently exist against such conduct;
- (b) to report the findings of the working party to the States, together with such recommendations for additional measures to combat racism and racial discrimination as the Committee considers to be appropriate.”

The Committee has not seen the need to set up a working party to undertake the tasks set out in paragraph (a) of the proposition. The Committee has sought information from the relevant States Departments and the Law Officers, and has had the benefit of independent surveys carried out by the local media.

Demographic composition of the population

2. The figures from the 1996 Population Census for Jersey show the total population of Jersey to be 85,150. Of that number 44,886 were born in Jersey, 31,580 born elsewhere in the

British Isles, 924 in France, 4,580 in Portugal, 942 in other E.C. countries and 2,238 elsewhere.

Defining the terms used

3. Before setting out to examine the available information, the Committee considers that it would be of value to distinguish between at least three different terms which are subsumed under the general heading of racism. Racism is a general term which can be used to describe a range of attitudes from minor unintended discrimination to extreme forms of xenophobia. In reading this report and in discussing the general topic of racism it is considered to be helpful to refer to the customary meaning of, and thereby enable a distinction to be drawn between, the following terms -

- (i) Racial bigotry
- (ii) Racist attitudes
- (iii) Racial discrimination.

Racial bigotry

4. This term describes the aberrant view that persons of one race are inherently superior to others. Over the years it has been alleged by various proponents that there is historical, and even genetic support for such a view. It is an assumption within this report that racial bigotry is a repugnant evil which no right thinking person should countenance or tolerate. It is not entirely interchangeable, however, with the words "racist attitude", as the true understanding of that latter term does not necessarily involve bigotry.

Racist attitudes

5. "Racist" is an emotive term which is repellent to most people. It must be used with care, however. It should be noted at the outset that the word "racist" is both a noun, as in "he is a racist", and an adjective, as in "he has racist attitudes". Consequently, there is some danger of confusion in how the

word itself is used. This is not merely playing with words, but gives rise to a very important distinction.

6. To accept that, at times, an individual's cultural viewpoint may lead him or her to act without the fullest degree of sensitivity to, or awareness of, the perspective of another racial group does not mean that an individual can be classified as racially bigoted, even though that lack of awareness may mean that the attitude concerned may be described as being a racist attitude.

Racial discrimination

7. For there to be racial discrimination it is sufficient for an unjustifiable distinction to be drawn between racial groups, albeit through an unwitting oversight. This oversight may well be committed by a community which would take pride in its opposition to bigotry and prejudice, and which would be taken aback to realise that it had unwittingly discriminated against anyone.
8. Some may be surprised that the word 'racist' should be used in such a context. However, using the term in this non-judgmental and descriptive sense can render it less threatening and critical than might be the case if only ever used as a synonym for bigotry. By accepting that 'racist' and 'racism' can have this less unpalatable nuance, a community is considered to be better placed to address the issue of racism within its borders.
9. Deputy Matthews' point that the term 'racial discrimination' must refer to an action rather than an attitude is very pertinent here. Discrimination involves the different treatment of one racial group over and against another. Overt forms of discrimination, such as segregation and apartheid, have attracted widespread and well deserved disapproval amongst the world community of nations. This is not to say that overt forms of discrimination do not still occur. Thankfully, however, there are no such overt policies in Jersey.
10. Nonetheless, it is worth at this point noting the comment of the Committee on the Elimination of Racial Discrimination that -

“the definition of ‘Racial Discrimination’ under the terms of Article 1(1) of ICERD is very broad, and that even the most sophisticated societies have some form of discrimination.”

11. It is necessary for each person to have an open mind as to the question of whether some more subtle forms of racial discrimination exist in Jersey. The evidence for this will be examined below. For present purposes it is important to note the distinct meanings of the terms ‘racial bigotry’, ‘racist attitudes’ and ‘racial discrimination’, and to note that -
 - (i) It is possible to examine one’s own community for aspects of racism without taking the view that this is tantamount to an accusation of bigotry; and
 - (ii) There is no room for complacency even in the most sophisticated society.

Definition of racial discrimination in the United Kingdom Race Relations Act 1976

12. It may be helpful to note that the United Kingdom Race Relations Act defines the two kinds of conduct which constitute racial discrimination: direct discrimination which consists of treating a person less favourably on ‘racial grounds’ (i.e. on the grounds of colour, race, nationality or ethnic or national origins), and indirect discrimination which involves practices which (whether or not intentionally so) are discriminatory in their effect on a particular racial group and cannot be shown to be justified.

General comments on the extent of the problem in Jersey

13. Jersey is party to the International Convention on the Elimination of Racial Discrimination (ICERD). The Insular Authorities are required to report to the Home Office at regular intervals concerning action needed in order to meet the United

Kingdom's State Party's obligations under the terms of that Convention.

14. The latest report is attached as an appendix to this document. In that report it was said that -

“The insular authorities accept that the definition of ‘Racial Discrimination’ under the terms of Article 1(1) of ICERD is very broad, and that even the most sophisticated societies have some form of discrimination. However, it is also noted that some communities, because of particular social, historical, political and other factors will experience more acute and overt forms of discrimination than others. Consequently, whilst it cannot be said that Jersey has not experienced any problems with regard to racial discrimination (as defined in Article I (1)), the extent and acuteness of the problem is less marked than is perceived to be the case in some other territories.”

15. It is submitted that this must be an underlying assumption for anyone considering the issue of racial discrimination in Jersey. This view is given a certain degree of official sanction by the following quotation from a letter to the Insular Authorities from the Home Office Constitutional Unit, dated 9th May 1996, wherein it was stated that “(I)t is clear that Jersey do (sic) not have the same problems with racial discrimination as the United Kingdom.”
16. Before commencing an examination of the available evidence of the extent of racism and racial discrimination present in the Island community, it should be noted that this report acknowledges the media interest and coverage which has arisen from time to time in the Island, as well as the number of letters and comments made in the press and elsewhere by members of the community, including States members. It is anticipated, however, that there will be general agreement that it is necessary to examine the available evidence in as empirical a manner as possible in order properly to address the question of the extent of the problem of racism and racial discrimination in

Jersey, and to refer to facts that can be supported by research wherever possible.

The extent of racism and racial discrimination present in the Island community - an examination of the available information

17. The Committee, in considering the extent of racism and racial discrimination present in the island community has sought the views of the following States Departments.
 - (i) *Information supplied by the States Police.*
18. The States of Jersey Police Force commenced recording statistics relating crime to racial issues in the latter part of 1994.
19. The most recent figures produced by the States of Jersey Police Service indicate that, in 1994, for the four months when records relating to what was defined as racial abuse were kept within the Force, five cases were recorded. In 1995, eight incidents which fell within this category were recorded, one of which was subsequently withdrawn. Of these, only one was known to be an assault allegedly perpetrated by a local youth on a foreign national. In one case the assailant was unknown. The remaining five cases all involved assaults upon African, Portuguese or other European persons by Asian, Portuguese or other European assailants.
20. It is acknowledged that care must always be exercised when dealing with criminal statistics. There is a phenomenon which some statisticians have referred to as the 'dark figure' in crime figures. This term refers to the number of crimes which were unreported or undiscovered, and which consequently were not recorded. To say that a community had a crime rate of 25 per cent in one year, and a rate of 30 per cent in the following year, is sometimes taken to mean that crime has increased. However, the more accurate conclusion to be drawn is that there has been a five per cent increase in recorded crime; this is not the same thing as saying that the crime rate has increased in real terms.

21. In examining the figures supplied by the States Police, this factor must be taken into consideration. However, it can be concluded that the problem of racially motivated violence in Jersey is shown by the available information to be numerically minimal in comparison to other jurisdictions. Nonetheless it is clear that Jersey is not free from racially abusive behaviour. It is significant that the Police in Jersey are now recording this information, and it will be possible to monitor the trends in the statistics over time.

(ii) *Information supplied by the States Industrial Relations Advisory Service*

22. There is little statistical evidence that racial discrimination is a problem with regard to employment in Jersey. Only one case of alleged racial harassment was brought to the attention of the Industrial Relations Officer during 1995. The latest information from the Industrial Relations Advisory Service in Jersey is that, over the last two and a half years, there have been six cases of alleged harassment of a racial origin reported to the Service. The Industrial Relations Advisory Officer has indicated that the number of reported cases is very small given the number of non native workers in the island.

23. The figures supplied indicate that the overall percentage of referrals to that department involving alleged racism constitutes only 0.15 per cent of the total. It is acknowledged that this does not mean that there were not more unreported incidents. However, there is no evidence to support this available at the present time. There is no customary law which would prohibit discrimination on racial grounds in the field of employment.

(iii) *Information supplied by the States Education Department*

24. The Education Department accepts that there is evidence of racial discrimination in Jersey. This is implicit in the adoption by the Education Committee of their Policy for Equal Opportunities within the Curriculum, and their publishing of Policy and Guidelines for the Multicultural Support Service.

25. As a matter of policy, the Education Committee has introduced measures in schools to give equal opportunities to children and young people of different ethnic origins. Teacher training has been adapted to provide awareness of racial issues, and extra staff have been made available to give additional language tuition.

26. The measures adopted by the Education Committee include -

Close co-operation with the Portuguese Government and Consul, resulting in a combined effort to support Portuguese students in schools and the appointment of four Portuguese teachers, along with four peripatetic local teachers with responsibility to help pupils whose first language is not English.

The celebration of other cultures in schools.

The establishment of a policy for equal opportunities in the curriculum.

The adoption of the Establishment Committee policy for equal opportunities in employment.

The introduction of written material, toys, education equipment to support good practice in equal opportunities.

The incorporation of equal opportunities requirements in National Vocational Qualification assessment.

The inclusion of relevant themes in Personal and Social Education lessons and Religious Education.

Remedies presently available against racism and racially discriminatory behaviour

27. The Solicitor General has supplied the Committee with a comprehensive statement on the present legal position.

28. As such, Jersey has not to date introduced specific legislation in the field of racial discrimination. Historically, Jersey has relied upon its existing laws, particularly the criminal law, in this area. As far as the existing law of Jersey is concerned, as racial discrimination is not per se unlawful it follows that no remedies are available in respect of it unless the discriminatory act constitutes some other tort, e.g. assault or defamation, independently of the racial element.

(i) *The relevance of the existing criminal and common law*

29. Acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin would be a criminal offence whether directed against any particular race or not. Racial motivation would be treated as an aggravating factor. Incitement to carry out such an act would also be an offence if the act incited were to be carried out, or if the incitement resulted in circumstances likely to lead to a breach of the peace. The financing of an act definable under Jersey law as an offence (such as breach of the peace) would constitute aiding, assisting or participating in the said criminal act; this would render the person financing the act liable to prosecution. If the dissemination of the ideas based on racial superiority was conducted in a manner which did not constitute either a breach of the peace, nor was likely to cause a breach of the peace, was not a public nuisance, nor an unlawful assembly, then the activity would not constitute an offence under existing law. As racial discrimination is not itself unlawful, it is not considered that the promotion of or incitement to racial discrimination, unless done so offensively as to be likely to lead to a breach of the peace, is an offence punishable by law. Consequently, organisations and propaganda activities promoting or inciting such discrimination are not unlawful, and participation in their activities is not an offence.

30. As racial discrimination per se is not unlawful, then the dissemination of ideas based on racial superiority or hatred would not be an offence unless it constituted or led to a breach of the peace. Similar comment may be made concerning incitement to racial discrimination. The Committee is of the

view that such propaganda should indeed be grossly offensive to decent people and that those who propagate it should be regarded by the wider community as being an aberrant minority. However, the United Kingdom's interpretative statement entered at the time of signature of the Convention on the Elimination of all forms of Racial Discrimination (see appendix 2) does note the relevance of the guarantee of the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association in considering the restriction of such activities. It is not anticipated that the insular authorities would be expected to take the view that implementation of the requirements of ICERD would justify a broad suspension of this constitutional right. Most written constitutions and bills of rights of territories comparable with Jersey note the tension between the right of freedom of opinion, speech, assembly, etc. and the need to restrict activities which are detrimental to the good of the community.

(ii) *The protection afforded by the International Convention on the Elimination of all forms of Racial Discrimination, and the International Covenant on Civil and Political Rights (ICPR).*

31. Reference has already been made to the fact that Jersey is subject to the terms of the International Convention on the Elimination of Racial Discrimination. This has important implications with regard to the issue of available remedies. For example, the terms of Article 2 (2) of ICERD refer to the need to take positively discriminatory steps where appropriate in order to overcome racially discriminatory circumstances.

32. In the latest report of the insular authorities on the Convention attached as an appendix to this report, it is stated that, "if, at any time, it were to be brought to the attention of the insular authorities, in a manner which was to their satisfaction, that circumstances in the Island so warranted the taking in the social, economic, cultural and other fields, special and concrete measures to ensure the development and protection of racial groups or individuals belonging to them, then due attention would be given to this matter. Presently it has not been considered to be necessary to implement any such measures. If

it were found to be necessary, then it is anticipated that such ends could be achieved through policy and good practice rather than through legislation.' It is also stated that the insular authorities are committed to the principles of the convention and will take whatever action is deemed necessary to ensure that those principles are observed.

33. The Convention has not been incorporated directly into Jersey law. Its provisions therefore cannot be invoked as a direct source of rights and duties. In interpreting local laws the courts, however, could have regard in any case of doubt, to relevant obligations under the Convention.
34. It is also noteworthy that the ratification by the United Kingdom of the International Covenant on Civil and Political Rights (ICPR) included Jersey. Article 2 of that convention provides as follows -

“Each State Party to the present Convention undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

(iii) *Internal executive accountability*

35. Public authorities or institutions in Jersey at an Island wide and Parish level are subject to scrutiny by other bodies. The States Police, for example, are accountable to the Defence Committee, and the Honorary Police of each parish to the Attorney General. There are no policies or programmes of activity in place which are presently considered to be overtly racist. If such a practice or policy were drawn to the attention of the relevant governing authority, then that body would be able to decide what action to take.

(iv) *Access to justice*

36. In order that people might exercise the available remedies through the criminal justice system, there is an independent judiciary, and access to the courts is open to all, on a basis of equality. Legal aid is available to any person, irrespective of race, colour, descent, etc., who cannot pay, or, for any other reason, is unable to find legal representation.

(v) *General administrative remedies*

37. The Draft Model Race Relations Ordinance Explanatory Note (prepared by HM Government to assist Dependent Territories in considering issues related to the management of racial discrimination) states that it has been assumed that none of the territories for which the Model Ordinance is designed would think it appropriate to follow the United Kingdom in establishing a separate Race Relations Commission, with all the powers and duties that are invested in that body under the 1976 Act. Jersey would not, therefore, appear to be acting inappropriately if it did not establish such a body. However, there is an existing remedy available to any person irrespective of any racial issues.
38. Under the Administrative Decisions (Review) (Jersey) Law 1982, as amended, any person who is aggrieved by any decision made, or any act done or omitted, relating to any matter of administration by any Committee or Department of the States or by any person acting on behalf of any such Committee or Departments, may apply to the Greffier of the States to have the matter reviewed by a Board of Administrative Appeal. No distinction on any grounds of race is made with regard to access to this right of administrative appeal.
39. A Board has power to call for documents from any Committee, Department or officer or employee of any Committee or Department and to hear any person in connection with any complaint. After completing its inquiry, a Board reports its findings in writing to the complainant and to the Committee, Department or person concerned. The Board may request that

the matter referred to in the complaint be reconsidered, and that the Board be informed within a specified time of the steps which have been taken to reconsider the matter and the result of that reconsideration. The provisions of this law are in addition to and not in derogation of any other remedy which is available to a complainant. Any expenses incurred in carrying out the provisions of the law are defrayed out of the annual income of the States.

40. It is important to note that the United Kingdom Government takes the view that there is no requirement under the terms of ICERD to give a person who has been the victim of racial discrimination a right to recover damages. It is sufficient if he is given a right to have the discrimination brought to an end. It may be, therefore, that the Administrative Decisions (Review) (Jersey) Law 1982 satisfies the requirements for redress against any discriminatory practice alleged without extending its provisions to include a power to award damages.

Recommendations for additional measures to combat racism and racial discrimination.

41. Although the Island does not have a problem of the magnitude experienced by some other jurisdictions, it is clear from the available evidence that racial discrimination is not entirely absent from Jersey. The present criminal and common law, along with the various terms of the relevant provisions of international conventions, and the Administrative Decisions (Review) (Jersey) Law 1982 already provide a certain degree of protection against racial discrimination in Jersey. However, there do appear to be certain gaps in the legislative framework with regard to any definition of racial discrimination, and to remedies for such behaviour.
42. The Committee therefore has decided to seek the support of the States for it -
- (i) to take the necessary steps to enable legislation to be considered for priority assessment for the States legislation programme-

- (a) to render racial discrimination unlawful;
 - (b) to prevent the dissemination of ideas and propaganda based on racial superiority;
 - (c) to prevent activities inciting racial discrimination or hatred which falls short of constituting a breach of the peace or other contravention of existing Jersey Law;
 - (d) to proscribe organisations and propaganda activities promoting or inciting racial discrimination, and of participation in the membership of such groups;
- (ii) to encourage more enlightened attitudes through education and a promotional campaign, which will incorporate the Island's response to the proclamation by the European Commission of the year 1997 as "European year against racism".

APPENDIX 1**REPORT OF THE INSULAR AUTHORITIES ON THE
APPLICATION OF THE INTERNATIONAL CONVENTION ON
THE ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION (ICERD).****1. Introduction**

Jersey is a Crown Dependency whose international relations are the responsibility of the United Kingdom Government. The United Kingdom's ratification of the convention included Jersey. In relation to domestic matters, Jersey is fully independent.

2. Demographic composition of the population

In 1991, when the last census of population was carried out, the total population of Jersey was 84,082. Of that number 43,331 were born in Jersey, 30,972 born elsewhere in the British Isles, 2,118 in the Republic of Ireland, 1,061 in France, 3,439 in Portugal, 851 in other E.C. countries and 2,310 elsewhere.

3. Definition and extent of the problem locally

The insular authorities accept that the definition of "Racial Discrimination" under the terms of Article 1(1) of ICERD is very broad, and that even the most sophisticated societies have some form of discrimination. However, it is also noted that some communities, because of particular social, historical, political and other factors will experience more acute and overt forms of discrimination than others. Consequently, whilst it cannot be said that Jersey has not experienced any problems with regard to racial discrimination (as defined in Article 1(1)), the extent and acuteness of the problem is less marked than is perceived to be the case in some other territories. For example, only one case of alleged racial harassment was brought to the attention of the Industrial Relations Officer during 1995. The most recent figures produced by the States of Jersey Police Service indicate that, in 1994, for the four months when records

relating to what was defined as racial abuse were kept within the Force, five cases were recorded. In 1995, eight incidents which fell within this category were recorded, one of which was subsequently withdrawn. Of these, only one was known to be an assault allegedly perpetrated by a local youth on a foreign national. In one case the assailant was unknown. The remaining five cases all involved assaults upon African, Portuguese or other European persons by Asian, Portuguese or other European assailants.

4. Policy on elimination of racial discrimination

As such, Jersey has not to date introduced specific legislation in the field of racial discrimination. Historically, Jersey has relied upon its existing laws, particularly the criminal law, in this area.

However, the States of Jersey are committed to the principles of the convention and can be expected to take whatever action is deemed necessary to ensure that those principles are observed.

5. Legislative arrangements, and general legal framework in which racial discrimination is defined

The following observations are offered concerning the legislative position in Jersey with regard to the obligations placed upon the Island under the terms of ICERD.

5.1 Racial discrimination and the issue of "citizenship"

Article 1

Article 1 (1) and (2)

These sections define "racial discrimination", and note that the convention allows State Parties to distinguish between citizens and non-citizens.

There are at least two important points to note with regard to this Article.

- (i) Discrimination on the grounds of race, colour, descent or ethnic origin are not, as such, defined in Jersey law;
- (ii) Any use of the term "national origin" requires that the following comments be made -

"National origin" has been held by the House of Lords to mean connection by birth with a particular group of people who could be described as a nation, and was held not to mean the same thing as "nationality" in the sense of citizenship of a particular state (*London Borough of Ealing v. Race Relations Board*). The Draft Model Ordinance on Race Relations defines racial grounds to include nationality as well as ethnic or national origins. However, Jersey does not have "citizens" in the sense which the word may be taken to mean within the context of this definition as applied to Art 1(1) of ICERD.

If it is to mean anything in its application to Jersey, it will presumably mean British or Commonwealth citizens. This distinction should be noted in the application of Article 1(2) of ICERD.

Article 1(3)

Article 1(3) allows State Parties to make legal provisions concerning nationality, citizenship and naturalisation, (provided that they do not discriminate against any particular nationality).

Jersey is not a sovereign state and has no independent law on this subject.

5.2 Positive discrimination

Article 1(4)

Article 1(4) allows for temporary positive discrimination.

Although this section legitimises the taking of steps in the field of what has been termed "positive discrimination", as the States of Jersey are not presently taking such steps, no comment is needed.

5.3 Condemning and eliminating racial discrimination.

Article 2

2(1) (a) Condemnation and elimination of racial discrimination

Although the Convention distinguishes between national and local authorities and institutions, in a territory the size of Jersey, it is considered to be artificial to seek to draw a distinction. The local authorities have no such discriminatory policies. Racial discrimination by any person or organisation is not sponsored, defended or supported by the insular authorities. Reviews of policy and legislation can be carried out as a matter of practice and do not of themselves require specific legislation. Given that the insular authorities accept the broad implications of the condemnation of racial discrimination explicitly expressed in this article, it is accepted by the authorities that integrationist, multi racial organisations should be encouraged, and racially divisive forces should be discouraged. Such matters are able to be implemented by policy and practice rather than requiring legislation. The terms of Article 2 (2) also refer to the need to take positively discriminatory steps where appropriate. If, at any time, it were to be brought to the attention of the insular authorities, in a manner which was to their satisfaction, that circumstances in the island so warranted the taking in the social, economic, cultural and other fields, special and concrete measures to ensure the development and protection of racial groups or individuals belonging to them, then due attention would be given to this matter. Presently it has not been considered to be necessary to implement any such measures. If it were found to be necessary, then it is anticipated that such ends could be achieved through policy and good practice rather than through legislation.

5.4 Racially divisive policies.

Article 3

Racial segregation and apartheid.

There is no policy of racial segregation and/or apartheid in Jersey.

5.5 Distribution and dissemination of racist material

Article 4

Racist propaganda and racial superiority.

This section condemns all racist propaganda in specific terms. The insular authorities would express the view that such propaganda should indeed be grossly offensive to decent people and that those who propagate it should be regarded by the wider community as being an aberrant minority. However, the United Kingdom's interpretative statement does note the relevance of the guarantee of the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association in considering the restriction of such activities. It is not anticipated that the insular authorities would be expected to take the view that implementation of the requirements of ICERD would justify a broad suspension of this constitutional right. Most written constitutions and bills of rights of territories comparable with Jersey note the tension between the right of freedom of opinion, speech, assembly etc. and the need to restrict activities which are detrimental to the good of the community.

The insular authorities note that Article 4 of the Convention does not use the word "legislation". The wording used is "shall declare an offence punishable by law". The interpretative statement entered by the United Kingdom (and referred to above) specifically interprets Article 4 as requiring a party to adopt further legislative measures only insofar as inter alia some legislative addition to or variation of existing law and practice is necessary. It is considered that there is thus no need

for legislation in any respect where the existing law is satisfactory.

Comment on the existing legal framework in Jersey with reference to the terms of Article 5 of the Convention is set out below.

As racial discrimination per se is not unlawful, then the dissemination of ideas based on racial superiority or hatred would not be an offence unless it constituted or led to a breach of the peace. Similar comment may be made concerning incitement to racial discrimination.

Acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin would be a criminal offence whether directed against any particular race or not. Racial motivation would be treated as an aggravating factor.

Incitement to carry out such an act would also be an offence if the act incited were to be carried out, or if the incitement resulted in circumstances likely to lead to a breach of the peace.

The financing of an act definable under Jersey law as an offence (such as breach of the peace) would constitute aiding, assisting or participating in the said criminal act; this would render the person financing the act liable to prosecution.

If the dissemination of the ideas based on racial superiority was conducted in a manner which did not constitute either a breach of the peace, nor was likely to cause a breach of the peace, was not a public nuisance, nor an unlawful assembly, then the activity would not constitute an offence under existing law.

As racial discrimination is not itself unlawful, it is not considered that the promotion of or incitement to racial discrimination, unless done so offensively as to be likely to lead to a breach of the peace, is an offence punishable by law. Consequently, organisations and propaganda activities

promoting or inciting such discrimination are not unlawful, and participation in their activities is not an offence.

Public authorities or institutions in Jersey at an island wide and Parish level are subject to scrutiny by other bodies. The States Police, for example, are accountable to the Defence Committee, and the Honorary Police of each parish to the Attorney General. There are no policies or programmes of activity in place which are considered to be overtly racist. If such a practice or policy were drawn to the attention of the relevant governing authority, then that body would be able to decide what action to take.

5.6 Protection of certain fundamental rights and freedoms, with specific reference to freedom of movement, political and civil rights, rights in the sphere of employment, and access to services and facilities on an equal basis.

Article 5

This Article deals with the prohibition and elimination of racial discrimination, equality before the law, and the enjoyment of specific rights to -

- (a) equal treatment before tribunals and organs administering justice;
- (b) security of persons;
- (c) political rights;
- (d) other civil rights, in particular -
 - (i) Freedom of movement;
 - (ii) The right to leave the country;
 - (iii) Nationality;
 - (iv) The right to marriage and choice of spouse;

- (v) Right to own property;
 - (vi) Right to inherit;
 - (vii) Freedom of thought, conscience and religion;
 - (viii) Freedom of opinion and expression;
 - (ix) Peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular -
- (i) Rights to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, just and favourable remuneration;
 - (ii) Right to form and join trade unions;
 - (iii) Right to housing;
 - (iv) Right to public health, medical care, social security and social services;
 - (v) Right to education and training
 - (vi) Right to equal participation in cultural activities;
- (f) Right of access to any place or service intended for use by general public (transport, hotels, restaurants, cafes, theatres, and parks).

The rights set out in Article 5 sections (a) (b) (c) and (d) already exist in Jersey, with the one rider being added that the right to stand for election to the States is restricted to British subjects. The Franchise (Jersey) Law 1968 provided that a person was not entitled to be registered or to vote as an elector in a public election if he was not a British subject or a citizen of the Republic of Ireland. However, amending legislation has extended the franchise to all foreign nationals. (The Franchise (Amendment No. 5) (Jersey) Law 1995)).

6. Employment

There is no customary law which would prohibit racial discrimination on racial grounds in the field of employment. Having said this, only one case of alleged racial harassment was brought to the attention of the Industrial Relations Officer during 1995. The latest information from the Industrial Relations Advisory Service in Jersey is that, over the last two and a half years, there have been six cases of alleged harassment of a racial origin reported to the Service. The Industrial Relations Advisory Officer has indicated that the number of reported cases is very small given the number of non native workers in the island. The figures supplied indicate that the overall percentage of referrals to that department involving alleged racism constitutes only 0.15 per cent of the total. It is acknowledged that this does not mean that there were not more unreported incidents. However, there is no evidence to support this available at the present time.

The forming of trade unions is not prohibited by law. If a trade union wished to exclude a person from membership on the grounds of race that would not be unlawful.

7. Land tenure

Turning to Article 5 (e)(iii), the right to property, Article 19 of the Wills and Successions (Jersey) Law 1993 provides that notwithstanding any rule of law or enactment to the contrary, the estate, whether moveable or immovable, of a person dying testate or intestate shall devolve without regard to the nationality of -

- (a) the person so dying;
- (b) any beneficiary; or
- (c) any person through whom a beneficiary claims.

The acquisition of land by purchase or lease, and the occupation of dwelling accommodation are subject to the provisions of the Housing (Jersey) Laws 1949, and the Regulations made thereunder. It has been accepted by the European Commission of Human Rights that this legislation pursues a legitimate aim which is necessary for the economic well-being of Jersey and for the protection of the rights and freedoms of others, and that the system thereby created is capable of operating in conformity with the Convention for the Protection of Human Rights and Fundamental Freedoms.

The conduct of property transactions is not governed by law prohibiting racial discrimination. Although the right to acquire or occupy housing is controlled by Regulation 1.1(a) of the Housing (General Provisions) (Jersey) Regulations 1970 this does not make distinctions between people on the ground set out in Article 1 of ICERD, but limits its applicability solely to place of birth. In other words, a person who was born in Jersey and satisfied the period of residence requirement would acquire a residential qualification regardless of his race, colour, descent or national or ethnic origin.

8. Health and educational provision

Health provision is not graded or allocated on racial grounds. There is no legislation to prevent this occurring in the private medical sector, although we are not aware of any evidence brought to the attention of the insular authorities that such discrimination is a problem in that area at this time.

Public educational provision is not graded or allocated on racial grounds. There is no legislation to prevent this occurring in the private sector, although we are not aware of any evidence brought to the attention of the insular authorities that such discrimination is a problem in that area at this time.

Insofar as cultural activities are provided by the States, access to them can be satisfied as a matter of practice and policy. To the extent that cultural activities are provided by private

institutions, there is no statutory or customary prohibition on discrimination on racial grounds.

Insofar as transport, hotels, restaurants, cafes, theatres and parks are provided by the States, access to them can be satisfied as a matter of practice and policy. To the extent that cultural activities are provided by private institutions, there is no statutory or customary prohibition or discrimination on racial grounds.

9. Remedies and redress for the victims of racial discrimination

Article 6

Remedies for discrimination.

As far as the existing law of Jersey is concerned, as racial discrimination is not per se unlawful it follows that no remedies are available in respect of it unless the discriminatory act constitutes some other tort, e.g. assault or defamation, independently of the racial element.

10. Education, culture and information

Increasing public awareness and knowledge concerning racial discrimination.

Article 7

Education and promotion of awareness.

Public awareness of such matters, it is acknowledged, is likely to be increased by active provision by the authorities of the relevant information within the public domain. With regard to all existing international conventions, covenants and agreements, the Office of The Chief Adviser to the States of Jersey has for some time been researching the position of the Bailiwick; that process has proved to be lengthy and time consuming. It is intended, once the process is complete, to place a copy of the file in the Public Library. This, it is submitted,

will constitute an important step towards increasing public awareness.

The educational policies and practices of today shape the minds of those who will constitute the future adult population. Consequently, whilst the application of Article 7 is much broader in scope than the sphere of compulsory education of the young, a powerful way to shape the views of society is to address it through the schools.

As a matter of policy, the Education Committee has introduced measures in schools to give equal opportunities to children and young people of different ethnic origins. Teacher training has been adapted to provide awareness of racial issues, and extra staff have been made available to give additional language tuition.

The measures adopted by the Education Committee include -

close co-operation with the Portuguese Government and Consul, resulting in a combined effort to support Portuguese students in schools and the appointment of four Portuguese teachers, along with four peripatetic local teachers with responsibility to help pupils whose first language is not English.

the celebration of other cultures in schools;

the establishment of a policy for equal opportunities in the curriculum;

the adoption of the Establishment Committee Policy for equal opportunities in employment;

the introduction of written material, toys, education equipment to support good practice in equal opportunities;

the incorporation of equal opportunities requirements in National Vocational Qualification assessment;

the inclusion of relevant themes in Personal and Social Education lessons and Religious Education.

11. Judicial arrangements

There is an independent judiciary, and access to the courts is open to all, on a basis of equality. Legal aid is available to any person, irrespective of race, colour, descent, etc., who cannot pay, or, for any other reason, is unable to find legal representation.

12. Administrative arrangements

The Draft Model Race Relations Ordinance Explanatory Note, states that it has been assumed that none of the territories for which the model Ordinance is designed would think it appropriate to follow the United Kingdom in establishing a separate Race Relations Commission, with all the powers and duties that are invested in that body under the 1976 Act. Jersey would not, therefore, appear to be acting inappropriately in not establishing such a body.

Under the Administrative Decisions (Review) (Jersey) Law 1982 any person who is aggrieved by any decision made, or any act done or omitted, relating to any matter of administration by any Committee or Department of the States or by any person acting on behalf of any such Committee or Departments, may apply to the Greffier of the States to have the matter reviewed by a Board of Administrative Appeal. No distinction on any grounds of race is made with regard to access to this right of administrative appeal. Boards of Administrative Appeal are constituted from a panel of senior members of the States. A Board has power to call for documents from any Committee, Department or officer or employee of any Committee or Department and to hear any person in connection with any complaint. After completing its inquiry, a Board reports its findings in writing to the complainant and to the Committee, Department or person concerned. The Board may request the Committee, Department or person concerned to reconsider the matter which it or he has decided and to inform the Board

within a specified time of the steps which have been taken to reconsider the matter and the result of that reconsideration. The provisions of this law are in addition to and not in derogation of any other remedy which is available to a complainant. Any expenses incurred in carrying out the provisions of the law are defrayed out of the annual income of the States.

13. Invocation of provisions of the Convention

The Convention has not been incorporated directly into Jersey law, therefore, its provisions cannot be invoked as a direct source of rights and duties. In interpreting local laws the Courts could, however, have regard in any case of doubt, to relevant obligations under the Convention.

The ratification by the United Kingdom of the International Covenant on Civil and Political Rights (CPR) included Jersey.

Article 2 of that convention provides as follows -

- “1. Each State Party to the present Convention undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

1st August 1996.

APPENDIX 2

Text of the interpretative statement entered by the United Kingdom of Great Britain and Northern Ireland upon signature of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD). (Signed in 1966).

Upon signature -

Subject to the following reservation and interpretative statements -

“First, in the present circumstances deriving from the usurpation of power in Rhodesia by the illegal regime, the United Kingdom must sign subject to a reservation of the right not to apply the Convention to Rhodesia unless and until the United Kingdom informs the Secretary-General of the United Nations that it is in a position to ensure that the obligations imposed by the Convention in respect of that territory can be fully implemented.

Secondly, the United Kingdom wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by subparagraphs (a) (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4. Further, the United Kingdom interprets the requirement in article 6 concerning “reparation or satisfaction” as being fulfilled if one or other of these forms of redress is made available and interprets “satisfaction” as including any form of redress effective to bring the discriminatory conduct to an end. In addition it interprets article 20 and the other related provisions of Part III of the Convention as meaning that if a

reservation is not accepted the State making the reservation does not become a party to the Convention.

Lastly, the United Kingdom maintains its position in regard to Article 15. In its view this article is discriminatory in that it establishes a procedure for the receipt of petitions relating to dependent territories while making no comparable provision for States without such territories. Moreover, the article purports to establish a procedure applicable to the dependent territories of States whether or not those States have become parties to the Convention. Her Majesty's Government have decided that the United Kingdom should sign the Convention, these objections notwithstanding, because of the importance they attach to the Convention as a whole."

Upon ratification -

"First, the reservation and interpretative statements made by the United Kingdom at the time of signature of the Convention are maintained.

Secondly, the United Kingdom does not regard the Commonwealth Immigrants Acts 1962 and 1968, or their application, as involving any racial discrimination within the meaning of article 1, paragraph 1, or any other provision of the Convention, and fully reserves its right to continue to apply those Acts.

Lastly, to the extent if any, that any law relating to election in Fiji may not fulfil the obligations referred to in article 5 (c), that any law relating to land in Fiji which prohibits or restricts the alienation of land by the indigenous inhabitants may not fulfil the obligations referred to in article 5 (d) (v), or that the school system of Fiji may not fulfil the obligations referred to in articles 2, 3 or 5 (e) (v), the United Kingdom reserves the right not to apply the Convention to Fiji."