

SAINT VINCENT AND THE GRENADINES

CCPR A/45/40 (1990)

244. The Committee considered the initial report of Saint Vincent and the Grenadines (CCPR/C/26/Add.4) at its 953rd and 954th meetings, held on 20 March 1990 (CCPR/C/SR.953-SR.954).

245. The report was introduced by the representative of the State party, who said that his country, despite its small size and population, was resolutely determined to respect the rule of law and to protect the fundamental rights of its citizens. The Constitution which had been elaborated in 1979 when the country obtained full independence from the United Kingdom, substantially protected all the civil and political rights covered in the Covenant, and appropriate legal machinery had been established to enforce those rights. He also noted that the Constitution provided for appeals in all cases to be made to the Judicial Committee of the British Privy Council and that there were no restrictions on access to legal remedies and redress.

246. Members of the Committee thanked the representative for the supplementary information provided in his introductory remarks. They noted, however, that the report had not been prepared in accordance with the Committee's guidelines and, in particular, lacked sufficient information on administrative measures and practices and on the interpretation actually given by the courts to the provisions of the Constitution.

247. With reference to article 2 of the Covenant, members of the Committee wished to know what the precise status of the Covenant was in the judicial system and domestic legislation of the country; whether the Covenant could be invoked before or directly enforced by the courts; whether there had been any judicial decisions regarding the implementation of the Covenant or any references to its provisions by a court; what guarantees existed to prevent derogation from the norms of the Covenant by legislation; how citizens could claim their rights under the Covenant if the law allowed such derogation; and what criteria were used to determine when application could be made to the High Court as a court of first instance. Additionally, members wished to know how extensively, and at what levels of society, the Covenant had been published and whether the current dialogue between the State party and the Committee was public knowledge. It was also observed that Section 1 of the Constitution did not seem to cover such non-discrimination requirements laid down in article 2, paragraph 1, of the Covenant as language, national or social origin and birth or other status.

248. With regard to article 3 of the Covenant, members wished to know whether women nationals married to foreigners and living abroad could pass their nationality on to their children born abroad in the same way as men could and what was the percentage of women in high schools, universities and the professions. Members noted that the Sections of the Constitution corresponding to article 4 of the Covenant did not indicate which rights admitted of no limitation or derogation and asked how, under the circumstances, the non-derogability of such rights was ensured.

249. With regard to article 6 of the Covenant, members of the Committee expressed special concern over the fact that the age limit for the application of the death penalty was clearly incompatible with

the Covenant and requested further details about legislation covering the death penalty and about its implementation. They also wished to know whether the application of the death penalty was limited to the most serious crimes; how many prisoners were currently under sentence of death; whether there were any plans for the abolition of the death penalty; how resort to lethal force, and the use of firearms more generally, were regulated; and how often the police had killed someone in performing an arrest. Clarification was also requested of the provisions of Section 2 of the Constitution, which appeared too broad in listing cases where deprivation of life might occur without criminal offence.

250. In connection with article 7 of the Covenant, members of the Committee wished to know whether there had been any judicial determination as to whether the imposition of corporal punishment was degrading; what the justification was for the introduction of corporal punishment under the Criminal Code; whether there was a minimum age for such punishment; and whether such punishment was applied in the schools. They also asked whether the right not to be subjected to medical and scientific experimentation without consent was guaranteed by law.

251. With regard to article 8 of the Covenant, members of the Committee wished to receive information regarding military conscription and the protection of conscientious objectors.

252. Concerning article 9 of the Covenant, members of the Committee observed that the period of seven days for notification of the reasons for detention seemed excessive and wished to know what the justification was for such a long delay. With regard to provisions relating to the deprivation of liberty of persons of unsound mind, it was asked whether suspicion constituted an adequate basis for such action or whether a court order was also necessary. Members also wished to know whether Section 16(2) of the Constitution included the right to compensation for unlawful arrest or treatment and what the regulations and practice were in respect of the detention and treatment of vagrants. In addition, they requested clarification of Section 3 (b) of the Constitution, regarding deprivation of liberty for contempt of court.

253. With reference to article 10 of the Covenant, members of the Committee wished to receive information concerning allegations of overcrowding, poor sanitary conditions, the lack of recreational facilities and the beating of prisoners; on police procedures for investigating complaints from prisoners, and the result of any investigation carried out; and on recidivism and the social rehabilitation of prisoners. They also wished to know whether regular prison inspections were carried out by persons independent of prison authorities; whether training of prison officials included information on the Standard Minimum Rules for the Treatment of Prisoners; whether juveniles were housed separately from adults in prison; and at what age adolescents were considered to be criminally responsible.

254. In connection with article 11 of the Covenant, members wished to know whether debtors could be imprisoned for the non-payment of a debt, which would be incompatible with article 11, and whether anyone had been imprisoned for non-compliance with a court order under Section 3 of the Constitution.

255. With reference to article 12 of the Covenant, members wished to know whether there was complete freedom of movement in the territory and whether the constitutional reference to restriction

to designated areas referred only to persons free on bail. Clarification was also requested of Section 12 of the Constitution, dealing with the restrictions on freedom of movement of non-citizens; of cases where exceptions were allowed in respect of foreigners in ensuring the protection of fundamental rights; and of other laws, if any, under which the rights of aliens were protected.

256. Regarding article 14 of the Covenant, members of the Committee wished to receive information concerning the excessive backlog of cases awaiting preliminary inquiries and on the steps that had been taken to improve the situation; on the independence and security of tenure of judges; on constitutional provisions, if any, relating to the right of appeal; and on the circumstances under which a person could be tried in his absence. Members also wished to know whether the Judicial and Legal Commission was concerned with the appointment of all judges or only those at the lower levels and whether there were any legal aid schemes.

257. In connection with article 16 of the Covenant, members of the Committee wished to know how the rights of all persons to recognition before the law was guaranteed in the legal system of the country.

258. Members of the Committee wished to receive information regarding constitutional or legislative provisions safeguarding the rights covered in article 17 of the Covenant, particularly in respect of surveillance and wire-tapping.

259. With reference to article 19 of the Covenant, members requested clarification of the statement in the report that no one could be hindered in the enjoyment of freedom of conscience and expression except with his own consent. They also expressed concern about Section 64 of the Criminal Code, which provided for a term of imprisonment for anyone publishing a false statement and which, in the view of members, was incompatible with article 19 of the Covenant and with the protection of freedom of the press. In addition, members wished to know how the ownership and control of the media was organized; whether a television system existed and, if so, whether it was State-run or privately owned; and whether a licence was required to start a newspaper.

260. With regard to article 22 of the Covenant, members wished to know whether the right to collective bargaining by trade unions was guaranteed; whether civil servants were allowed to join a trade union; whether the right to strike was restricted in any way; and whether there were special provisions governing strikes by persons employed in essential services.

261. With reference to article 23 of the Covenant, members of the Committee wished to know whether there were any restrictions on the right to marry; what was the marriageable age; whether minors of both sexes enjoyed equality and whether equality of spouses in areas such as household management was ensured.

262. In connection with article 25 of the Covenant, information was requested as to the conditions and authority under which Parliament might disqualify a person as a registered voter and as to the right of citizens to appeal against such decisions. Members also wished to know why ministers of religion were precluded from serving in Parliament.

263. With regard to article 26 of the Covenant, members wished to know whether there were any

languages, other than English, in common use and whether a person who spoke such a language would be at a disadvantage before the courts.

264. With reference to article 27 of the Covenant, members of the Committee wished to know whether minority groups existed and, if so, whether they were entitled to preserve their culture, practise their religion and use their own language.

265. In his response to questions raised by members of the Committee under article 2 of the Covenant, the representative explained that the Constitution was the supreme law and that any law in conflict with it was considered null and void. The Covenant had not been incorporated into domestic legislation because some of its provisions were in conflict with Section 1 of the Constitution but usually a rule of common law was found to resolve such problems. In recent years, some consideration had been given to the possibility of political unification with Dominica, Saint Lucia and Grenada and if such a union should materialize the new State would have to adopt a new Constitution that could incorporate other human rights provisions. While the public had not been made aware of the current meeting with the Committee, reports on the meeting would be given to the media after the representative's return to Saint Vincent.

266. In his reply to questions raised under article 6 of the Covenant, the representative said that the discrepancy regarding the minimum age for application of the death penalty would be raised with the Cabinet on his return. Capital punishment was limited to high treason, murder and genocide, and was carried out only in the case of brutal murder, there being no distinction in legislation between first and second degree murder. However, in most cases of murder the death sentence was commuted and was applied only when the population was highly inflamed. With the exception of the anti-drug unit, the police were not armed. People were rarely shot to death by the police but when this did occur a coroner's inquest was required. No police official had ever been prosecuted for complicity in a shooting.

267. Responding to questions asked under article 7 of the Covenant, the representative explained that in the past, corporal punishment had taken the form of caning and flogging, but that the latter had been abolished in 1983. Caning of juveniles was still retained under carefully controlled conditions, including medical supervision. The purpose of such punishment was correction, not brutality. Corporal punishment was an institutionalized cultural norm within his country which could not be ignored, and its abolition would meet with general public resistance. It was believed that such punishment was needed in a country lacking an extensive welfare service, as it provided necessary discipline in the home and at school and experience had shown that no negative effects had resulted from it.

268. In response to the question raised under article 8 of the Covenant, the representative said that conscription did not exist in his country since there was no military service. Therefore the question of conscientious objection did not arise.

269. In response to questions raised by members of the Committee under article 9 of the Covenant, the representative stated that while the right to compensation for wrongful arrest or imprisonment had not been established, damages could be obtained where the normal common law provided a remedy.

270. In reply to questions raised under article 10 of the Covenant, the representative said that although prison conditions were far from ideal, this was not due to a lack of consideration or sympathy on the part of those in authority and did not involve wholesale violations of human rights. New prison facilities were planned which would place emphasis on vocational training and rehabilitation. All prisoners, except those with a propensity for violence or who tried to escape, were allowed daily recreation. In cases where a prison guard was suspected of having beaten a prisoner, prison authorities had taken disciplinary measures but such cases did not occur frequently. A prison-visiting committee existed, including ministers of religion and medical doctors appointed by the Governor-General, which visited prisons quite regularly and heard complaints from prisoners. Unfortunately, at present juveniles could not be separated from adult prisoners because of lack of space.

271. Responding to questions raised under article 11 of the Covenant, the representative confirmed that there were provisions in the law for imprisonment for debt and acknowledged that this was in contravention of article 11.

272. With reference to questions raised by members of the Committee under article 12 of the Covenant, the representative explained that there was complete freedom of movement in the country but that an alien required a land-holding licence. The Constitution gave Parliament the power to restrict the movement of non-citizens, but as no laws giving effect to that provision had been enacted it was impossible to say how that provision would be applied in practice.

273. In response to questions raised under article 14 of the Covenant, the representative explained that the backlog of cases in magistrates' courts was essentially due to budgetary restrictions, which made it impossible to recruit additional magistrates and support staff and to provide adequate courtroom facilities. However, the situation had improved somewhat over the past two years as a result of the liberalization of certain procedures. The independence of the judiciary was not stipulated in the Constitution but was provided for in other instruments and a judge's salary could not be reduced during his tenure. Under sections 98 and 99 of the Constitution the right of appeal was limited only in a few procedural matters, such as a decision to try a sex-related case in camera. Most other decisions of judges could be appealed against, even to the Privy Council in London. Saint Vincent could not at present afford to provide comprehensive legal aid and could do so only to those charged with capital offences. However, many lawyers agreed to defend the poor without payment. Additionally, a first step in establishing a legal aid system had been taken in a recently enacted law, which gave the Solicitor-General the right to handle certain administrative cases free of charge for those who could not afford lawyers.

274. With regard to questions raised under article 17 of the Covenant, the representative said that the law provided no special protection against surveillance such as telephone tapping but did contain against tampering with the mail.

275. Responding to questions raised by members of the Committee under article 19 of the Covenant, the representative said that certain public officials were required to take an oath of secrecy, which was in effect a voluntary surrender of the right to freedom of expression. Section 64 had been considered necessary to prohibit false statements likely to cause fear or alarm or to disturb the public peace, but it was not intended to curb freedom of speech and, as worded, could

not do so since there were legal safeguards to protect a person making a statement in innocence. The Section of the Criminal Code in question had recently been challenged before the High Court and the Committee would be informed of the High Court's ruling. There was one radio station in the country, operated as a public corporation free of government control, and one privately owned television station, which provided broadcasting time to all political parties during the 1989 elections. There were three privately owned national newspapers and all political parties had journals of their own which were published without government interference of any kind.

276. In response to questions raised under article 22 of the Covenant, the representative said that the right to organize trade unions was ensured, including civil servants. The right to strike was also ensured, even in essential services. Recognition of trade unions was not compulsory but was obtained usually, after a period of struggle.

277. With reference to questions raised under article 23 of the Covenant, the representative said that all legal disabilities had been removed from children born out of wedlock despite accusations against the Government from certain sections of society that it was thereby undermining the status of marriage. Information concerning the right to pass nationality to children, which was a complicated matter, would need to be supplied to the Committee at a later date.

278. In response to questions raised under article 25 of the Covenant, the representative stated that the 1989 elections had been free and fair, as had been attested by the many foreign observers who had witnessed them.

279. In reply to questions raised under article 27 of the Covenant, the representative explained that there were no identifiable minority groups as such. Seventy-five per cent of the population were descended from Africans, 15 per cent from Europeans, and the rest from Indians and Caribbeans. There was one universal language, English, with no dialects and no major variations; for that reason the framers of the Constitution had not considered it necessary to refer to discrimination on the grounds of language.

General observations

280. Members of the Committee thanked the representative for his full and candid replies to their questions and, in general, expressed satisfaction with the efforts that were being made to observe and protect human rights in Saint Vincent and the Grenadines. They believed that although certain derogations from the Covenant by omission could probably be corrected without the need for constitutional amendments the removal of other inconsistencies, such as those relating to capital punishment for persons below the age of 18 and imprisonment for debt, would clearly require legislative action. In addition to the two problems just cited, members also expressed concern about certain other matters, such as the use of corporal punishment, prison conditions, the independence of the judiciary and possible restrictions on freedom of speech and freedom of the press. Members considered that a constructive dialogue had begun between the Committee and the State party, which, they hoped, would set a fruitful example for all the countries of the Caribbean region.

281. The representative of the State party thanked the members of the Committee for their remarks and stated that the dialogue had provided him with a better understanding of the Committee's

concerns about the implementation of the Covenant. He assured the Committee that the documents needed to complete his replies to questions raised would be submitted in the near future and that the next periodic report of his country would be more comprehensive. In concluding consideration of the initial report of Saint Vincent and the Grenadines, the Chairman thanked the representative for his frank responses, which had allowed a very fruitful dialogue with the Committee.