



**GOVERNMENT OF ANTIGUA AND BARBUDA**

**Response by Delegation of Antigua and Barbuda**  
**to the United Nations**  
**Committee on the Elimination of Racial Discrimination**  
**28<sup>th</sup> February, 2007 – 1<sup>st</sup> March, 2007**

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**Introduction:**

Mr. Chairman, Members of the Committee, it is our distinct honour to be Antigua and Barbuda's first representatives before this august body and to enter into dialogue with the Committee in reference to the first report submitted by Antigua and Barbuda on 29<sup>th</sup> March, 2006. Our presence here today is an indication of the commitment of the Government of Antigua and Barbuda to actively preserve and protect the human rights and fundamental freedoms to which all persons are entitled. Further it is indicative of the present administration's policy to ensure that all international commitments are fully honoured.

As you are poignantly aware, Antigua and Barbuda's report of 29<sup>th</sup> March, 2006 contains the initial through ninth periodic reports of Antigua and Barbuda which had been outstanding for the period 1989 through 2005.

Please be advised that two corrections are necessary to the report. Namely the estimate of the number of households headed by women should be amended to read 43% and further, the references to a Broadcast and Freedom of Information Act is inaccurate and should read Freedom of Information Act 2004. Additional information on this latter is provided in response to a subsequent question

**Questions put by the Rapporteur relating to the Initial, 2<sup>nd</sup> to 9<sup>th</sup> periodic reports of Antigua and Barbuda:**

Antigua and Barbuda wishes to thank the Rapporteur, Mr. Luis Valencia Rodriguez for the clarity and specificity of the questions posed by him on behalf of CERD. These questions are hereafter answered in the order in which they were posited.

**Question 1:**

Though some time has passed since the Report was submitted last year, no further census has been performed since 2001. Accordingly, very little additional data is available from Antigua and Barbuda at this time. However, it may be helpful to further review the Census information of 2001 for further information. It is our understanding that CERD has already received a copy of that Census. However, a further copy is herewith submitted for the Committee's convenience.

As regards the further demographic data sought by the committee in relation to the religious constitution of Antigua and Barbuda's population, it may be noted that as at 2001 the religious constitution of the country is found at pages 41-43 of the Census attached.

A census is conducted once every 10 years. Thus the next census is scheduled to take place in 2011. During the intervening years, individual Government ministries do collect data from time to time on various matters and aspects of the country's socio-economic structure. However, due to limited resources statistical analysis of this data is not always readily available in Antigua and Barbuda.

However, the Ministry of Labour of Antigua and Barbuda reports that in 2001 it granted some 5709 work permits. If these figures are juxtaposed with the census figures for that year, then we can approximate that some 7.43% of the population at that time were non-nationals lawfully working in Antigua and Barbuda. Of the 5709 work permits issued the majority were issued to nationals of Guyana and Jamaica (1854 to Guyanese 32%, and 1554 to Jamaicans 27%)

After two amnesties that were conducted in 1998 and 2002 it is estimated by the Immigration Department that there are at least 1500 illegal immigrants in Antigua and Barbuda who have failed to come forward to have their status regularized.

**Question 2:**

Antigua and Barbuda acknowledges the importance of human rights issues as embraced by GA res 48/134, and notes that the resolution does not create a mandatory requirement with which State parties must comply. Rather it encourages the Antigua and Barbuda establishment of the national human rights institutions for promotion and protection of human rights. Further the resolution acknowledges that it is the right of each State to choose the framework that is best suited to its particular needs at the national level.

As a developing small island nation, Antigua and Barbuda must of necessity be extremely judicious in the allocation of its very limited resources. Such limitations sometimes constrain Antigua and Barbuda from participating more fully in initiatives which have significant merit. Accordingly, Antigua and Barbuda has no immediate plans for the establishment by Antigua and Barbuda of a national human rights institution. However, Antigua and Barbuda embraces the spirit of the Paris Principles and has sought in other ways to ensure the protection of human rights at all socio-economic levels of the society.

In the context of the elimination of racial discrimination in Antigua and Barbuda, Antigua and Barbuda is not aware of any infringements of human rights which cannot be and have

not been adequately addressed by the provisions of our Constitution and by the independent judicial and legal system as a whole.

However, the Government of Antigua and Barbuda is also aware of the influx of lawful immigrants to Antigua and Barbuda over the past several years many of whom did not qualify for citizenship without more under the Constitution. These persons had in some cases been lawfully working in Antigua and Barbuda and had made Antigua and Barbuda their home. Moreover, such persons enjoyed all the fundamental freedoms accorded to them under the Constitution of Antigua and Barbuda. Notwithstanding this, the Government felt it was important to offer such persons a route to citizenship. Hence the Millennium Naturalization Act was passed in 2004 pursuant to section 116(3) of the Constitution. This Act provides at section 3 as follows:

*“(1) Notwithstanding any law to the contrary, and subject to subsection (3), any person of full capacity who was lawfully resident in Antigua and Barbuda on the first day of January, 2000 and on the date of his application for citizenship under this Act, has been continuously lawfully ordinarily resident in Antigua and Barbuda from that day, may apply to become a citizen of Antigua and Barbuda in accordance with Regulations made under this Act.*

*(2) An application under subsection (1) shall be made through the Chief Immigration Officer to the Minister in the appropriate form prescribed by regulations made under this Act.*

*(3) The Minister may approve an application made under this section if he is satisfied that the applicant –*

*(a) possesses the qualifications set out in subsection (1)*

*(b) is of good character*

*(c) intends, in the event of being granted a certificate of registration or naturalization as the case may be, to be ordinarily resident in Antigua and Barbuda”*

Further, in as much as it has been our experience that issues of human rights are often related to the economic limitations of individuals rather than to their ethnicities or national origins, the Government of Antigua and Barbuda has established a Legal Aid Clinic which has continued to function successfully over several years notwithstanding very limited resources. This clinic allows the poor and underprivileged access to legal representation, without regard to race or national origin, thereby ensuring that any breaches or perceived breaches of the rights and freedoms guaranteed by the Constitution should not go unredressed merely because the potential claimant does not have the personal economic means to commence a legal action.

Antigua and Barbuda continues to be aware of the reality of discrimination and human rights violations within the larger context of the international community and wishes to remain vigilant in preventing the same at a national level and ensuring that persons affected may properly seek adequate redress. Due to the relative homogeneity of Antigua and Barbuda's population to date, Governmental departments have typically not sought to classify demographic data along racial or national lines. Accordingly, little information is presently available to distinguish as between the social circumstances of the various, few minority groups who live in Antigua and Barbuda.

However a Poverty assessment initiative is presently being undertaken for the purposes of determining the levels of poverty in Antigua and Barbuda and this does provide for assessment on the basis of national origin.

Additionally, it should be noted that the Ministry of Culture has planned a Diversity Day to take place in May 2007 for the purpose of sensitizing members of the public as to the benefits of a fully integrated and ethnically diverse society.

**Question 3:**

Section 14 (3) of the Antigua and Barbuda Constitution Order 1981, Chapter 23 Laws of Antigua and Barbuda, revised edition 1992 reads as follows:

*“In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.”*

Compare the relevant part of Article 1 of the Convention which states:

*“In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”*

Comparison:

**a. *The context of the definition of “discriminatory” at s.14(3) of the Constitution is narrower than the context of Article 1 of the Convention.***

S.14 of the Constitution defines that which is “discriminatory” (s.14(3)) and, subject to certain exceptions (s. 14(4),(5), (6), (7) & (8)),

- prohibits the making of any provision in any law that is discriminatory per se or in its effect (s.14(1));
- prohibits the treatment of any person in a discriminatory manner by any person acting by virtue of any law or in the performance of a public office or public authority (s.14(2)).

This definition is therefore limited to the context of s. 14 (i.e. The prohibition of discriminatory laws, and the prohibition of discriminatory treatment by persons acting under law or in a public capacity).

Whereas, Article 1 of the Convention defines “racial discrimination” for the purposes of the wide use of that term throughout the Convention in several contexts.

**b. *The definition in s.14(3) of the Constitution is wider than that in Article 1 of the Convention in so far as it provides for a wider range of motivating factors as the basis for discrimination.***

Section 14 relates to discriminatory practices within the context of section 14 that are motivated not only by “racial” distinctions, but also by political, sexual and

faith-based distinctions, whereas the definition in Article 1 of the Convention speaks more specifically to racially and ethnically motivated distinctions. The definition of racial discrimination in Article 1 of the Convention is predicated on the basis of “...*race, colour, descent, or national or ethnic origin*” as motivating factors, whereas section 14(3) of the Constitution embraces a wider scope of motives for discrimination, namely any different treatment to persons “...*attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex*” (emphasis mine).

- c. ***Both definitions are relative rather than absolute in their scope, that is to say, for an action to be “discriminatory” or to “constitute racial discrimination”, such action must be different as between defined classes of persons in addition to having the necessary motivating factors (see above).***

The definition in Article 1 is restricted by use of comparative words such as “...*any distinction, exclusion, restriction or preference...*”. Similarly, the relativity of Section 14 is embodied in the use of the words, “*different treatment to different persons*” and in the qualifying requirement: “*whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.*”

Antigua and Barbuda is unclear as to what report the Committee refers in the Rapporteur’s question 3. Antigua and Barbuda does not have legislation known as an Equal Opportunity Act nor was any act of similar name adopted in March 2005 or at all.

It is true that in 2004 some contemplation was given to the need for legislation to ensure that the non-nationals would be afforded greater opportunities for integration. Eventually this was formulated in the Millennium Naturalization Act 2004 and there is presently no intention for any further legislation in this regard.

It should be noted however that Antigua and Barbuda did in 2003 fully ratify the ILO Convention concerning Equal Remuneration for Men and Women. Further the Antigua and Barbuda Labour Code, since its initial passage into law in 1975 has provided substantial protection of the equal rights of all persons in employment situations. Further judicial interpretation of this act has been extremely wide, allowing for extension rather than contraction of the protections it provides.

In particular, and inter alia, the Antigua and Barbuda Labour Code provides for

- equal pay for women and men
- prohibition against discrimination
- minimum wages
- safe work conditions
- rights not to be unfairly dismissed
- rights to severance pay

#### **Question 4:**

Section 14 (1) and (4) of the Antigua and Barbuda Constitution Order 1981, Chapter 23 Laws of Antigua and Barbuda, revised edition 1992 reads as follows:

*“14 (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.*

...

*(4) Subsection (1) of this section shall not apply to any law so far as the law makes provision—*

*(a) for the appropriation of public revenues or other public funds;*

*(b) with respect to persons who are not citizens; or*

*(c) whereby persons of any description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.”*

Explanations:

Section 14(4) provides that the prohibition against discriminatory laws in section 14(1) shall not apply to certain provisions in the law. This means that laws which are “discriminatory” within the meaning of s14(3) could be constitutional if they fall within one of the exceptions in (a), (b) and (c). It should be noted however, that, as with all constitutional exceptions, these exceptions are strictly and narrowly interpreted by the Judiciary. Further these exceptions are consistent with similar exceptions provided for in the Convention.

- a. The exception in Section 14(4)(a) is for provisions in the law for appropriation of public revenues or public funds. Thus a law which determines how public funds may be used can be constitutional even though it has the effect of affording discriminatory treatment of persons. This would permit, for instance, for ministerial discretion in paying the country’s debts and other allocation of public funds. To the best of my knowledge no specific laws have been passed under this exception.
- b. The exception in Section 14(4)(b) is for provisions in the law with respect to non-citizens. Thus a law that specifically relates to non-citizens is not bound to be non-discriminatory in order to be constitutional. Examples of laws passed which are constitutional under this section include: the Non Citizens Land Holding Regulation Act, Cap. 293 which requires non-citizens to acquire a license in order to own land in Antigua and Barbuda; and the Non-Citizens Undeveloped Tax act which imposes a tax on non-citizens who own land but have failed or chosen not to develop the same. Further this exception is in keeping with the provisions of the Convention at Article 1, paragraph 2 by which the *“Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”* ; and Article 1, paragraph 3 which endorses nationalism.
- c. The exception in Section 14(4)(c) is for provisions in the law to allow for discriminatory practices (within s.14(3)), where the same is reasonably justifiable in a democratic society due to the special circumstances of the persons affected. This exception is limited in its scope by the requirements

of reasonable justifiability in a democratic society and “special circumstances” of the persons affected. Thus if the special circumstances of such persons change or if after a time the special circumstances are no longer applicable to those persons, then the exception would not apply. Further the narrow interpretation of Constitutional clauses is also restrictive. Moreover, this exception is necessary in order to empower the Government to enact laws which will properly protect any persons who may historically have been specially disadvantaged and therefore require additional privileges on a temporary or limited basis to allow for them to compete on an equal footing with others in society. This is the same sentiment expressed by the Convention at Article 1, paragraph 4. The reference in s. 14(4) to “special circumstances” is akin to “the objectives” in Article 1, paragraph. 4. To the best of my knowledge no laws have been enacted under this exception.

- d. All the foregoing exceptions are tempered by the requirement of section 3 that limitations upon fundamental freedoms shall be *“limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”*
- e. Independence of the Judiciary also plays a critical role since the Judiciary are charged with reasoned interpretation of the Constitution. Antigua and Barbuda is proud to be a part of the Eastern Caribbean Supreme Court which is structured to ensure independence of the Judiciary as well as a clear path of Appeal to a Court of Appeal and ultimately to the Judicial Committee of the Privy Council.

#### **Question 5:**

In as much as the Constitution of Antigua and Barbuda already entrenches and guarantees to every person in Antigua and Barbuda fundamental rights and freedoms of an individual, the Government of Antigua and Barbuda is of the view that no additional efforts are required at this time to harmonize domestic law with the provisions and principles of the Convention. The Government of Antigua and Barbuda interprets Article 4 of the Convention as requiring the State party to enact measures only where it is considered that the need arises to enact such legislation.

#### **Question 6:**

Though Antigua and Barbuda has not adopted any single plan of action for the specific purpose of adopting and implementing the Durban Declaration and its Programme of Action, Antigua and Barbuda acknowledge the concerns expressed in the Durban Declaration as valid and significant. Further, Antigua and Barbuda has in a variety of ways sought to honour the spirit of those concerns by a number of programmes, many of which have had slow but steady progress due to extremely limited resources. These programmes are addressed in various of the other answers provided herein and therefore will not be repeated here.

#### **Question 7:**

Section 14(4) of the Constitution does allow for special measures to be taken as envisaged in Article 1(4) and 2(2) of the Convention.

No such measures have been adopted because no racial or ethnic groups in Antigua and Barbuda presently require the special protections envisaged by Article 1(4) and 2(2) of the Convention.

**Question 8:**

Reference at paragraph 338 of the Antigua and Barbuda report to the Committee on the Rights of the Child CRC/C/28 Add.22 (2003) to : “segregation of immigrants in distinct communities” refers to the voluntary actions of such immigrants rather than to any state imposed segregation. Antigua and Barbuda has never imposed and has no intention of imposing any restrictions upon any distinct ethnic, racial or national group. Immigrants are free to live and move freely within Antigua and Barbuda. The extent of their assimilation with native Antiguan and Barbudans is a matter of choice for such immigrants. Often members of immigrant groups may choose to live in proximity to one another and to socialize and worship together. Antigua and Barbuda considers this to be an exercise of their personal freedoms rather than any inhibition thereof. Such groups are completely free to integrate and associate within the community at large. Moreover, there are no impediments to such integration, neither impediments of public policy, nor impediments of racial bias at a community level which would or could substantially inhibit such integration. It is therefore not accurate to say that any group or section of our community is segregated by any measure.

**Question 9:**

Antigua and Barbuda has no plans at this time to adopt specific criminal legislation to implement Article 4(a) of the Convention.

As indicated above, references to a “Broadcast and Freedom of Information Act” in Antigua and Barbuda’s report are inaccurate.

A Freedom of Information Act 2004 does exist but this act addresses only access to public information and requires persons in various offices to make available such information upon request by any member of the public. The Freedom of Information Act makes no reference to broadcasting, media or publication issues and therefore does not in any way relate to Article 4(a) of the Convention.

Antigua and Barbuda does not have any legislation which specifically criminalizes language which incites racial violence. However, by the Small Charges Act, Cap 405, section 9:

*“Any person who makes use of abusive, blasphemous, indecent, insulting, profane or threatening language*

*(a) in any public place*

*(b) in any place to the annoyance of the public*

*(c) tending to a breach of the peace.*

*Shall be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding one month.”*



Additionally, it is both a summary and a common law offence to aid and abet anyone in the commission of an offence. Thus a person who incited another to behave violently might be liable as an aider or abettor if the violent act itself constituted an offence.

**Question 10:**

Antigua and Barbuda has no plans at this time to adopt specific criminal legislation to implement Article 4(b) of the Convention. Please see above answer to Question 9.

**Question 11:**

Antigua and Barbuda does not envisage removing the declaration made regarding the Convention. We are satisfied that our Constitution adequately implements our obligations under the Convention. Further, as a developing nation with limited financial and human resources, preparation and implementation of additional legislation in this context could place a significant burden upon the country at this time. Accordingly, Antigua and Barbuda is of the view that where the Constitution adequately covers the issues, it is not necessary to invest further resources in preparation and implementation of additional legislation.

**Question 12:**

Antigua and Barbuda is of the view that our Constitution adequately protects the rights specified in Article 5 of the Convention. In fact these rights are entrenched in the Constitution requiring a two-thirds majority vote on a referendum of registered voters before any change can be effected (see section 47(5) of the Constitution).

Antigua and Barbuda is not aware of any substantial or persistent issue of racial discrimination within Antigua and Barbuda. Vulnerability to racial discrimination is largely an issue of disenfranchisement and lack of representation which are not apparent in Antigua and Barbuda. Antigua and Barbuda has sought through its Constitution and its laws and governmental policies to ensure that all persons have equal access to the law and to its remedies. Further Antigua and Barbuda has an independent judiciary which allows for impartial enforcement of that law.

**Question 13:**

The issue of lawful immigration status and the issue of immigrants' work status are closely related. Antigua and Barbuda is most concerned not with an immigrant's nationality or racial origin but rather with his/her ability to be a productive member of Antigua and Barbuda society. Thus the Immigration Department often works in conjunction with the Ministry of Labour. Illegal immigrants who are found working without a work permit are usually allowed to regularize their status and to remain in the country. Only in exceptional cases where background checks reveal criminal convictions and other such impediments is an illegal immigrant deported.

**Question 14:**

The Directorate of Gender Affairs is the national machinery responsible for promoting the advancement of women in Antigua and Barbuda. Domestic violence is regarded as a violation of women's human rights and a form of discrimination. The enactment of the Domestic Violence (Summary Proceedings) Act, 1999, the ratification of the Inter-American Convention on the Prevention, Punishment and Elimination of all forms of Violence against Women (Belem do Para) and the Convention on the Elimination of Discrimination against Women (CEDAW) all attest to the Government's commitment to protect and promote women's human rights in Antigua and Barbuda. The Directorate of Gender Affairs is the main organization responsible for promoting and protecting the human rights of women in Antigua and Barbuda. It is responsible for the implementation of a comprehensive and integrated programme of action to address domestic violence through the following initiatives:

- A 24hr crisis hotline
- A drop-in counseling and advise service
- Counseling and Advise
- Victim support
- Emergency accommodation
- A Court Advocacy Service
- Legal Assistance provided by the Legal Aide Department
- Public awareness
- Education and training.

Education and training are provided to key stakeholders involved in the management of domestic violence. These include members of the judiciary, police officers, prosecutors, legal officers, health care professionals, social workers, counselors and members of civil society groups. Community education is provided to community groups to promote awareness and sensitization of the issue of domestic violence.

Special dates such as International Women's Day, 8<sup>th</sup> March and the Day for the Eradication of all forms of Violence against Women 25<sup>th</sup> November are observed with activities to promote awareness and call for action such as marches, candlelight vigils, public education campaign and training workshops and seminars.

The following is a break down of the number of complaints received by the Directorate of Gender Affairs through the 24hr Crisis hotline and the Drop-in service.

YEAR	TOTAL	SEX		NATIONAL	NON-NATIONAL
		Female	Male		
*1997	24	22	2	18	6
1998	202	177	25	110	78
1999	369	302	67	217	103
2000	321	249	72	129	102
2001	329	269	60	162	45

2002	358	273	85	173	135
2003	208	180	28	67	62
2004	321	264	57	157	117
2005	251	203	48	144	63
2006	189	144	45	88	94

- The programme commenced in August 1997

### Question 15:

Section 8 of the Constitution (in relevant part) provides:

“8.

(1) *A person shall not be deprived of his freedom of movement, that is to say, the right to move freely throughout Antigua and Barbuda, the right to reside in any part of Antigua and Barbuda, the right to leave Antigua and Barbuda and immunity from expulsion from Antigua and Barbuda.*

(2) .....

(3) *Nothing contained in or done under the authority of any law shall be inconsistent with or in contravention of this section to the extent that the law in question makes provision*

(a)....

....

(d) *for the imposition of restrictions on the freedom of movement of any person who is not a citizen.”*

This provision does not in and of itself restrict the free movement of non-citizens. Rather it states that a law shall not be unconstitutional merely because it restricts the movement of non-citizens. Any such potential law would further have to conform with other requirements of constitutionality in order to be effective, including the provisions of section 14. Accordingly s. 14(4)(b) would apply as addressed above. In any event, no law has in fact been passed in reliance upon s. 8(3)(d) of the Constitution.

It should further be noted that as a member of Caricom and a signatory of the Revised Treaty of Chaguaramas, Antigua and Barbuda has committed to the creation of a Single market and economy within countries of Caricom, which includes provision for free movement of certain member state citizens among member states. Further, to accommodate the Cricket World Cup matches being played in Caricom countries, Antigua and Barbuda has further implemented a Caricom initiative to allow for a temporary Single Domestic Space among Caricom countries hosting the World Cup Cricket. This allows for freedom of movement for all persons within those countries for a limited time.

With respect to the restriction of movement of any person who is not a citizen, in practice such restrictions are only imposed in compliance with a court order or where a non-citizen has been charged with a criminal offence and is detained pending trial. However such

non-citizens have full access to the Court for review of their detention and no person may be so detained for more than 48 hours without bringing them before a Magistrate for consideration of bail. There is no fundamental difference in this application as between nationals and non-nationals, except in so far as a Magistrate may take into consideration a person's place of residence in determining whether to grant bail.

**Question 16:**

The State Party did by accession upon independence ratify the 1967 International Convention on the Protection of the Rights of Migrant Workers. Antigua and Barbuda does not have any or any statistically significant numbers of Migrant Workers. Accordingly though Antigua and Barbuda supports the principles enshrined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, it is the view of Antigua and Barbuda that issues of Migrant Workers are not strictly applicable to the socio-economic infrastructure of our country.

**Question 17:**

Yes, discrimination on the bases of national extraction and social origin are expressly banned in the Labour Code.. In fact, the Labour Code criminalizes racial discrimination by an employer or prospective employer, with offenders being subject to both a fine and imprisonment.

Antigua and Barbuda Labour Code, Cap 27, Section

“C4:

- (1) *No employer shall discriminate with respect to any person's hire, tenure, wages, hours, or any other condition of work, by reason of race, colour, creed, sex, age or political beliefs:  
Provided, however, that this shall not be construed as forbidding the taking of personnel actions genuinely related to that person's ability to discharge the duties of the employment question.*
- (2) *Anyone who contravenes the requirements of subsection (1) shall be liable to a fine of three thousand dollars and to imprisonment for twelve months.”*

Note the definition of “Employer” at section A5 is wide enough to include a potential employer.

**Question 18:**

Please see attached data from the Ministry of Education, Planning Department regarding Students Enrolment. Please note, that as previously indicated, data is not categorized as regards national or ethnic origin, only as regards gender.

The practice of requiring children of immigrants to attend fee-paying schools for two years before they may be transferred to a free government school has been discontinued for several years. The Education Act makes it compulsory for all children to attend school between the ages of 5 years and 16 years. Accordingly, it is the policy of the Ministry of Education that every child seeking enrolment in school and all children are entitled to an education regardless of race, national origin, religion and sex. This means that foreign students can access free primary and secondary education, having just entered the country. When they enter the school system, they receive the following: -

- a. free textbooks

- b. free uniforms
- c. free meals (in some schools, see below)

A school meals programme was begun with great success last year such that a number of schools offer a free, hot lunch for all students daily. This programme is presently being expanded to include all government schools.

**Question 19:**

Children may be refused schooling only if they are not in possession of the necessary records required regarding immunization. Thereupon such child's parent would be referred to the Ministry of Health to obtain the necessary immunizations.

**Question 20:**

Yes, sections 3 and 14 of the Constitution can be invoked directly before the ordinary courts by way of an Originating Motion for an Administrative Order in the High Court of Justice for relief under the Constitution or for declaration of the constitutionality or unconstitutionality of any provision of law. Such direct access to the Court is protected by the entrenched provisions of section 18 of the Constitution. Further, the Civil Procedure Rules of the Eastern Caribbean Supreme Court (Part 56) makes specific provision for the procedure for such an application for Administrative Orders and provides that the same shall be by way of Fixed Date Claim Form which allows for an initial hearing within four weeks of the date the claim is issued (Part 56.7(8)) or sooner where the matter is urgent (Part 56.7(9)). Further, it is customary that where issues of Constitutional importance are brought before the Court, the presiding Judge will often take into consideration the public importance of the issue in deciding whether or not to award costs to the prevailing party. This is may often make it easier for an applicant who can seek to keep his costs down by demonstrating the public importance of the issue brought by him, even if his application is ultimately unsuccessful. Any decision of the Court in such action may be challenged on Appeal first to the Court of Appeal and thereafter to the Her Majesty in Council (i.e the Judicial Committee of the Privy Council).

**Question 21:**

Any person who claims that his/her constitutional rights have been infringed has free access to the judicial system to seek relief. And the Court may order any relief it considers appropriate, including declarations, orders, and the issuing of writs and directions (see section 18 and particularly s.18(2) of the Constitution) . Such relief may include injunctive relief to prevent an anticipated breach or to end a continuing breach as well as damages, restitution and administrative orders of mandamus, prohibition or certiorari. Under s. 18(6) the Chief Justice is empowered to make rules with respect to the practice and procedure of the High Court in it's jurisdiction in this regard. Reference may be made to the Eastern Caribbean Supreme Court Civil Procedure Rules at Part 56 and more particularly: Part 56.1 which provides for remedies of certiorari, mandamus, prohibition, injunctions, return of property, restitution and damages. Additionally, Part 56.8(2) empowers the Court to award in Constitutional cases, damages or restitution in addition to making any administrative order for remedies.

**Question 22:**

Reference is made to Section 66 of the Constitution and to the Ombudsman Act, 1994:

Section 5: Functions of Ombudsman

Section 12: Powers of Ombudsman after investigation

Section 22: Penalties for obstructing work of ombudsman

In accordance with the Ombudsman Act #5 of 1994, the Office of the Ombudsman is charged with the responsibility to receive complaints and concerns from any member of the population in respect of unfairness and injustice experienced at the hand of any Government employee or entity.

The Ombudsman is expected to be impartial and to investigate such complaints and concerns set before her in respect of Government policy or action and to make recommendations designed to enhance Government's performance in those areas.

To carry out its role, the Office of the Ombudsman is provided with legal and investigative staff and a budget.

While the Ombudsman is not directly charged with the protection of human rights, the Office provides a vital avenue through which the provisions of the Constitution of Antigua and Barbuda pertaining to Human Rights issues including racial discrimination can be addressed. Section 22 of the Ombudsman Act 1994 makes provision for sanctions to be imposed on anyone who, without lawful justification or excuse, willfully obstructs, hinders or resists, fails to comply with any lawful requirement of the Ombudsman under this act or willfully makes false statements or misleads or attempts to mislead the Ombudsman in the exercise of his powers under the Act.

**Question 23:**

This information is presently being compiled and will be provided subsequently.

**Question 24:**

Discrimination by educators is not tolerated. Disciplinary action can be taken against any Ministry official, Principal or teacher who discriminates against non-nationals. In such a case, an investigation would be set up by the Permanent Secretary of the Ministry at the request of the school Principal. An officer would be appointed as Head of that Inquiry. The result of the investigation is sent to the PS and he/she determines the action to be taken against the teacher.

**Question 25:**

The input of various Governmental departments was sought in preparing and disseminating Antigua and Barbuda's report.

**Question 26:**

Not specifically, though individual ministries do conduct sensitization training on various issues from time to time.

**Question 27:**

Antigua and Barbuda has made no plans to make the declaration under Article 14 of the Convention.