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Summary record of the 2440th meeting

Held at Headquarters, New York, on Thursday, 22 March 2007, at 10 a.m.

Chairperson: Mr. Rivas Posada

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (continued)

Third periodic report of Barbados (continued)
(CCPR/C/BRB/3; CCPR/C/BRB/Q/3)

1. *At the invitation of the Chairperson, the members of the delegation of Barbados resumed places at the Committee table.*

2. **The Chairperson** invited the delegation to take up any points regarding questions 1-12 of the list of issues (CCPR/C/BRB/Q/3) addressed at the previous meeting.

3. **Sir Louis Tull** (Barbados), responding to the question raised about persons with disabilities, said that a Government White Paper had been issued in that connection. It provided for a public awareness programme, based on regular television treatment of the issue and dissemination of information by dedicated centres. In addition, private companies were encouraged to include a disability-related dimension in their activities.

4. With regard to the question of the decriminalization of same-sex sexual relations, serious consideration was being given to the matter, including at Cabinet level, but no decision had yet been reached.

5. As for the Constitution (Amendment) Act 2002, it applied only to cases subsequent to its enactment and had no effect in cases predating it. As no time-limits were set, appellants were able to exhaust all remedies. He hoped to be able to submit fuller information by the end of the week on the 46 cases currently before the police complaints authority.

6. Taking up the question of the Constitutional Review Commission, he said that, following public hearings, it had begun drafting new legislation to incorporate the recommendation that gender-based discrimination should be recognized. The Commission had recommended a higher profile for the office of Ombudsman, who previously had had an administrative rather than a human rights function; his powers had been increased to the same level as those of a High Court judge.

7. As to why the Government had set up a Committee for National Reconciliation, there was no

particular event that had prompted it. It was one of a number of bodies, including the Commission on Social Justice, that had been established proactively, in order to clarify for the people the Government's position on a number of important issues. The Government was not opposed to the establishment of an independent human rights commission, an idea which had come up against a lack of resources; it was currently giving the matter its active consideration, taking into account the need to guard against overlapping.

8. **The Chairperson** invited the Committee to raise any additional questions or concerns.

9. **Mr. Lallah** asked about the State party's experience with the new Caribbean Court of Justice, which had replaced the Privy Council as the final court of appeal of Barbados.

10. **Mr. O'Flaherty** commended the State party for its initiatives on behalf of disabled persons but expressed concern about the inadequate participation of the non-governmental Barbados Council for the Disabled in decisions of interest to its constituency. He asked what had become of the National Advisory Committee on the Rights of Persons with Disabilities, if indeed that body had ever been active. On the issue of the decriminalization of same-sex relations, he urged the delegation to report to its Government on its exchanges with the Committee and to impress on it in particular the permanent importance of protecting sexual minorities, not only against prejudice but also against physical violence.

11. **Sir Nigel Rodley** asked how mental as opposed to physical torture could be treated as a criminal offence if there was no legal definition of it.

12. **Sir Louis Tull** (Barbados) said it was too early to assess the work of the Caribbean Court of Justice, which had so far been seized of fewer than a dozen cases. As yet, its appellate jurisdiction was limited to only two countries, Barbados and Guyana, but it was hoped that they would soon be joined by some of the other Caribbean States. In response to the question about the National Advisory Committee on the Rights of Persons with Disabilities, he said that as it overlapped with the Barbados Council for the Disabled and other agencies it had not been very active. He would look into the matter and would also bring the other concerns raised to the notice of his Government. The protection of minorities was part of the very ethos of Barbados.

13. He conceded that, while physical torture was widely covered by national legislation, there was no legal sanction for mental torture and that the issue needed to be addressed. On the question of corporal punishment, he stressed that although flogging was still on the statute book, it was no longer applied. Similarly, no one had been executed in Barbados for 24 years, even though capital punishment had not been formally abolished.

14. **The Chairperson** invited the delegation to address questions 13 -22 of the list of issues (CCPR/C/BRB/Q/3).

15. **Sir Louis Tull** (Barbados) stressed that the Caribbean islands were very susceptible to trafficking in persons (question 13), as well as in arms and drugs, because of their very porous national borders. Huge resources were needed to police and monitor access to Barbados, which did not depend solely on the airport or seaport but was possible all around the island to anyone with a fast boat. For that reason, Barbados, along with other Caribbean Community (CARICOM) member countries, had been seeking to develop a number of regional initiatives to combat such trafficking, including an information campaign and programmes for the protection of victims. A unified approach to prosecution was difficult, however, because of the different jurisdictions involved. At its twelfth meeting, in April 2005, the CARICOM Council for Human and Social Development had drawn up a regional plan to address the issue and the International Organization for Migration (IOM) had been providing useful assistance and guidance. The concern was to nip the phenomenon in the bud, before it became a matter of real concern. Efforts were also being made to harmonize the different visa policies of the Caribbean States and to maintain the security measures introduced for the Cricket World Cup, in particular through the regular circulation between the competent authorities in all the islands of a security watch list.

16. Regarding the treatment of prisoners (questions 14 and 15), he said that although it had not been possible to fully observe the Standard Minimum Rules for the Treatment of Prisoners in the aftermath of the Glendairy prison fire, that had quickly been rectified: within six weeks a relative level of comfort and security had been re-established, including better conditions of detention, resumption of visits by relatives and provision of meals by the school meals service, which had taken over from the destroyed

prison kitchens. The new prison would be completed by the end of August 2007.

17. In response to question 16, he said that the Government was working on a comprehensive refugee policy and that it did not deport refugees but contacted the Office of the United Nations High Commissioner for Refugees (UNHCR) in order to find a place for them in another country. It had only ever received one application for asylum, which it had referred to UNHCR, and was a country of transit for asylum seekers. Refoulement was consequently not an issue for Barbados, but if it were to become one it would be addressed within the framework of CARICOM. Aliens who overstayed or forfeited their right of residence were required to return to their own countries.

18. On the matter of legal aid (question 17), he stressed that it was available to all. Under the Community Legal Services Act, citizens, immigrants and permanent residents were all entitled to legal aid; a legal aid certificate could accordingly be issued by the Director of Community Legal Services for any scheduled offence. However, judges were also able to order such aid in cases not falling into that category. Applicants were offered a choice of several attorneys identified for the purpose.

19. Statistics on domestic violence and sexual abuse (question 18) would be provided at a later date, but he reassured the Committee that his Government was making every effort to protect women against violence, as well as to combat sexual and physical abuse of children (question 19). The 1990 Protection of Children Act itself was complemented by a number of programmes. The Child Care Board, a branch of the Ministry of Social Transformation, was required by law to fully investigate all complaints of child abuse, including complaints first made to the police, and to report the results of its investigation to the police with a view to laying of charges if justified. The Board could place children in protective care or make them wards of the State. It organized programmes, such as the "safe touch" programme on appropriate physical contact, in schools, churches, etc., offered training and advice on good parenting and worked with the media to increase awareness of the need to prevent child abuse. Within the police force, the juvenile liaison scheme provided police with training in social work in order to help them understand children's issues.

20. In response to questions 20 and 21, he said that juveniles up to the age of 15 were sent to reform schools, whereas juveniles between the ages of 16 and 18 were sent to either reform school or prison depending on the seriousness of the offence, although even if sent to prison they were housed separately from adult inmates. In the new prison at Dodds, St. Philip, scheduled to open in August 2007, juvenile offenders would be completely segregated from adult inmates. As of February 2007 there had been 10 young offenders in prison. He noted that a Juvenile Court had always existed as a separate jurisdiction in Barbados, and legal aid was available to juveniles accused of a crime. Finally, he informed the Committee that the age of criminal responsibility was currently 11.

21. As for dissemination of information about the Covenant (question 22), he said that there was great awareness within Barbados of the need to promote and protect human rights in order to build a just society. Government departments were required to take human rights concerns into account in their operations and programmes and the Government Information Service worked to encourage discussion and awareness of human rights. In recent years, with a view to reaching out to the population, the Government had organized frequent town hall meetings attended by Government representatives at which any issue, including human rights, could be raised. In addition, every year broad based consultations were held on issues such as the economy, or social policy, during which human rights related matters were inevitably raised.

22. **Mr. Glélé Ahanhanzo** said the Committee had information from sources such as the United States Department of State and IOM that immigrants in Barbados working in the construction, industrial and domestic sectors often suffered exploitation in the form of low wages, bogus employment contracts and forced labour. Women were also the victims of trafficking for the purposes of prostitution. He enquired whether the State party had investigated such practices and envisaged any measures to combat them, including legislation outlawing forced labour and other contemporary forms of slavery. He also expressed concern at the incidence of domestic violence against women and requested information on measures to help victims, such as the establishment of shelters, on efforts to give training to law enforcement authorities and health-care providers, and on any legislation being planned to combat that phenomenon.

23. **Mr. Shearer**, referring to question 14, asked whether prisoners had any recourse other than an appeal to the High Court, such as registering a complaint with the Visiting Justice responsible for monitoring prison conditions, for abuses suffered at the hands of prison officers. The Prisons Act authorized prison officers to use reasonable force when necessary and required them to report any use of force to a superior officer and to have the prisoner examined by a medical officer as soon as possible, but he wondered if there was any further follow-up or investigation of such incidents and whether any attempt had been made to define improper conduct by prison officers.

24. According to his information, during the temporary relocation of prisoners following the destruction by fire of Glendairy prison, two prisoners had been shot by security personnel, one had been shot dead by prison officers and two had died as a result of the unsanitary conditions. He asked if those incidents had been investigated, and in particular whether the use of force had been necessary. He welcomed the State party's willingness to cooperate with UNHCR but urged it to incorporate the principle of non-refoulement, set out in the 1951 Convention relating to the Status of Refugees, into the Immigration Act.

25. **Mr. O'Flaherty** said he was disturbed at the relatively high rate of sexual and physical abuse of children (question 19) revealed by the tables contained in the report (paras. 407 and 409) and asked if any social programmes existed or were planned to educate the public about that issue. He wondered how a society that tolerated corporal punishments such as flogging would be able to tackle the problem of the abuse of children.

26. He asked if the State party had taken any steps to implement the recommendation of the International Labour Organization (ILO) Committee of Experts pursuant to ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour regarding the criminalization of trafficking of children under the age of 18, and to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. He had information according to which women who had been trafficked for the purpose of prostitution had been deported from the State party. Such women were victims and he urged the State party to reconsider its

immigration and deportation policies to include, for example, humanitarian leave to remain.

27. Turning to the issue of children and the justice system (questions 21 and 22), he requested more information on the content of the new juvenile/young offenders policy mentioned in the report as well as on whether that policy had been implemented. Although he welcomed the increase in the age of criminal responsibility from 7 to 11, he recalled the recommendation of the Committee on the Rights of the Child that the State party consider raising the age of criminal responsibility further and urged the State party to exercise caution in assessing the physical and mental maturity of a child as young as 11 who was accused of committing a crime. Did the State party also envisage the use of alternative, non-custodial and non-judicial, approaches to dealing with children accused of criminal offences?

28. With regard to the dissemination of information relating to the Covenant (question 22), although he welcomed the awareness of human rights issues by the Government, the absence of non-governmental organizations during the Committee's informal briefings and the current meeting as well as the lack of information from such organizations implied a low level of public awareness of the Covenant and the work of the Committee. In order to remedy that situation, the State party should consider posting its report and the Committee's concluding observations on the Government website, engage with the press including through press releases, make information about the Covenant and the Committee's work available in public libraries, and table the report and the concluding observations in Parliament or at least make them available in the parliamentary library.

29. **Ms. Wedgwood** enquired whether the recent fire (at Glendairy prison) had claimed any casualties, and expressed concern about evacuation procedures in high-security facilities. Noting that flogging was still on the statute book in Barbados, she pointed out that, by condoning such a public form of physical violence, the Government was sending a particular message to its citizens about the acceptability of such violence.

30. In trials conducted under a common-law system, cross-examination was an extremely effective way of obtaining information. However, cross-examination was a complex process, not easily understood by members of the general public. In those circumstances,

legal aid was particularly important, since an unrepresented defendant could be wrongly sentenced on the basis of a misunderstanding. If the State party was unable to provide universal legal aid, it should, at the very least, ensure that accused persons had access to the services of a paralegal. Prison libraries should also contain reference materials on trial procedures.

31. Lastly, she stressed the value of dialogue between States parties and the Committee as a catalyst for national debates on human rights. In that connection, she supported Mr. O'Flaherty's comments on awareness-raising measures. The practice of other States and the views of individual Committee members could enrich public discussion of the implementation of the Covenant and influence future interpretations of relevant national legislation.

32. **Mr. Bhagwati** expressed particular concern about the situation of children in Barbados. He enquired as to the measures taken to outlaw trafficking in children, especially trafficking for the purposes of sexual exploitation, and to punish those responsible. According to a report issued by the United States Government, child abuse was a serious problem in the State party. He therefore wondered whether any steps had been taken to prevent such abuse and to protect children.

33. He wished to know when the Caribbean Court of Justice had been established, and requested further information on its composition. How were judges appointed, and how long was their term of office? How did the Court's jurisdiction compare to that of the Privy Council? He also enquired as to the types of appeal heard by the Court, and asked whether legal aid was available to individuals wishing to bring cases before it.

The meeting was suspended at 11.45 a.m. and resumed at 12.05 p.m.

34. **Sir Louis Tull** (Barbados) said that section 14 of the Constitution of Barbados prohibited slavery, servitude and forced labour. The Government was cooperating with other members of CARICOM with a view to developing a comprehensive anti-trafficking policy. Prostitution was illegal in the State party, and individuals involved in such activities were prosecuted.

35. Victims of domestic violence could seek refuge at a number of State-run and private shelters. The courts were also empowered to issue restraining orders

against perpetrators of such violence. The Government was committed to the ongoing review of its legislation on women's rights and had also introduced various counselling programmes for victims and abusers.

36. In response to Mr. Shearer's question about prison officer conduct, he said that any prisoner injured by a prison officer was referred to a doctor. An incident report was then transmitted to the Superintendent of Prisons. If the evidence pointed to excessive use of force, the Commissioner of Police and the Director of Public Prosecutions were notified and charges could be brought. While the Prisons Act did not provide explicitly for such investigations, prisoners' rights were protected by the Constitution. Prisoners wishing to make complaints concerning ill-treatment could also approach the Visiting Justice of Prisons.

37. As far as migrant workers were concerned, trade unions in Barbados had taken an active role in defending their rights, which were also protected under the Constitution. With regard to asylum-seekers, he said that the Government was currently studying the relevant legislation with a view to incorporating the principle of non-refoulement. Discussions on the possibility of harmonizing immigration and asylum policies were also under way with other States in the region.

38. Turning to the questions put by Mr. O'Flaherty, he said that the age of criminal responsibility was 11 years. However, if an examining judge had doubts about the ability of an individual aged between 11 and 14 years to understand his or her actions and take responsibility for them, an investigation could be ordered.

39. While drafting its third periodic report, the Government had consulted widely with NGOs, and it had every intention of pursuing such collaboration in future. The absence of Barbadian NGOs during the Committee's current session was attributable to inadequate resources and should certainly not be taken to mean that they were not interested in the Committee's work or unaware of the Covenant. Although it would not be possible for Parliament to discuss the report and the Committee's concluding observations, copies thereof would be forwarded to the Parliament library and to public libraries nationwide.

40. One prisoner had been shot and killed during the prison fire, but the incident was still under investigation and there would be a coroner's inquest.

The police would then decide whether there was sufficient evidence to bring criminal charges. On the issue of flogging, he had taken note of Ms. Wedgwood's remarks. He pointed out that, in accordance with the student code of discipline published by the Ministry of Education, Youth Affairs and Sports, corporal punishment was used rarely, and only in very specific circumstances.

41. He agreed with Ms. Wedgwood that many individuals charged with criminal offences were not in a position to defend themselves properly. Unfortunately, while legal aid was widely available, the Government did not have sufficient resources to assist everyone. However, a number of free legal clinics, staffed by attorneys and academics, had been established to advise members of the general public. Furthermore, judges had a legal obligation to assist defendants and, as such, could order the provision of legal aid where necessary.

42. Referring to the concerns expressed by Mr. Bhagwati, he said that the Sexual Offences Act protected all citizens, including children, from sexual abuse. He had not read the report of the United States Government on violence against children, but assured the Committee that every effort was being made to promote and protect children's rights. Those rights would also be taken into consideration during the drafting of new, comprehensive anti-trafficking legislation. Since education was compulsory until the age of 16 and children under the age of 16 were not allowed to work, child labour was not a serious problem.

43. The Caribbean Court of Justice was made up of a President and nine judges. The judges were appointed on the combined recommendation of two regional, one subregional and six or seven local legal organizations. Barbados had taken extraordinary care to prevent politics from interfering with the Court. The Court had the same responsibilities as those previously held by the Privy Council. In addition, it was a court of original jurisdiction with respect to trade disputes under the Treaty of Chaguaramas and a court of last resort for appeals in all territories. As the Court had become operational only 18 months previously, there were insufficient data to produce useful statistics. Finally, legal aid was fully available to litigants before the Court, which had not been the case with the Privy Council.

44. **Mr. O'Flaherty** explained that he was interested specifically in the group of prostitutes who were known to have been trafficked and used as modern slaves in Barbados, as identified by IOM. Notwithstanding the fact that a policy was not yet in place, some sort of prosecutorial discretion could be exercised with regard to prostitutes who had been trafficked and who should be considered as slaves and victims, rather than criminals. He would appreciate a written response concerning Barbados' position on the Trafficking Protocol supplementing the United Nations Convention against Transnational Organized Crime and on the ILO Committee of Experts' specific recommendation that Barbados establish a crime of trafficking of persons under the age of 18. He also requested a response to his question as to whether there were non-custodial approaches in Barbados to deal with crimes committed by juveniles. He suggested that, for purposes of outreach, the delegation should meet with the Barbados Association of Non-Governmental Organisations to discuss the Committee's concluding observations when it returned to Barbados.

45. With reference to the figures on child abuse, he said that his previous statement had in fact referred to figures in Barbados' periodic report, paragraphs 407 and 409, rather than to a United States report.

46. Finally, he said he would appreciate more information with regard to paragraph 412 of the State party's report. Firstly, he wondered whether conviction for a criminal offence rendered a person ineligible only during the period of incarceration or for his lifetime, in which case it might raise some problems with regard to the enjoyment of article 25. Secondly, he asked whether the circumstances required for ineligibility were criminal offence and mental instability together or whether mental instability alone was sufficient, in which case he would appreciate a definition of the latter.

47. **Mr. Shearer**, reverting to the question of the Committee for National Reconciliation, as referred to in paragraphs 115 and 116 of the State party's report, asked what had prompted the Government to feel the need for such a Committee. He also enquired about the nature of that Committee's findings and their impact.

48. **Ms. Wedgwood**, clarifying her previous question, said she was interested to know the injuries and casualties resulting from the prison fire in Barbados. Referring to legal aid, she said that judges could not

sum up defence cases as well as an effective trial counsel and that, in general, dealing with a legal aid clinic as compared with a genuine lawyer did not obtain the same results. She therefore strongly encouraged the State party to further explore the possibility of providing one-on-one lawyering for any serious felony, i.e. an offence carrying a custodial sentence of one year or more.

49. **Sir Louis Tull** (Barbados) said that prostitutes who entered Barbados to engage in prostitution usually did so voluntarily; they were therefore dealt with under the Immigration Act and could not be treated as victims. However, his delegation would be sure to provide supplementary written information on the matter. In addition, Barbados was currently examining the United Nations Convention against Transnational Organized Crime before making a formal decision in that respect.

50. There were non-custodial options for juvenile offenders. The vast majority did not go to prison; many were placed on probation and left in the custody of their parents, while others, if found guilty of a minor infraction, were asked to report to the community service authorities for training or work. Yet others received no penalty whatsoever, but were simply warned or commended to the attention of the social services.

51. The figures referred to by Mr. O'Flaherty did not tell the whole story, and repeat offences were certainly responsible for inflating the statistics. However, he recognized it was his delegation's responsibility to make that point clear and that would be done in future.

52. In regard to Mr. Shearer's question, no single catalyst had led to the establishment of the Committee for National Reconciliation. In the past, the Government had launched a number of similar initiatives in the interests of race relations in Barbados in response to such issues as distribution of wealth and the economic influence of different ethnic groups. In that particular case, the Cabinet had decided to set up a committee with a mandate to develop, coordinate and implement a programme for progress towards national reconciliation and strengthening of national unity.

53. Responding to Ms. Wedgwood, he said that a commission of inquiry was currently looking into the circumstances of the Glendairy fire, including any casualties and their cause. If criminal wrongdoing was established, the matter would be referred to the

Director of Public Prosecutions. In addition, while he agreed that the principle of free legal aid for all was commendable, Barbados simply did not have sufficient resources to do more than it was already doing in the matter; he hoped that would change in the future.

54. **The Chairperson** commended the delegation for its comprehensive report, but stressed that it was important for States parties not only to comply with the provisions of the Covenant, but also to submit their reports on time. A number of concerns remained, including the State party's invoking of public opinion and customs to justify non-compliance with international treaties, including the Covenant. In that connection, the Committee did not find it totally satisfactory that some laws that were incompatible with the Covenant remained in force in Barbados, and that no steps had been taken to remedy the situation, simply because they had not been applied for a long time. For example, the death penalty, although not explicitly prohibited by the Covenant, was strongly discouraged, yet was still provided for in Barbados for certain crimes. Another concern was the continued practice of corporal punishment of children, which, although supported by public opinion, could lead to excesses that were totally unacceptable in the light of the State party's international obligations.

55. He noted that the Committee members had suggested a number of measures to the State party, including the establishment of a human rights commission and further efforts to improve the treatment of prisoners. In conclusion, he said it was important for the delegation to convey the Committee's concerns to the Government of Barbados with a view to continued improvement of the human rights situation in the country.

56. **Sir Louis Tull** (Barbados) thanked the Committee for a very useful dialogue and assured its members that his delegation would convey their observations to its Government. Barbados would strive to submit its next periodic report on time and to take into consideration the views of the Committee on issues of concern.

The meeting rose at 1 .05 p.m .