



# International Covenant on Civil and Political Rights

Distr.: Restricted\*  
20 April 2007

Original: English

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## Human Rights Committee Eighty-ninth session

### Summary record of the 2451st meeting (closed)

Held at Headquarters, New York, on Thursday, 29 March 2007, at 3 p.m.

*Chair person:* Mr. Rivas Posada

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

*Concluding observations of the Human Rights Committee on the third periodic report of Barbados*

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07-29218 (E)

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*The meeting was called to order at 3.05 p.m.*

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

*Concluding observations of the Human Rights Committee on the third periodic report of Barbados (CCPR/C/BRB/CO/3/CRP.1)*

1. **Mr. Shearer** (Country Rapporteur) introduced the draft concluding observations.

2. **Mr. O'Flaherty** said that the Committee had received a communication from the Permanent Mission of Barbados since the concluding observations had been drafted. It seemed largely to recapitulate what had been said during the Committee's dialogue with the delegation. He wondered whether the Country Rapporteur had had the opportunity to identify any aspect which would require an amendment to the draft concluding observations.

3. **Mr. Shearer** (Country Rapporteur) said that he had indeed read the communication, admittedly rather quickly, but he could not see that it would in any way alter the Committee's draft observations.

*Paragraphs 1 to 4*

4. *Paragraphs 1 to 4 were adopted.*

*Paragraphs 5 and 6*

5. **Mr. Kälin** suggested that paragraphs 5 and 6 might be combined, as they covered the same matter. He pointed out that the Committee did not usually welcome in its concluding observations measures which were still projects.

6. **The Chairperson** said that there was a practice of not emphasizing stated intentions to carry out reforms before they were implemented. That was not a set principle, however.

7. **Mr. Shearer** (Country Rapporteur) concurred with Mr. Kälin that the Committee did not normally take note of matters which were prospective, although the reform process did seem well under way. The sentence should be removed. He wondered how paragraphs 5 and 6 could be merged under heading C. Principal subjects of concern and concluding observations. Simply inserting paragraph 5 at the beginning of paragraph 6 might make the paragraph

too lengthy and cumbersome. He suggested deleting paragraph 5 and adding the following phrase to the beginning of paragraph 6: "While the Committee takes note of the ongoing constitutional reform process". He would find the appropriate wording for the sentence if Committee members agreed to the amendment.

8. **Mr. Kälin** said that he would prefer integrating paragraph 5 into the second sentence of the expression of concern of paragraph 6. The text of paragraph 5 would be helpful for readers who were not familiar with the situation in Barbados. For example, it could be amended to read: "The Committee takes note of the Constitutional Review Commission's recommendation that the amended Constitution should incorporate the State party's international legal obligations and that the Commission will shortly report to Parliament".

9. **The Chairperson** took it that the Committee wished to adopt the paragraph along the lines suggested by Mr. Kälin.

10. *It was so decided.*

*Paragraph 7*

11. *Paragraph 7 was adopted.*

*Paragraph 8*

12. **Ms. Wedgwood** said that the last sentence of the expression of concern had a slight connotation that the Committee was actually calling for limits on the length of time granted to condemned prisoners, when just the opposite was true. She suggested the following wording: "However, the Committee notes that no guarantee of adequate time limits has been made so far".

13. **Mr. Shearer** (Country Rapporteur) said that he did not understand the meaning of the word "guarantee" in the proposed amendment. The Constitutional (Amendment) Act gave power to the Governor General to establish time limits but the Governor General had not published any such regulations to date. The Committee was hoping that matters would stand as they were, at the very least, and that the Governor General would never make such regulations.

14. **Ms. Wedgwood** said that she was glad to leave it for the Country Rapporteur to find appropriate wording which would express disapprobation towards the setting of any time limits.

15. **Mr. Shearer** (Country Rapporteur) suggested moving the last sentence to the beginning of the paragraph with the following amendment: “Although the Committee notes that no specific time limits have been set so far (arts 2 and 6)”. The Constitutional (Amendment) Act was like a sword of Damocles hanging over the heads of persons who might appeal their cases. The Committee’s concern was the power itself, not the fact that limits had not yet been set.

16. *Paragraph 8, as amended, was adopted.*

*Paragraph 9*

17. **Mr. Shearer** (Country Rapporteur) said that the following words should be added at the end of the last sentence of the recommendation “in consultation with the Caribbean Community (CARICOM)”.

18. *Paragraph 9, as amended, was adopted.*

*Paragraph 10*

19. **Mr. Kälin** said that the Committee could be bolder and recommend that the State party should consider the abolition of the death penalty and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty. In other cases in which States had no longer carried out the death penalty, the Committee had encouraged them to go one step further.

20. **Mr. O’Flaherty** said that the de facto moratorium in Barbados provided the Committee with the justification to follow the suggested approach.

21. **Mr. Shearer** (Country Rapporteur) said that he had no objection to the proposed amendment. The reason for the omission was that the Committee had clearly made the point to the State party during its consideration of the report that, as the death penalty had not been exercised for the previous 24 years, there was no reason to keep it. The delegation had responded that the death penalty was very deeply ingrained in the attitudes of the people, the overwhelming majority of whom believed that it should remain on the statute books. Therefore, the Government believed that there was no point in reconsidering the matter. The reply had been so emphatic that he feared a stronger recommendation might only antagonize the delegation. The real problem was the mandatory nature of the death penalty.

22. **Mr. Glélé Ahanhanzo** said that the Committee had indeed stressed the idea that the death penalty should be abolished. It should continue to urge the State party to do so or, at the very least, to ratify the Optional Protocol.

23. *Paragraph 10, as amended, was adopted.*

*Paragraph 11*

24. **Mr. Kälin** suggested replacing the phrase “such policies” with “an asylum policy” in the recommendation, as the policies described in the expression of concern involved laws which did not provide for the granting of refugee status.

25. **Mr. Shearer** (Country Rapporteur) said that “CARICOM” should be replaced by “the Office of the United Nations High Commissioner for Refugees (UNHCR)”.

26. *Paragraph 11, as amended, was adopted.*

*Paragraph 12*

27. **Mr. O’Flaherty** wondered whether reference should be made at all to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whether the State was a party thereto and, lastly, whether it was relevant to the expression of concern.

28. **Ms. Chanet** concurred that the Committee was not in the practice of referring to the Convention. She said, moreover, that the Committee’s definition of torture did not correspond to the definition set forth in the Convention. Therefore, as in the case of Chile, the Committee should criticize the fact that torture was not defined in the domestic law of the State party and that it was treated as an aggravating circumstance. As it did not constitute a major offence, torture was not punishable. Therefore, the Committee should state that the State party should criminalize torture as such in its legislation.

29. **Ms. Wedgwood** said that as the Committee did not want to encourage countries to engage in clever, idiosyncratic definitions of what constituted torture, the reference to “a legal definition” should be removed. The Committee should indicate that there was an international definition of torture and urge the State party to incorporate it in domestic law. She wondered whether mention should also be made of the relevant general comment as well in the recommendation.

30. **Mr. Shearer** (Country Rapporteur) said that simply recommending legislation to criminalize torture was insufficient, as the State party would respond that torture was already criminalized under its general criminal law. The State party should adopt a comprehensive definition of torture, including mental torture. It was relevant to include a reference to the Convention, even if Barbados was not a party to it, as the definition set forth under the Convention was regarded as part of general international law. If the Committee wished to avoid referring specifically to the Convention, it could replace the reference to it with the words “international legal norms”. The recommendation would thus read: “The State party should make criminal in its laws torture in terms compatible with international legal norms”.

31. **Ms. Chanet** said that there was no single definition of torture in international law. Under article 1 of the Convention, torture was limited to acts committed by public officials. The Committee had given a different definition in its general comment on article 7 of the Covenant. The Committee should not refer to an international instrument whose definition of torture was not fully consistent with its own jurisprudence and general comment. Respect for the obligations under article 15 of the Covenant on the strict interpretation of criminal law and of acts which constituted a criminal offence necessarily entailed a definition of torture. If the Committee wished to go beyond requesting the criminalization of torture and urging a State party to make its definition of torture compatible with other norms, it should put forward its own definition. Reference could also be made to the Committee’s general comment on article 7 of the Covenant concerning torture.

32. **Mr. Shearer** (Country Rapporteur) said that the recommendation could be shortened to read: “The State party should introduce a legal definition of torture compatible with article 7 of the Covenant”.

33. *Paragraph 12, as amended, was adopted.*

#### *Paragraph 13*

34. *Paragraph 13 was adopted.*

#### *Paragraph 14*

35. **Mr. Amor** said that he did not understand what was meant by sexual minority in terms of international law. It was unclear whether international law

recognized sexual minorities. Of course, homosexuals should be protected against any form of harassment, discrimination and violence. Nevertheless, he was concerned by the phrase “sexual minority”, which was vague.

36. **Ms. Wedgwood** concurred with Mr. Amor. She said that in some aspects the matter could be delicate. She recalled that in the Economic and Social Council, there had been much controversy over whether the North American Man-Boy Love Association should be accredited, for fear that it had been involved in advocacy of sexual acts with underage youth. She had never heard of sexual minorities as such as a term of art in human rights law. It might be preferable to focus the paragraph on Barbados’s unapologetic prohibition of any kind of same-sex affiliation.

37. **Mr. O’Flaherty** said that he had used the term “sexual minority” as shorthand to cover gay men, lesbian women, transsexuals, bisexuals and others. The term could be replaced by “homosexuals” in the expression of concern and recommendation, because they were being referred to in the present case. By using the term, he had not intended to introduce some new concept into the law.

38. **Ms. Chanet** proposed using the following language: “discrimination by reason of sexual orientation”. The term sexual minorities should not be used.

39. **Mr. Glélé Ahanhanzo** said that he was troubled by referring directly to homosexuals. It would be more appropriate to use the term “sexual orientation” rather than referring to homosexuals as such.

40. **Mr. O’Flaherty** said that he could agree with Mr. Glélé Ahanhanzo’s proposed wording in the expression of concern. It would be awkward in the recommendation, however. The Committee should specify who was being protected. It was unclear how that could be done by using the language of sexual orientation.

41. **Mr. Shearer** (Country Rapporteur) said that he could not improve on Mr. O’Flaherty’s proposed wording. He agreed with his amendment, as there had been no discussion of transgender persons, for example. The concern was related to the maintenance on the State party’s statute books of old legislation dating back to mid-nineteenth century Britain. The Committee was not concerned with wider aspects of

sexual orientation. It was best to keep the wording simple. The wording suggested by Mr. Glélé Ahanhanzo did not fit well in the sentence. The Committee should keep his comment in mind, however, for situations where the concern might be wider than it was in the present case.

42. **The Chairperson** took it that the Committee wished to adopt the paragraph as amended by Mr. O'Flaherty.

43. *It was so decided .*

*Paragraph 15*

44. *Paragraphs 15 was adopted with minor drafting changes.*

*Paragraph 16*

45. *Paragraph 16 was adopted .*

*Paragraph 17*

46. **Mr. O'Flaherty** said that the lapse of five years was too generous for a State party that had avoided the Committee for a very long time. He suggested four years.

47. **Mr. Amor** said that although the Committee should treat all State s parties in the same manner, he concurred that , in relative terms , 2011 was an appropriate date to set.

48. **The Chair person** took it that the Committee wished to change the date for the forthcoming scheduled report from 2012 to 2011 and to adopt the paragraph as amended.

49. *It was so decided .*

50. *The draft concluding observations of the Human Rights Committee on the third periodic report of Barbados as a whole, as amended, were adopted .*

*The discussion covered in the summary record ended at 3.45 p. m.*