

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

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Information Submitted to the Committee

Barbados submitted its third to sixth periodic reports¹ in a single document on the implementation of the *International Covenant on Civil and Political Rights* (the Covenant) as well as written replies to the Human Rights Committee's (the Committee) list of issues.²

Shadow reports were submitted to the Committee by several non-governmental organisations (NGOs) and an academic institution.³ They highlighted issues faced by lesbian, gay, bisexual and transgender persons

¹ CCPR/C/BRB/3, available at <http://www.ohchr.org/english/bodies/hrc/hrcs89.htm>.

² The list of issues, replies to the list of issues, NGO parallel reports and the Concluding Observations of the Committee are available at <http://www.ohchr.org/english/bodies/hrc/hrcs89.htm>.

(LGBT) in Barbados, including the fact that sodomy is criminalised; concern for the treatment of those who conscientiously object to military service; issues with the *Vagrancy Act* (which apparently operates contrary to the Covenant); explanation of a need for greater civil society involvement in decision-making processes; concern regarding the treatment of the poor in Barbados; and corporal punishment for children (flogging).

During the interactive dialogue, the Committee asked the delegation a number of times, and in different ways, to be more specific in their answers. The dialogue, in general, was frank and forthcoming, and where the delegation did not have the required information, it promised to provide it to the Committee soon after the meeting.

Barbados has declared a reservation with regard to paragraph 3 (d) of Article 14 of the Covenant, regarding guarantees during trial, including the assurance of legal assistance.⁴

Barbados is party to a number of international instruments, including the *International Convention on the Elimination of All Forms of Racial Discrimination*; *International Covenant on Economic, Social and Cultural Rights*; and the *Convention on the Elimination of All Forms of Discrimination against Women*. It is not a party to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Themes and Issues⁵

Constitutional and legal framework, and Implementation

The delegation noted its commitment to human rights and the rule of law, and in particular highlighted its Bill of Rights, which implements the Covenant and introduces it into domestic legislation. The delegation also added that domestic legislation is continuously being updated to protect fundamental human rights, including freedom of religion, and noted that Barbados' Constitution of 1966 embodies these same principles.

The Committee noted the absence of a lack of a national human rights body and suggested that the creation of such a body would be crucial to implementing the Covenant.

Right to life

The delegation explained that the death penalty remains a possible form of punishment in Barbados, but has a long line of appeal, which includes the Court of Appeal of Barbados, the Caribbean Court of Justice, the local Barbados Privy Council (which may commute a death sentence to imprisonment), the Inter-American Court and the Human Rights Committee of the United Nations (UN). In addition, the 2002 Constitutional Amendment Act authorizes the Governor General, head of the Privy Council, to establish a timeframe so the process does not drag on indefinitely. The delegation noted that no-one may be executed until they have taken this legal course, and that no-one has been executed since 1983, despite the laws remaining on the books. The Committee expressed their concern about these laws remaining on the books, despite the fact that they remain unused.

³ Conscience and Peace Tax International; Barbados Association of Non-Governmental Organisations; Briefing from Global Initiative to End All Corporal Punishment of Children; and Indiana University, School of Law, Indianapolis.

⁴ Please visit http://www.bayefsky.com/.html/barbados_t2_ccpr.php.

⁵ For a more detailed description of the dialogue between the Committee and the State, please see the press release of the proceedings, available at <http://www.un.org/News/Press/docs/2007/hrct689.doc.htm>.

Principle of non-discrimination and gender equality

The delegation suggested that all forms of discrimination, and particularly those found to be on the basis of gender, are prohibited by the Constitution of Barbados. Nonetheless, the delegation defended the prohibition of same-sex intercourse, saying that it was not the relationships which were prohibited, but the act itself. The Committee noted that this was at odds with the Covenant.

In terms of national machinery, the delegation noted that in Barbados there is now a Ministry of Social Transformation, a National Committee on HIV/AIDS, and a National Committee of Reconciliation, all of which serve to alleviate discrimination and provide recourse where discrimination has been suffered. The Ministry of Social Transformation is for all vulnerable groups, but especially women and children.

The delegation stated that non-discrimination and equality for persons with disabilities is important to Barbadians, and elaborated on a number of measures in place in regard to transport, education and standards in new buildings. The recently enacted *Employments Rights Bill* was highlighted, which specifically looks at the rights of persons with disabilities. The Committee noted its concern regarding the role of women in decision making positions, and suggested that this could be improved. In addition, the Committee expressed its concern regarding persons with disabilities and their concern that the National Advisory Committee for People with Disabilities, established in April 2005, had still not met.

Prohibition of torture and inhuman and degrading treatment and punishment

The Committee recommended that Barbados define torture as established in Article 7 of the Covenant and Article 1 of the *Convention against Torture and other Degrading Treatment*. According to the delegation, Section 15(1) of the Constitution provides adequate protection against torture, as does constitutional redress and ordinary tort law. The Committee expressed its ongoing concern and suggested that the definition of torture should be brought in line with the definition contained within the Convention. The Committee also expressed its concern regarding the flogging of prison inmates, and suggested that a modified definition of torture in the Constitution would perhaps redress this issue.

Flogging of children

The Committee strongly condemned the flogging of children, and its lack of complicity with the Covenant. The delegation expressed a lack of concern regarding its use in the home and schools, and defended staunchly its cultural acceptance. The Committee noted that any form of corporal punishment was outdated and not compliant with the Covenant.

Liberty and security of person, and treatment of prisoners

The delegation explained that conditions within prisons have been improved since the burning down of their sole prison in 2005 and the subsequent construction of a new prison with more modern facilities. The new prison has a capacity for 12,000 inmates and will include a number of health and recreational facilities, as well as self-contained sections for females and juveniles. The Committee expressed its pleasure at the modernization of facilities for prisoners, but expressed ongoing concern regarding their mistreatment and possible corporal punishment.

Freedom of movement and prohibition of arbitrary expulsion of non-citizens

The delegation noted that only one asylum seeker had come to Barbados in recent years, and that the government found that this asylum seeker was not from the country which he claimed. The Committee noted that freedom of movement applied not only to asylum seekers, but also to the broader trend of trafficking in the region, and queried the delegation regarding their role in protection of the those being trafficked, particularly those most vulnerable, such as women. The delegation suggested that most women who are involved in prostitution and other similar professions are there by choice.

Right to a fair trial

The provision of legal aid was discussed at some length, with answers varying in clarity as to when and where legal aid is provided for defendants. The Committee noted that every defendant has the right to legal representation, particularly where the punishment involves extended incarceration.

Violence against women and children and the right of children to be protected

Trafficking of women and children, and the extent to which they are protected, was discussed at some length. The Committee expressed its concern that greater protection was required for these groups under the Covenant. The delegation noted that the Ministry for Social Transformation was undertaking a study on the trafficking of women which, in the government's view, was a very recent phenomenon from a Caribbean-wide perspective.

Conclusions and next steps

The Committee thanked the delegation for their fruitful, substantive spirit resulting in a comprehensive report, but noted the need to provide information in a timely manner in future. The Committee noted that it was satisfied with the candid and positive nature of the dialogue with the delegation. The delegation noted that a new Constitution was to be presented to parliament this year, making possible some of the changes which the Committee had recommended.

The Committee, in concluding the interactive dialogue, underlined that Barbados' laws, even if they are not being used, must be brought in line with the Covenant and international law, particularly in relation to the death penalty and the flogging of children. The Committee also reiterated the need to establish a national human rights commission to investigate the treatment of prisoners, as well as the need to take legislative and constitutional steps to enhance compliance with the Covenant. Barbados, in its closing remarks, rejected that the conditions in prisons in Barbados were oppressive, but accepted that flogging and the death penalty may be extreme.

In the Committee's concluding observations, the Committee strongly encouraged Barbados to incorporate the Covenant into domestic law through the ongoing constitutional reform process, and strongly recommended the establishment of an independent national human rights institution. The Committee also stressed its concern regarding the existence of the death penalty and the ongoing possibility of its use, as well as its concern for trafficking in the region. The Committee also suggested immediate cessation of corporal punishment, and reiterated its concern regarding juvenile justice and access to legal aid.

The Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) discussed the issue of domestic violence in Barbados in some detail.⁶ The Committee on the Elimination of Racial Discrimination (CERD) also expressed its concern about ongoing racism in the country.⁷ The Committee on

⁶ Details available at http://www.bayefsky.com/html/barbados_t4_cedaw.php.

⁷ Details available at http://www.bayefsky.com/doc/barbados_t4_cerd_67.doc.

the Rights of the Child (CRC) outlined the vulnerability of juveniles in Barbados, and in particular in regard to flogging.⁸

⁸ Details available at http://www.bayefsky.com/html/barbados_t4_crc.php.

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