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POLITICAL RIGHTS



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SUMMARY RECORD OF THE 264th MEETING

Held at Headquarters, New York,  
on Tuesday, 24 March 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.50 a.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

1. The CHAIRMAN drew attention to the provisional programme of work prepared by the officers of the Committee, which had been circulated to members. He added that the Government of Peru had requested that consideration of its report (CCPR/C/6/Add.1) should be postponed in view of the fact that, since the submission of the report in July 1979, a new Government had been elected and a new Constitution had been promulgated. The Government had given him to understand that a new report would be prepared for submission within six months. The officers of the Committee recommended that the request for postponement should be granted.
2. Mr. TARNOPOLSKY said that the report of Peru raised a problem that had come up before, namely, the inadequacy of reports consisting of one or two pages and containing mainly generalities or unsubstantiated references to national legislation. He suggested that the Chairman should inform the State party concerned of the average length of reports and of the Committee's guidelines for preparing reports.
3. The CHAIRMAN said that he had done so in the summer of 1980, and the Government of Peru was fully aware of the problem. If there was no objection, he would take it that the Committee wished to grant the request for postponement.
4. It was so decided.
5. The CHAIRMAN said that the provisional programme of work allocated much time for the consideration of communications, as many cases were now ready for either a final decision or a decision on admissibility. Furthermore, nine new communications had been received.
6. Mr. OPSAHL asked, with reference to agenda item 6, whether representatives from any of the States parties concerned had indicated their readiness to appear and discuss the matter of reports with the Committee.
7. The CHAIRMAN said that representatives of Guyana, Iran and Lebanon had indicated their intention to appear, and decisions on the matter were expected soon from the Governments of Panama and Zaire. A letter from the Government of Chile had indicated that its Permanent Representative was absent from New York.
8. Mr. SADI said that, in his view, more than 15 minutes per State party was required to deal with the problem in question. The Committee would no doubt wish to address questions to the representatives, which would hardly be possible in so short a time.
9. The CHAIRMAN said the officers of the Committee had decided that such meetings with representatives of State parties should be conducted in informal sessions. He would make a summing-up for inclusion in the Committee's report. In any event, the schedule was flexible as usual, and members should feel free to ask all the

(The Chairman)

questions they considered necessary. They should also be ready to take up new items at short notice, if time became available. He hoped in that manner to be able to deal adequately with all the pending communications at the current session.

10. Mr. OPSAHL said that it would be useful to have some indication from the officers of how the Committee should prepare for the meetings dealing with the question of "follow-up".

11. The CHAIRMAN said that no details had been worked out but the Secretariat would be consulted, as would members of the Committee, for their views on the subject. Furthermore, a list of the questions most frequently asked by members of the Committee in connexion with the reports submitted by States parties would be circulated for information.

#### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

##### Barbados (CCPR/C/1/Add.36)

12. At the invitation of the Chairman, Mr. Walker (Barbados) took a place at the Committee table.

13. Mr. WALKER (Barbados), introducing his country's initial report (CCPR/C/1/Add.36), drew the attention of the Committee to the general legal framework outlined on page 2 of the report, which served to place in context the specific information in relation to particular articles of the Covenant.

14. Mr. PRADO VALLEJO said that he welcomed the initial report of Barbados and the opening of a dialogue between the Government and the Committee on how best to implement the Covenant. He noted that the introduction to the report, entitled "General legal framework", stated that the provisions of the Covenant could not per se be invoked before or directly enforced by the courts, tribunals or administrative authorities of Barbados. That raised the problem of the status of the Covenant within the legal system of Barbados. What would happen if there should be a conflict between the Constitution and the laws, on the one hand, and the Covenant, on the other. How were the provisions of the Covenant given legal effect and implemented, as required by the Covenant? Had any of the provisions of the Covenant been enacted into local laws? He noted from the same section of the report that rights and freedoms were subject to limitations, based in particular on considerations of public interest. He asked how the public interest was defined and whether all rights and freedoms were subject to such limitations.

15. With reference to article 2 of the Covenant, he noted that section 23 of the Constitution guaranteed protection from discrimination, which was defined as the affording of different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed. The enumeration failed to mention sex; he asked whether the omission was an oversight or whether there was in fact no protection against sex discrimination. In connexion with the same article of the Covenant, he noted

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(Mr. Prado Vallejo)

that the High Court of Barbados had a certain amount of discretion in exercising its power to issue writs and give directions for enforcing rights and freedoms and that it should not exercise that power if it was satisfied that adequate means of redress were available to the person concerned under some other law. Did that mean that the protection afforded by the High Court might in some cases not be effective?

16. With regard to article 4 of the Covenant, he noted that section 13 of the Constitution set limits on pre-trial detention, specifying the time within which the person detained must be informed of the grounds upon which he was detained and the time within which a notification must be published in the official Gazette stating that he had been detained and giving particulars of the provision of law under which his detention was authorized. Section 13 also stated that the Prime Minister or a Minister authorized by him must make periodic reports to each House of Parliament stating the number of persons detained and the number of cases in which the authority that had ordered the detention had not acted in accordance with recommendations of a tribunal appointed in pursuance of the relevant subsection. Such provisions were also relevant to article 9 of the Covenant, which required that pre-trial detention should be short and reasonable. The particular time periods provided for in the Barbadian Constitution seemed rather long. What would happen, for instance, if the Gazette could not be published on schedule; would the individual remain in detention without the knowledge of his family or friends? Could the period of detention be extended? It did not seem that those provisions of the Constitution complied adequately with the relevant provisions of the Covenant. The same could be said of the provisions of the Constitution relating to freedom of movement, particularly section 13 (1) (j), as set forth in the part of the report dealing with article 9 of the Covenant. He requested that further details be given on that subject.

17. With regard to article 16 of the Covenant, section 18 (2) (d) of the Constitution, read in conjunction with section 18 (12), suggested that accused persons had to provide legal representation at their own expense. There again, the provisions of the Constitution seemed to run counter to the spirit and letter of the Covenant.

18. He noted that section 22 (3) (a) to (c) of the Constitution mentioned in the report in connexion with article 12 of the Covenant, provided for various restrictions on the movement or residence within and departure from Barbados of individuals, as "reasonably required" in the interests of defence, public safety, public order, public morality or public health. He asked what remedies were available to persons whose freedom of movement was thus restricted. Such provisions might well be in contravention of article 12 of the Covenant.

19. Lastly, with reference to article 18 of the Covenant, he noted that under section 19 of the Constitution certain basic rights and freedoms could be restricted with the consent of the person concerned. It would seem that the rights and freedoms involved were so fundamental that no State could call upon its citizens to waive them without contravening the spirit, if not the letter, of the Covenant.

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20. Sir Vincent EVANS observed that Barbados had had parliamentary government since the early seventeenth century. The preamble to its Constitution showed that respect for human dignity and freedom was deeply ingrained in its people. As he had often remarked, the Committee's function was not merely to criticize or to draw attention to the shortcomings of reporting States, but to provide a forum in which States could learn from the experience of others; Barbados, though a small nation, provided an admirable example in its observance of human rights.

21. Although the Covenant could not be directly invoked before the courts, it was particularly interesting to note that under section 24 (1) of the Constitution the jurisdiction of the High Court, to which an individual could apply for redress if he believed that any of his rights under sections 12 to 23 were being or were likely to be contravened, was clearly proclaimed. He wondered how many cases of that kind had in fact been brought before the High Court.

22. Article 6 of the Covenant placed certain limitations on the imposition of the death penalty in countries where it had not yet been abolished. He requested information on compliance by Barbados with paragraph 5 of that article, as well as details as to how often the death sentence had been carried out in Barbados in recent years, and for what crimes. Article 6 looked towards the abolition of the death penalty, and he wondered whether the Government of Barbados had considered that and, if so, what was the state of public opinion on the subject.

23. Although the provisions of article 7 were reflected in section 15 of the Constitution, complaints did arise from time to time in most countries about the ill-treatment of individuals by the police or by prison officers, and it was therefore important that there should be independent, impartial procedures by which such complaints could be received and investigated. He wondered whether such procedures existed in Barbados. On the subject of the treatment of prisoners, he noted that under rule 122 of the Prison Rules 1974 there was a so-called Visiting Committee to take care of juveniles. He inquired what the functions and powers of that Visiting Committee were, and whether there were similar committees concerned with the treatment of adult prisoners. He also asked what legal safeguards there were to ensure that no person was detained on the ground of mental illness without good reason and that those confined to mental institutions received adequate care. The formulation in section 13 (1) (h) of the Constitution - "reasonably suspected to be of unsound mind" - seemed to him to be a little too widely drawn. There was an obligation under article 14, paragraph 3 (d) of the Covenant to provide free legal assistance for those with insufficient means, but he noted that, under the Barbadian Constitution, a person was not entitled to legal representation at public expense. He inquired whether any provision was made to provide legal aid for the indigent.

24. The extent to which the rights referred to in article 18, 19, 21 and 22 of the Covenant were enjoyed was the acid test of freedom in any country. Regrettably, those rights were severely restricted in many countries as a result of religious persecution, religious discrimination, strict control of the press and other mass media, intolerance of criticism of the régime, including repression of dissident opinion and imprisonment, or sometimes mass executions, of political opponents, prohibition of the formation of new political parties or independent trade unions,

(Sir Vincent Evans)

and so forth. In Barbados, by contrast, the only restrictions or limitations were those imposed by law. It might be interesting to other States to hear how such a liberal régime worked in practice, and what advantages or risks the Government of Barbados saw in its liberality and tolerance.

25. The Committee had perhaps somewhat neglected the crucial area of the family rights set forth in articles 23 and 24 of the Covenant. It seemed to him that the report needed to be supplemented in that regard with information about the problems arising from the breakdown in the traditional concept of the family and from the economic necessity for mothers to work. He wondered to what extent child care and children born out of wedlock were problems in Barbados, and what measures were being taken to safeguard the interests and welfare of children.

26. Mr. BOUZIRI commended the Government of Barbados for providing a clear and precise picture of the various provisions to safeguard human rights. It was obvious from the report and from the Constitution that Barbados was a democratic country where human rights were respected. The kind of tolerance evident in a provision such as section 19 (5) of the Constitution, concerning the taking of oaths, would be welcome in every country, and it was reassuring to learn from the part of the report dealing with article 25 that Barbadian citizens participated fully in public affairs.

27. However, he agreed with Mr. Prado Vallejo that it was very important to have information on how the provisions of the Covenant might be enforced, in view of the fact that it could not be invoked before or directly enforced by the courts. There seemed to him to be a slight contradiction between the fourth and fifth paragraphs on page 2 of the report, which did not indicate what redress was available if a provision of the Covenant was not covered by domestic law or if a local law contravened any such provision.

28. In reporting on its implementation of article 1 of the Covenant, the Government of Barbados seemed to have misunderstood the intent of that article, which referred not to individual rights but to the right of self-determination of peoples. With respect to article 2, the Constitution guaranteed protection from discrimination but, as in many other countries, certain exceptions were made, particularly in regard to non-citizens. He would welcome further information on the extent of the restrictions in question, and also of those applying to adoption, marriage, divorce and the other matters of personal law mentioned in section 23 (3) (b) of the Constitution.

29. He also felt that more information should have been provided with respect to article 3. In many countries the law made no distinction between men and women, but in practice the situation was somewhat different. It would be interesting to know what was the percentage of girls attending school as compared with boys, and also the percentages of women Members of Parliament, Senators, members of the Government and senior civil servants. He wondered whether women received equal pay, and what the practice was with regard to the award of custody of children. Information on those points would give some idea of the extent to which the rights of women were ensured in practice.

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30. The part of the report dealing with article 4 of the Covenant described the special provisions which applied in Barbados in cases of public emergency. It was not clear, however, what status was accorded to the articles enumerated in article 4, paragraph 2, from which no derogation was allowed under the Covenant even in time of public emergency. It also appeared from section 13 of the Constitution that the length of time for which a person might be detained during a period of public emergency was somewhat excessive, and he would like to know why that was so.

31. Section 13 (2) of the Constitution made it quite clear that there was no provision for free legal assistance in Barbados; yet article 14, paragraph 3 (d), of the Covenant imposed an obligation on States parties to provide such assistance if a defendant was unable to pay for it. Almost every country had enacted laws providing for free legal assistance, and he wondered why Barbados had not done so, and whether it planned to in the future.

32. Article 6 of the Covenant provided that the death penalty should not be imposed on persons below 18 years of age or on pregnant women. There was no reference to such a provision in the report before the Committee, and he would like to know what situation existed in Barbados in that respect.

33. He would welcome clarification as to how the independence and impartiality of the judiciary was guaranteed - for instance, how judges were chosen and appointed and whether they could be removed from office.

34. With regard to article 9 of the Covenant, section 13 (2) of the Constitution provided that any person who was arrested or detained must be informed as soon as reasonably practicable of the reasons for his arrest or detention. The phrase "as soon as reasonably practicable" was extremely vague and could lead to abuse. The same subsection provided that a person who had not attained the age of 16 years must also be afforded "a reasonable opportunity" for communication with his parent or guardian; such communication should surely be obligatory in the case of persons under the age of 16. In general, he was somewhat concerned at the repeated use of the word "reasonable" in the provisions relating to article 9. A definition of that term could be extremely subjective and might differ from country to country or culture to culture. The use of such vague terms could lead to abuse, and the provisions of the Constitution should be much more specific.

35. With respect to article 12 of the Covenant, section 22 of the Constitution provided for freedom of movement but imposed restrictions on such freedom in the case of non-citizens. He wished to know what was the exact situation of foreigners in Barbados in the light of section 22 (3) (c), what reasons were invoked for restricting their freedom of movement and what was the extent of such restrictions.

36. Referring to article 20 of the Covenant, he noted that there appeared to be no provision in the Constitution prohibiting propaganda for war. While Barbados was clearly a peaceful country which would not threaten to wage war on another country, the Covenant imposed a definite obligation on States parties to prohibit by law any propaganda for war. Some countries had actually been obliged to enact such a provision or to make reservations justifying their failure to do so, and he wondered why that was not the case with Barbados.

37. Mr. OPSAHL commended the representative of Barbados on his country's report. The presentation of the general legal framework was very clear and precise, but he was rather concerned to learn that the provisions of the Covenant could not per se be invoked before or directly enforced by the courts, tribunals or administrative authorities of Barbados. If the Covenant was to be implemented, the laws of Barbados must offer protection identical with or similar to that afforded by its provisions. That must be done through the Constitution and the protection afforded by the Constitution must then be enforced by means of laws. Since the Constitution reproduced in essence the provisions of the Covenant, one must in order to determine the status of the Covenant, first determine the relationship between the Constitution and the laws of Barbados.

38. Although, according to section 1 of the Constitution, the Constitution prevailed over other laws, section 26 appeared to give previously existing law precedence over the Constitution and thus over its human rights provisions. Section 26 therefore warranted further examination. Again, the last paragraph of the part of the report relating to article 2, in referring to remedies for interference with personal liberty, used the phrase "unless the interference was justified under some specific provision of the laws of Barbados", which implied that, in theory at least, the Constitution did not take precedence over existing law or indeed over new laws that were inconsistent with or in contravention of the Covenant. He would welcome further clarification on that point. The Covenant also provided that all the obligations which it imposed must have immediate effect, while according to the Constitution of Barbados the constitutional provisions on human rights did not take precedence over existing laws, nor was there any provision that they should be progressively implemented. Instead, they appeared to be indefinitely subject to existing and future legislation. That was incompatible with the Covenant, and he wondered whether actual practice bore out that situation. He was not implying that there was any actual violation of individual rights in Barbados - indeed, there was no evidence to that effect - but if provisions contrary to the Covenant were applied in future they would be in violation of those rights.

39. With regard to article 5 of the Covenant, the report stated that the question of interpretation referred to in paragraph 1 of the article, or the pretext referred to in paragraph 2, should not arise. However, since the Constitution did not guarantee the rights enumerated in the Covenant, the question of such interpretation could indeed arise. It could therefore be said that Barbados was not fulfilling the provisions of article 5 of the Covenant.

40. With reference to article 6, section 12 of the Constitution stated that a person was not to be regarded as having been deprived of his life in contravention of that section if he died as a result of the use of such force as was reasonably justifiable. In view of the enumeration in section 12 (2) of cases where killing was "reasonably justifiable", he wondered whether that meant that it was permissible, for instance, under the laws of Barbados to kill thieves caught in flagrante delicto? In other words, did it mean that Barbados was a violent society in which such killings were frequent?

41. Although the Covenant did not require the immediate implementation of article 23, paragraph 4, concerning the equality of spouses in marriage, he would like to know what steps, if any, Barbados had taken to ensure such equality.



42. Generally speaking, he believed that it would help the Committee in its work if representatives of reporting countries could give much fuller information on actual practice in their countries with regard to the provisions of the Covenant.

43. Mr. SADI noted that the report of Barbados contained no mention of that country's position on the right of self-determination of peoples enunciated in article 1 of the Covenant. He would like to know what its position was on that issue. The report also made no reference to the prohibition of propaganda for war imposed by article 20 of the Covenant.

44. With regard to article 27 of the Covenant, concerning ethnic and other minorities, he wished to know whether there were any governmental subdivisions in Barbados which attended to the rights of the country's different ethnic groups and ensured that they were allowed to enjoy their own culture, language and tradition.

45. There appeared to be general agreement in the Committee that Barbados had not implemented some of the provisions of the Covenant. The Government itself recognized that fact in the introduction to its report when it indicated that the provisions of the Covenant could not be invoked or directly enforced. The report also stated that the fundamental human rights, including most of those dealt with in the Covenant, were guaranteed in the Constitution. That was not sufficient; all the rights dealt with in the Covenant must be guaranteed and observed. He therefore wished to know whether Barbados intended to implement article 2 of the Covenant by taking legal steps to give full effect to the rights recognized therein. He trusted that the Committee's concerns would be conveyed to the Government of Barbados so that it could take action to rectify the situation.

46. Section 23 of the Constitution of Barbados guaranteed protection from discrimination, but subsection (3) provided for a number of derogations. Since the Covenant made no provision for derogations from the prohibition of discrimination, Barbados was in fact violating article 2, paragraph 1, of the Covenant.

47. With regard to article 4, the report described the legal provisions which applied in cases of public emergency in Barbados. He wished to know whether Barbados had in fact ever declared a state of emergency and, if so, whether it had done so in accordance with the provisions of the Covenant - in other words, whether it had immediately informed the other States parties. The report gave no indication as to whether there was any law in Barbados specifically requiring action in accordance with article 4 (c) of the Covenant.

48. He commended Barbados on the actions regarding prison conditions described in connexion with article 10.

49. Article 23 of the Covenant did not make freedom to marry subject to any minimum age, but in Barbados the Marriage Act provided that men and women over the age of 18 years were free to marry. He was curious to know what happened if someone under the age of 18 wished to marry. Such an age-limit might conflict with religious customs or prove totally unrealistic.

(Mr. Sadi)

50. With regard to article 25, he noted that the Constitution of Barbados provided for the "appointment" of Senators. He wondered why such a term was used, since legislators should be elected. With regard to elections, he would like to know whether voting districts were delimited in such a way as to ensure that the principle of "one man, one vote" was effectively applied.

The meeting rose at 1 p.m.