

51. En sus observaciones sobre el artículo 6 del Pacto, los miembros del Comité elogiaron a Venezuela por haber abolido la pena de muerte desde 1864. En la práctica, para conocer cómo se garantizaba el derecho a la vida, se preguntó cuál era el régimen jurídico aplicable a la utilización de armas de fuego por la policía. Se hizo notar que el informe sólo citaba la prohibición de la pena de muerte y que el derecho a la vida no sólo imponía a las autoridades la obligación de abstenerse de privar arbitrariamente a un individuo de la vida, sino también la de adoptar medidas positivas para reducir la mortalidad infantil, el analfabetismo, el desempleo y, por ejemplo, el riesgo de ser víctima de un asesinato político o de derecho común. Se pidió información sobre los esfuerzos del Gobierno en esas esferas.

52. En cuanto a los artículos 7 y 10 del Pacto, se señaló que no bastaba con citar las disposiciones de la Constitución y del Código Penal que prohibían la tortura. El informe debería indicar si Venezuela respetaba las Reglas mínimas para el tratamiento de los reclusos establecidas por las Naciones Unidas y si existían órganos encargados de comprobar el trato que se da a los presos; qué medidas se adoptaban para investigar las acusaciones de malos tratos cometidos por la policía o los servicios de seguridad, si se iniciaban rápidamente las investigaciones y, en caso afirmativo, cuáles habían sido los resultados. Se preguntó también si en Venezuela existían disposiciones legislativas expresas que prohibiesen someter a las personas a experimentos médicos o científicos sin su libre consentimiento; cuáles eran las leyes o normas que regían el internamiento en hospitales psiquiátricos y que objetivo se perseguía con la clasificación de los penados mencionada en la Ley de Régimen Penitenciario y en el Reglamento de Cárceles.

53. En relación con el artículo 8 del Pacto, se preguntó si existían disposiciones expresas que prohibiesen el trabajo forzoso y en qué medida las "colonias de trabajo" mencionadas en el informe podrían justificarse en virtud del artículo 8 del Pacto.

54. En cuanto al artículo 9 del Pacto, un miembro observó que, de conformidad con el Código de Enjuiciamiento Criminal, un acusado no tenía derecho a disponer de asistencia letrada hasta que se hubiese concluido la investigación preliminar y señaló que esto no sólo era una denegación de las garantías que se deberían conceder al acusado, sino que también estaba en conflicto con la Constitución de Venezuela según la cual la defensa era un derecho inviolable en todas las etapas y niveles del juicio. Se preguntó cuál era el plazo máximo, legalmente fijado, dentro del cual un acuerdo debía ser puesto a disposición de los tribunales; qué leyes o normas regían las condiciones o la duración de la detención incomunicada; si todavía había personas presas por sus

opiniones o actividades políticas y, en caso afirmativo, en virtud de que disposiciones jurídicas seguían presas, cuántas eran y si se las hacía comparecer ante la justicia; si las fuerzas de seguridad y las fuerzas armadas cumplían siempre con sus obligaciones de acuerdo con el gobierno civil o actuaban independientemente de ese gobierno, y qué tipo de indemnización moral o pecuniaria preveían el derecho penal o civil en caso de detención o encarcelamiento ilegal.

55. En relación con el artículo 13 del Pacto, los miembros del Comité observaron que la legislación privaba expresamente a los extranjeros que se hallaren legalmente en territorio de Venezuela de todo recurso contra una posible orden de expulsión y señalaron que tal disposición no se ajustaba al Pacto. La afirmación contenida en el informe, según la cual el artículo 13 del Pacto derogaría implícitamente esa norma no era convincente, pues la simple incorporación del Pacto en el orden jurídico interno no bastaba por sí misma para poner remedio a una situación de ese tipo, ya que no podía haber recurso si no estaba organizado expresa y concretamente. Se solicitó información sobre los derechos de que gozaban los numerosos extranjeros que entraban en Venezuela en busca de asilo o de trabajo y sobre el trato que la policía y los funcionarios de aduanas daban a estos extranjeros, que eran sobre todo colombianos.

56. Refiriéndose al artículo 14 del Pacto, los miembros pidieron información sobre las leyes que garantizaban la independencia del poder judicial, especialmente respecto del nombramiento, la destitución y la suspensión de los jueces; sobre la ley que estableció las atribuciones del Consejo de la Judicatura y los sectores del poder público que estaban representados en este Consejo; sobre si los miembros del Ministerio Público podían ser transferidos o sancionados; sobre las garantías de que gozaba cualquier persona acusada de un delito, como se preveía en el artículo 14 del Pacto; sobre los casos en que los tribunales militares podían juzgar a civiles y sobre las razones para sustraer a éstos a la jurisdicción de los tribunales civiles; sobre si el procedimiento de los tribunales militares se ajustaba a las disposiciones del Pacto y sobre la posibilidad de que los condenados por un tribunal militar pudieran apelar ante una instancia superior y sobre el procedimiento aplicable a los menores, los tribunales que podían juzgarlos y las medidas de reintegración a la sociedad de que podían hacer uso estos tribunales en beneficio de los menores.

57. En sus observaciones sobre el artículo 18 del Pacto, los miembros preguntaron qué religiones se practicaban en Venezuela, si el Estado adoptaba una actitud uniforme hacia ellas y si alguna religión recibía ayuda de cualquier clase del Estado. Se pidió una aclaración

sobre la afirmación, contenida en el informe, de que el culto debía estar sometido a la "suprema inspección del Ejecutivo Nacional de conformidad con la ley" y se preguntó qué implicaba exactamente esta inspección y sobre qué base se realizaba. Citando un artículo de la Constitución que establecía, entre otras cosas, que la República poseía el Derecho de Patronato Eclesiástico, que debía ejercer conforme determinara la ley, un miembro preguntó cómo se aplicaba este derecho en la práctica y cómo era compatible con el Pacto. Observando que la Constitución preveía que el servicio militar era obligatorio, algunos miembros preguntaron si se tenía en cuenta la objeción de conciencia y si otras formas de servicio podían reemplazar al servicio militar.

58. En cuanto a la libertad de expresión, prevista en el artículo 19 del Pacto, se pidió una aclaración acerca de cuáles eran las "expresiones que constituyan delitos" mencionadas en la Constitución y se preguntó en qué forma concebían los tribunales la protección del interés nacional en materias relativas a la libertad de expresión y si existían normas administrativas que permitieran a todos los sectores de la población utilizar los medios de difusión tales como la radio y la televisión.

59. En sus observaciones sobre el artículo 20 del Pacto, algunos miembros elogiaron la prohibición en Venezuela, por la Constitución, de la propaganda de guerra, tanto más cuanto que la legislación antibélica era rara en América Latina. Se preguntó si una posible infracción suponía la aplicación de sanciones previstas en el Código Penal y si existía paralelamente una prohibición de toda apología del odio nacional, racial o religioso, de conformidad con el artículo 20 del Pacto.

60. En relación con los artículos 21 y 22 del Pacto, se preguntó si la ley se había promulgado para regular las reuniones en lugares públicos prevista en la Constitución y, en tal caso, cuáles eran sus disposiciones, y en particular, si se hacía alguna distinción entre los nacionales y las demás personas en cuanto al disfrute del derecho de reunión y el derecho de manifestación pacífica y sin armas. Se preguntó también al representante si existía efectivamente la legislación para garantizar la igualdad de los partidos políticos ante la ley, prevista en la Constitución; si el derecho a fundar sindicatos y afiliarse a ellos estaba sometido a restricciones; y si los sindicatos desempeñaban un papel puramente económico o si tenían también una función política.

61. En cuanto al artículo 23 del Pacto, los miembros observaron que la edad legal para contraer matrimonio era de 14 años para los hombres y de 12 para las mujeres. Cabía preguntarse si personas de esa edad eran capaces de dar su libre y pleno consentimiento en el sentido previsto en el Pacto, si se había previsto una modificación de la edad a la

que el matrimonio podía contraerse válidamente y en qué circunstancias el consentimiento para el matrimonio se hallaba viciado. Observaron también con preocupación el reconocimiento en el informe de que en Venezuela no existía igualdad de derecho y responsabilidades de los esposos en cuanto al matrimonio y se preguntaron que medidas se proponía adoptar el Gobierno para ajustar su derecho interno al Pacto. Los miembros preguntaron también si el Estado pagaba subvenciones a las familias numerosas; mediante qué disposiciones se regulaba el régimen matrimonial de bienes, dado el papel predominante del marido; cual era la actitud de las autoridades administrativas y de los jueces en los pleitos de divorcio, especialmente en los casos de adulterio, y si esta actitud era discriminatoria en cuanto al sexo o si el hombre recibía un trato más indulgente que la mujer. Se pidió también una aclaración sobre la afirmación, contenida en el informe, de que "[la acción de divorcio y la separación]... no podrán intentarse sino por el cónyuge que no haya dado causa a ellas" y su aplicación en la práctica.

62. En sus observaciones sobre el artículo 24 del Pacto, los miembros preguntaron si el trabajo de los niños estaba autorizado o se practicaba y, de ser así, en qué medida y mediante qué disposiciones se reglamentaba y cuáles eran los planes del Gobierno para eliminarlo; si un hijo ilegítimo podía obtener por medios judiciales el reconocimiento por sus padres y si se hacía alguna distinción entre hijos legítimos e ilegítimos en cuanto al derecho de herencia.

63. En cuanto al artículo 25 y el artículo 26 del Pacto, algunos miembros observaron que sólo los ciudadanos nacidos en Venezuela podían ocupar los altos cargos del Estado o ser diputados o senadores. Como la Constitución preveía la posibilidad de adquirir la ciudadanía venezolana por naturalización, plantearon la cuestión de si las disposiciones que regían el acceso a determinadas funciones o a determinados cargos no establecían una discriminación casada en el origen nacional o en el nacimiento. Observado también que los ciudadanos analfabetos no pueden desempeñar funciones públicas, los miembros preguntaron qué medidas se habían adoptado para eliminar el analfabetismo y promover así la igualdad en el goce del derecho al acceso a la función pública. Se preguntó si, como el votar era legalmente obligatorio, ello se ajustaba al Pacto; si en la legislación se preveían sanciones en caso de incumplimiento de esta coligación y cuáles eran esas sanciones. Se preguntó también si la disposición de la Constitución según la cual el derecho a voto en las elecciones municipales podía hacerse extensivo a los extranjeros, en determinadas condiciones, se aplicaba en la práctica.

64. En relación con el artículo 27 del Pacto, se pidió información sobre el régimen de excepción indispensable para la protección de las comunidades indígenas y para su incorporación progresiva a la vida de la nación; sobre si las comunidades indígenas deseaban esa incorporación y participaban en la adopción de decisiones que las afectaban; sobre si la disposición relativa a la representación proporcional de las minorías en la Cámara de Diputados se refería a los indios; sobre el número de autóctonos y de grupos en que se dividían; sobre su nivel de vida y de educación en comparación con el resto de la población; sobre la protección de que disponían, en el régimen de excepción o fuera de él, para impedir que se les despojase de sus tierras ancestrales con fines de expansión agrícolas; o industrial; y sobre las medidas adoptadas para garantizarles el goce efectivo de sus derechos en virtud del Pacto. Se preguntó también cómo se conciliaban jurídicamente la protección especial que debía concederse a los autóctonos y los conceptos de igualdad ante la ley y la igualdad de protección de la ley, en caso de que esta contradicción se hubiese examinado en los tribunales y en el Congreso y, si habían lugar, cómo se había resuelto la cuestión.

65. Respondiendo a las preguntas planteadas por los miembros del Comité, el representante de Venezuela recalcó que las respuestas que diera tendrían carácter preliminar y que los órganos competentes del Gobierno de Venezuela responderían oportunamente de manera oficial.

66. En relación con el artículo 1 del Pacto, manifestó que su país había apoyado la libre determinación en los diversos foros internacionales y votado a favor de ella.

67. En cuanto al artículo 2 del Pacto, señaló que, con exclusión de los derechos políticos, los extranjeros gozaban en Venezuela de los mismos derechos que los venezolanos; que los extranjeros y los venezolanos por naturalización gozaban de ciertos derechos políticos en relación con los cargos gubernamentales y municipales y que era lógico que un país de inmigración como Venezuela tuviese ciertas normas para proteger los derechos de quienes eran venezolanos por nacimiento. Señaló que en Venezuela las leyes especiales, especialmente en el caso de los acuerdos internacionales, eran equivalentes a las leyes orgánicas que regulaban instituciones tales como la Corte Suprema, el Ministerio Público y la Oficina del Contralor General. En cuanto la diferencia entre los recursos de habeas corpus y de amparo, indicó que éste protegía todos los derechos individuales establecidos en la Constitución, mientras que en el primero, destinado concretamente a proteger la libertad personal, se establecía un procedimiento especial para asegurar

que ninguna persona pudiera ser detenida sin que se indicase una causa legal en el auto de detención. Si bien las leyes que regulaban esos recursos no habían sido promulgadas aún, era perfectamente posible invocarlos en virtud de la Constitución. Agregó que el Ministerio Público era un organismo autónomo, que velaba por la observancia de la Constitución y las leyes y constituía la garantía más segura del orden constitucional y la salvaguardia más efectiva de los derechos individuales.

68. Respondiendo a las preguntas formuladas sobre el artículo 3 del Pacto, el representante se refirió a un proyecto de ley presentado por el Ejecutivo en 1980 para la reforma parcial del Código Civil en cuestiones relativas, entre otras cosas, a la situación jurídica de la mujer. Esa medida constituía un paso importante para mejorar la situación de la mujer en la sociedad venezolana. Se refirió también al establecimiento en 1979 de un Ministerio de Estado para la Participación de la Mujer en el Desarrollo, al frente del cual se encontraba una mujer. Agregó que en el servicio diplomático y en el poder judicial había muchas mujeres.

69. En cuanto a la preocupación expresada por los miembros del Comité en relación con las disposiciones del artículo 4 del Pacto, indicó que, en vista de las condiciones prevalecientes en Venezuela después de largos períodos de dictadura, no era sorprendente que los legisladores hubiesen conferido al Presidente las facultades necesarias para proteger la democracia. Señaló que habían pasado casi 16 años desde la última vez en que se decidió declarar el estado de emergencia y suspender las garantías. En el caso de que Venezuela se viera en la obligación de adoptar una medida análoga en el futuro, se ceñiría al procedimiento de información establecido en el artículo 4 del Pacto. Señaló al Comité que las autoridades competentes de su país analizarían cuidadosamente cualquier conflicto que pudiese existir entre el Pacto y la Constitución respecto de la suspensión de los derechos garantizados en virtud del Pacto.

70. En respuesta a las preguntas formuladas con respecto a los artículos 7, 9, 10 y 14 del Pacto, el representante indicó que había procedimientos jurídicos que permitían a una persona cuyos derechos hubieran sido violados, sea por actos de terceros o por actuaciones ilegales del poder público, formular una reclamación. Los plazos prescritos para cada etapa de los procesos estaban indicados en el Código de Enjuiciamiento Criminal y el Código de Procedimiento Civil. El derecho de una persona que no hablara español a contar con un intérprete en el caso que tuviera que comparecer ante los tribunales estaba previsto en la ley. Señaló al Comité que, en muchos casos, los tribunales de menores estaban presididos por mujeres y que se estaba

preparando la reforma parcial del Código de Enjuiciamiento Criminal con miras a perfeccionar el sistema de la justicia penal y aligerar los juicios.

71. En relación con la pregunta que se le había formulado en relación con el artículo 13 del Pacto, destacó que todas las personas que habían encontrado en Venezuela un país de asilo se habían integrado totalmente a la vida venezolana y sus hijos eran venezolanos con plenos derechos. Sin embargo, el problema de los colombianos que no tenían los documentos necesarios era sumamente delicado y sería mejor tratarlo por escrito con el Gobierno de Venezuela.

72. Respondiendo a las preguntas formuladas respecto del artículo 18 del Pacto, señaló que en Venezuela se toleraban todas las religiones, así como diversas organizaciones y colonias de personas que pertenecían a distintas sectas con prácticas diversas. La ley no preveía la objeción de conciencia. No obstante, con arreglo a una nueva ley, una persona podía ser declarada exenta del servicio militar por varias razones.

73. En relación con el artículo 19 del Pacto, señaló que la ley de prensa, destinada a evitar abusos, no se había dictado todavía. Habían surgido diversos problemas, porque ciertas personas que controlaban las empresas periodísticas realizaban campañas contrarias al bienestar público y que hasta podrían socavar las relaciones internacionales.

74. En cuanto a los artículos 21 y 22 del Pacto, indicó que se habían dictado ciertas ordenanzas municipales en lo concerniente al derecho de reunión, pero que normalmente había completa libertad al respecto. Existía el sindicalismo libre y había numerosas organizaciones que actuaban en la vida política. También se permitían otros tipos de organizaciones que estaban reguladas por la ley.

75. Respondiendo a las preguntas formuladas respecto de los artículos 23 y 24 del Pacto, el representante señaló que la edad a la cual se podía contraer matrimonio se había determinado basándose en la edad en la cual era posible procrear o concebir. No obstante, con arreglo a la ley, las mujeres hasta los 18 años y los hombres hasta los 21 necesitaban la autorización de los padres para contraer matrimonio. Sin embargo, reconoció de que era necesario reconsiderar toda la cuestión. En el proyecto de ley presentado por el ejecutivo en 1980 para la reforma parcial del Código Civil, se incluyeron cuestiones relativas a la familia y la administración de los bienes de la sociedad conyugal. En la actualidad, un hijo ilegítimo podía heredar una porción equivalente sólo a la mitad de lo que heredara un hijo legítimo. Se había presentado ante el Congreso un proyecto de ley para la igualdad de los hijos legítimos y

los ilegítimos en todos los aspectos, especialmente en materia de sucesión. Agregó que en Venezuela existía un Consejo del Niño que se ocupaba de todas las cuestiones relativas a los niños y a sus problemas en la familia. Los menores podían iniciar acciones judiciales para lograr el reconocimiento de la paternidad.

76. Respondiendo a preguntas que se le habían formulado respecto del artículo 27 del Pacto, el representante dijo que la población indígena de Venezuela ocupaba grandes extensiones de terrenos poco poblados a lo largo de la frontera con Colombia y en los territorios federales. Tenían sus propios idiomas y el Gobierno estaba haciendo un estudio de sus comunidades. Cualquier intento para integrarlos a la vida nacional tenía sólo por objeto su propio beneficio.

77. El representante reiteró su declaración anterior, según la cual el Gobierno tendría mucho gusto en contestar con más detalle por escrito a las preguntas formuladas.

B. English Speaking Caribbean

1. BARBADOS

Committee on Human Rights
Report of the forty-third session
Supplement N° 40 (A/43/40), 28 September 1988

547. The Committee considered the second periodic report of Barbados (CCPR/C/42/Add.3) at its 823rd, 825th and 826th meetings, held on 18 and 19 July 1988 (CCPR/C/SR.823, 825 and 826).

548. The report was introduced by the representative of the State party who drew attention to certain new developments since the consideration of his country's initial report, notably the entry into force of the Community Legal Services Act in 1981, the Family Act in 1982 and the Administrative Justice Act in 1983. Those legislative measures helped to bring the laws of Barbados into closer conformity with the provisions of the Covenant and removed certain ambiguities that had been noted by the Committee when it examined the initial report. He also informed the Committee that an ombudsman, who enjoyed the confidence of both the Government and the opposition, had been appointed and was now in a position to exercise his functions fully.

Constitutional and legal framework within the Covenant is implemented

549. With regard to the issue, members of the Committee wished to know what the Covenant's legal status was in relation to the Constitution and domestic laws, what happened in case of conflict between the latter and the Covenant, whether an individual had any recourse in cases where rights, guaranteed under the Covenant but not protected under the Constitution or laws of Barbados, were violated, what the powers, functions and activities of the ombudsman were and whether he was fully independent of the executive power, whether there had been any factors or difficulties affecting the implementation of the Covenant, and what efforts had been made to disseminate information about the Covenant and the Optional Protocol, particularly to schools, universities and to law enforcement personnel.

550. Members also wished to know why the domestic law relating to the death penalty had not been brought into line with article 6 of the Covenant, whether all the rights guaranteed under the

Covenant were in fact protected in Barbados, whether the provisions of the Covenant could be invoked before the courts directly or indirectly, whether appeals were still referred to the Privy Council in London, whether any laws adopted prior to 1966, such as the law of 1936 relating to emergency powers, were still in force, although not in conformity with articles 12 to 23 of the Constitution or with the Covenant, and whether the legal profession and the bar in Barbados were adequately informed about the provisions of the Covenant.

551. In his reply, the representative of the State party explained that, although the Covenant did not have the force of law in Barbados, its provisions, with only a few exceptions, were reflected in the Constitution and domestic law. The fact that the provisions of the Covenant had not been incorporated into domestic law did not mean that there was necessarily a conflict between such laws and the Covenant. At the same time, the law authorizing the imposition of the death penalty on minors under the age of 18 was clearly in conflict with article 6 of the Covenant and required revision, a matter that would be brought to the attention of the appropriate authorities.

552. The ombudsman was also empowered to investigate alleged violations of rights through abusive, irregular or inadequate administrative actions by both central authorities and parastatal bodies and to make observations concerning the general comportment of administrative authorities. In addition, he could apply to the High Court whenever he considered that a right had been violated or was not protected under the Constitution and existing laws. The ombudsman's tenure—and hence his independence—was protected under article 105 of the Constitution.

553. Regarding the dissemination of information concerning the Covenant, he said that the members of the bar were very active in bringing the provisions of international human rights instruments to public attention—which was reflected in the increasing number of human rights complaints being lodged—and that Government ministers referred frequently in their public statements to the Universal Declaration of Human Rights and to the Covenant. There was also a very active Amnesty International chapter in Barbados, which frequently brought alleged human rights violations to the attention of the government authorities. National legislation was not identical in every respect with the provisions of the Covenant but the divergences did not present major difficulties. The Government of Barbados was not indifferent to the need for compatibility between domestic laws and international obligations and was proceeding to make necessary modifications as rapidly as was practical. The ombudsman also had a

role in that regard, since he could intervene in cases where he found that rights guaranteed under the Covenant were not adequately reflected in domestic legislation.

554. Responding to other questions, the representative said that he had alluded to certain difficulties relating to the implementation of the Covenant in his introductory remarks and that the matter would be treated more fully in his country's third periodic report. The courts of first instance in Barbados were the magistrates' courts, which handled both criminal cases and minor civil cases. The High Court dealt with more serious civil and penal matters and had unlimited original jurisdiction as well as an appellate court function in respect of judgements rendered by lowering courts. Its own judgements could only be appealed to the Privy Council. Cases involving minors were handled by minors' courts that sat alongside the magistrates' courts. Litigation relating to labor law or administrative matters was handled by either the magistrates' courts or the High Court, depending on the seriousness of the matter. Persons seeking compensation for the violation of their constitutional rights could apply for redress to the High Court and there had been a number of instances in which such persons had obtained relief. No state of emergency had been proclaimed in Barbados since 1937 and the Government did not consider it necessary to adopt any special measures currently in that regard.

Non-discrimination and equality of the sexes

555. With regard to that issue, members of the committee wished to know the nature of the relationship between the Women's Affairs Bureau and the National Commission on the Status of Women and asked what the former's actual or planned activities were, whether there were any current plans to amend the Constitution, particularly by the deletion of paragraph 3 (a) and (b) of article 23, how many women there were in Parliament, in the judiciary, the public service, the universities and the professions, whether discrimination on the basis of sex in such areas as adoption, marriage, divorce, nationality or inheritance existed, what percentage of the population was of Asian origin and whether such persons were subjected to discrimination on the grounds of language.

556. In his reply, the representative of the State party explained that the establishment of the Women's Affairs Bureau had been recommended by the National Commission on the Status of Women. The National Commission had been established to study the role of women in society and the best way to ensure equality of sexes in Barbados. There had been notable progress in that regard in recent

years, including the adoption of laws relating to the ownership of property, the status of children, family rights and inheritance. The Women's Affairs Bureau, on the other hand, was composed of civil servants and dealt with specific questions of discrimination against women and provided advice to the Government in that area. There was no current plans to delete paragraph 3 (a) and (b) from article 23 of the Constitution.

557. Responding to questions relating to the extent of women's participation in various fields of activity and the scholarization rate for girls, the representative stated that his Government was seeking to promote equality of the sexes and that there were no longer any fields of activity strictly reserved to members of one of other sex. Women were serving in the Assembly as well as the Senate, held leading posts in the public service, served as judges, doctors, and lawyers, and played an important role in the school system. Their numbers in the professions and in higher posts were still limited, but prospects for significant further improvements in that regard over the next decade were encouraging. There was no pay discrimination on the basis of sex and there was currently full equality of sexes with respect to adoption, marriage, divorce and inheritance. Under the new legislation on the family, couples who had lived for at least five years were recognized as constituting a family and each partner had custodial rights over the children. However, no action had been taken in the area of acquisition of nationality by marriage, despite a recommendation by the National Commission on the Status of Women that such inequality should be eliminated.

Right to life

558. With regard to that issue, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and actually carried out since the consideration of the initial report of Barbados, whether there were any plans to bring the law concerning the imposition of the death penalty on persons under 18 years of age into conformity with article 6, paragraph 5, of the Covenant and what measures had been taken in the field of health care, particularly with a view to reducing infant mortality. It was asked whether there were laws regulating the use of firearms by the police, whether such laws had ever been violated and if so, whether such violations had ever led to loss of life and had been investigated and followed up. Members also requested additional information on article 6 of the Covenant, in accordance with the Committee's general comments Nos. 6 (16) and 14 (23).

559. In his reply, the representative of the State party said that, in the view of the Government of Barbados, the right to life had far greater implications than merely those relating to the death penalty. At the same time, it was clear that the Government would eventually need to address the question of eliminating the provision that allowed the imposition of the death penalty on minors under 18 years of age. As a general rule, the death penalty was commuted to a sentence of life imprisonment. The public authorities had taken a number of measures in the field of health care, including the creation of numerous polyclinics throughout the country and intensive campaigns for the mass vaccination of children. The health care of children and of older persons received priority and was provided free of charge under the social security system to children under 16 and adults over 65 years of age as well as to the chronically ill. The police in Barbados were generally unarmed. Any abuse of regulations relating to the use of force was subject to sanction by a disciplinary committee. Police officers and security agents suspected of wrong-doing were subject to prosecution in the courts and in some instances prison sentences had been imposed. Victims of such abuse could also apply to the courts for compensation.

**Liberty and security of person and treatment of prisoners
and other detainees**

560. With regard to that issue, members of the Committee wished to know what the maximum period of detention was, whether bail was available to everyone regardless of their means and whether there were any possibilities for release pending trial other than bail, whether persons detained in mental institutions, or their families or lawyers, could apply to the courts for release, whether the State accepted responsibility for providing compensation to persons who had been unlawfully detained, whether persons awaiting trial were detained separately from convicts and whether juveniles were held separately from adults, and what regulations governed the treatment of prisoners and detainees. It was asked whether sanctions had ever been taken against police officers or prison guards who had violated such regulations and, if so, how common such occurrences were.

561. Members also asked whether there were any special prisons, what the maximum allowable period for holding prisoners in "temporary solitary confinement" was and whether such confinement was the most severe form of detention, how frequently detainees made use of their right of recourse to the High Court on the grounds of encountering unreasonably long delays before being brought to trial, whether nursing mothers in detention were held in separate quarters from other detainees, what the law and practice was relating to the

arrest of juveniles and what specific role parents or guardians played in that regard, whether imprisonment for failure to honor a contractual obligation was permitted under the law, and what the relevant procedures and practices were in respect of habeas corpus.

562. In his reply, the representative of the State party said that a person under arrest was normally brought before a judge on the day of arrest or on the following day but there was no maximum limit to the length of preventive detention. Detainees could apply to the High Court for release pending trial under the habeas corpus procedure. Persons confined in mental institutions or others acting on their behalf could also apply to the High Court for release. Bail was available for all crimes and offences except murder. In cases involving the payment of compensation for unlawful detention, the State conformed to the judgement of the courts. Detainees awaiting trial were separated from convicted persons and minors were held separately from adults. The conduct of prison officials towards prisoners was subject to the relevant prison regulations and had to be in conformity with them.

563. Responding to other questions, the representative said female detainees accompanied by small children were kept in separate quarters away from other prisoners and that prison authorities were eager to foster, to the maximum extent possible, normal relations between mothers and their children. It was up to the courts to determine the extent to which delays in bringing an accused person to trial were reasonable. There was no fixed minimum age in respect of the arrest or detention of juveniles, but they were held in special establishments, away from adults and there were separate facilities for boys and girls. A person could not be imprisoned for debt, but if he failed to settle the debt, after having been ordered by a court to do so and found to be capable of doing so, he could be gaoled for contempt of court. Complaints could be lodged against prison officials for violations of human rights on the same basis as against any other official who had contravened the law. Police officers had been prosecuted and punished on several occasions for unlawful detention or mistreatment. Solitary confinement was a punishment resorted to only for brief periods for violations of prison rules. Under the law, all detainees had the right of recourse to habeas corpus proceedings and to engage a lawyer for the purpose.

Right to a fair trial

564. With regard to that issue, members of the Committee wished to know how soon after arrest a person could contact his family or lawyer, whether any consideration was being given to withdrawing

the reservation of Barbados to article 14, paragraph 3 (f), of the Covenant, since enactment of the Community Legal Services Act, 1981-33, and how the bar was organized. Members also requested additional information on article 14, in accordance with the Committee's general comment No. 13 (21) and asked for clarification as to whether persons accused of theft or in detention could benefit from legal assistance under the new Legal Services Act.

565. In his reply, the representative of the State party said that all persons taken into police custody had to be presented to a judge as quickly as possible and that usually occurred within hours after the arrest. The Bar Association was represented on the Consultative Council of the Judiciary as well as on the relevant section of the Education Council dealing with the teaching of law at the University of the Caribbean. The Bar Association also reviewed draft legislation and could make recommendations and suggestions thereon to the Government. All detainees could apply for legal assistance on an equal footing. The independence of the judiciary in Barbados was fully guaranteed and all citizens who considered that their rights had been violated by the State could apply to the courts for redress.

Freedom of movement and expulsion of aliens

566. With reference to that issue, members of the Committee wished to know whether any restrictions on the freedom of movement of public servants or law enforcement officers were currently in effect and, if so, whether such restrictions were compatible with article 12 of the Covenant. They also requested additional information on the position of aliens, in accordance with the Committee's general comment No. 15 (27).

567. In his reply, the representative stated that there were no restrictions on the movement of public servants or law enforcement officers except those made necessary by the requirements of the public servants. Security personnel who were sometimes away from their posts without authorization were declared to be "absent without leave". While aliens did not specifically enjoy constitutional protection, article 22 of the Constitution provided for liberal access to Barbados and afforded considerable protection against expulsion.

Right to privacy

568. With regard to that issue, members of the Committee wished to know whether any legislation regulating wire-tapping or electronic surveillance was being contemplated.

569. In his reply, the representative stated that his Government had no official position on wire-tapping or electronic surveillance and that such sophisticated methods were scarcely in use in countries like Barbados.

Freedom of religion and expression, prohibition of war propaganda and advocacy of national, racial or religious hatred

570. With regard to that issue, members of the Committee wished to receive information concerning laws and regulations pertaining to the recognition of religious sects by the public authorities, the controls exercised on the freedom of the press and the mass media, in accordance with the law, and the practice in Barbados in respect of the availability of information relating to administrative and governmental acts. Members also wished to know whether any legislation concerning the prohibition of propaganda for war was being contemplated, whether there were any plans to accord explicit constitutional protection to the right to seek information, whether laws relating to official secrets were still in effect and, if so, whether the Government envisaged their abolition.

571. In his reply, the representative of the State party said that freedom of religion was guaranteed under the Constitution and that there was no State religion in Barbados. The press and other media operated under ordinary laws and were not subjected to official control of any kind. Barbados had not formulated an official position in respect of the prohibition of war propaganda. The restrictions embodied in the Official Secrets Act were consistent with the provisions of article 19, paragraph 3 (b), of the Covenant and there were no plans to abolish that Act. The freedom to receive ideas, which was explicitly guaranteed in the Constitution, subsumed the freedom to "seek" information. There were, in practice, no restrictions on access to government information and such public documents as the records of parliamentary proceedings and the Official Gazette were available to anyone who wished to buy them.

Freedom of assembly and association

572. With reference to that issue, members of the Committee wished to receive additional information concerning the practical application of section 31 of the Public Order Act and the relevant laws and practices relating to the establishment of political parties, including the number of such parties and their representation in Parliament. Members also wished to know how trade unions were organized and

regulated and what type of offences carried the penalty of loss of civic rights guaranteed under article 25 of the Covenant.

573. In his reply, the representative explained that, in one case involving the application of section 31 of the Public Order Act, in which that Act had been challenged in the magistrate's court, the court had found against the complainant, since it had been proven to its satisfaction that he had wrongfully accused someone of murder at a public meeting. There were no restrictions on the activities of political parties in Barbados. There were two major parties and three smaller parties, but the latter had only a limited appeal and, since independence, only the two main parties had been in public office. The activities of trade unions were regulated by a law enacted in 1964. Their officers were elected by the membership annually. Some of the larger unions sponsored educational and training activities for their members. Under section 8 of the Representation of the People Act, a person was disqualified from voting or holding office if he was actually serving a prison sentence or had been sentenced to a term of imprisonment exceeding 12 months in Barbados, or of he had been sentenced to death by a court in any part of the Commonwealth.

Protection of the family and children, including the right to marry

574. With regard to that issue, members of the Committee wished to receive additional information concerning the system of protection of children, as envisaged under article 24, paragraph 1, of the Covenant and the right of children to acquire a nationality.

575. Responding to the questions raised by members of the Committee, the representative of the State party explained that, in cases where no paternity had been established or where there was no presumed paternity, the law provided that an application could be made to a court for a declaration of paternity. A child born in Barbados acquired the right to Barbadian nationality even if both parents were stateless. The relevant legislation provided an important protection for children and had been adopted upon the recommendation of the National Commission on the Status of Women. Further important protection for children was offered under the Family Act of 1981, which put the union of a cohabiting couple on the same legal footing as that of a married couple.

Rights of minorities

576. With regard to that issue, members of the Committee wished to know whether there were any special factors or difficulties affecting the enjoyment by minorities of their rights under the Covenant.

577. In responding, the representative stated that a considerable number of Asian immigrants had arrived in Barbados in recent years. The children of those Asian immigrants were fully integrated in the country's school system and provisions had been made to enable immigrants to practice their various religions.

General observations

578. Members of the Committee thanked the representative of the State party for his co-operation with the Committee and for having engaged in a useful and candid dialogue. Satisfaction was expressed over the improvements that had occurred since the consideration of the initial report of Barbados, including, in particular, the appointment of the ombudsman, the enactment of important legislation, such as the Community Legal Services Act, the Family Act and the Administration of Justice Act, the enhanced role of the Bar Association in the promotion and protection of human rights and the steps that had been taken to heighten public awareness of human rights issues. At the same time, members noted that the second periodic report of Barbados was rather short and contained few details in respect of relevant legislation, case law, public debate or the practical application of the provisions of the Covenant. It was hoped that such information, including a systematic review of the compatibility of domestic legislation with the provisions of the Covenant, would be provided in the third periodic report.

579. Attention was also drawn by members of the Committee to the fact that in certain respects the laws of Barbados were still not fully compatible with the Covenant, notably in respect of article 6, relating to the death penalty for minors, article 3, regarding the position of women as far as the acquisition of citizenship was concerned, and article 11, in so far as its guarantee against imprisonment for debt did not seem to be fully effective in Barbados. Accordingly, they expressed the hope that the comments of members regarding those and other issues would be brought to the attention of the authorities.

580. The representative of the State party welcomed the foregoing comments and assured members that he would draw the Government's attention to the points they had raised and would urge the competent authorities to introduce improvements, before the next report was submitted. Barbados was proud of its human rights record and would continue to seek to meet the Committee's requirements as well as possible.

581. In concluding consideration of the second report of Barbados, the Chairman again expressed appreciation to the representative of the State party for the considerable efforts he had

made to reply to the many questions that had been posed by members, as well as to the points contained in the list of issues drawn up by the Committee earlier, which he had not had a chance to review prior to his arrival. Although more statistical data and information on legislation and practice would need to be provided in the third periodic report, during the open discussion with the representative of the State party, the Committee had become better acquainted with the progress that Barbados had achieved thus far in implementing the Covenant.

Committee on Human Rights
Report of the thirty-sixth session
Supplement N° 40 (A/36/40), 29 September 1981

148. The Committee considered the initial report (CCPR/C/1/Add.36) submitted by the Government of Barbados at its 264th, 265th and 267th meetings held on 24 and 26 March 1981 (CPR/C/SR.264, 265 and 267).

149. The report was briefly introduced by the representative of the State Party who drew the Committee's attention to the general legal framework outlined in the report which served to place in its proper context the specific information in relation to particular articles of the Covenant.

150. Members of the Committee expressed their satisfaction at the achievements of Barbados in the field of human rights, noted the effectiveness of the legal system which was designed to protect them and commended the ratification by Barbados of the Optional Protocol. Noting that the enjoyment of human rights and the ability to monitor the observance of the Covenant by States parties required a well-informed citizenry, members requested information on the rate of literacy in Barbados and on whether publicity was being given to the Covenant itself, the report submitted to the Committee and its consideration at the current session.

151. With respect to article 1 of the Covenant, it was noted that the report did not deal with the subject matter of this article and information was requested on the position of Barbados regarding the right of self-determination of peoples enunciated in that article.

152. As regards article 2 of the Covenant, reference was made to the non-discrimination clause and information was requested on the omission in the Constitution of sex, language, national or social origin, property, birth or other status as grounds on which discrimination was prohibited. Information was also sought on the exceptions provided in the Constitution to the principle of non-discrimination in regard to non-citizens and to matters of personal law. Members noted that the Covenant was not directly incorporated in domestic legislation and that, although most of the Covenant rights dealt with were guaranteed in the Constitution, section 26 of the Constitution could be so interpreted as to give laws existing before the Constitution had come into force precedence over the Constitution itself and over its human rights provisions. Members of the Committee accordingly requested clarification of the meaning of section 26 of the Constitution and asked in what matter the provisions of the Covenant were given legal effect, how they were implemented and what legislative or other measures as might be necessary had been adopted to ensure to all individuals within Barbados the rights recognized in the Covenant. Reference was made to the statement in the report that the Covenant could not, per se, be invoked before or directly enforced by the courts, tribunals or administrative authorities of Barbados and it was asked what redress was available if a provision of the Covenant was not covered by domestic law or if a law contravened any such provision and whether any legal provision existed in Barbados to the effect that when national law conflicted with an international obligation, it was the latter which would prevail. In this connexion the representative was requested to clarify the statement in the report to the effect that appropriate remedies were available for interference with the personal liberty unless such interference was justified under some specific laws. He also asked if he could give some examples of remedies given by the High Court since the Covenant had come into force.

153. As regard article 3 of the Covenant, members felt that more information should have been given. Questions were asked as to why, in the Constitution, women were not placed on equal footing with men; what the Government's attitude was to the principle of equality between the sexes and what action had it taken to achieve such equality; whether women's movements existed in Barbados and, if not, what the Government was doing to make women aware of their rights. Information was requested on the percentage of girls attending school as compared with boys and on women's participation in the social, political and economic life of the country, on the practice with regard to the award of the custody of children; on whether the principle of equal pay for equal work between men and women was respected in

Barbados and on whether remedies were available for women who believed that their rights under this article were violated. The question was asked whether the provisions of the Constitution relating to the possibility of acquiring citizenship through marriage applied to men as well as to women.

154. With reference to article 4 of the Covenant, members wondered whether, under the Constitution, emergency provisions allowed for distinctions to be made on some prohibited grounds and for derogations from the articles enumerated in paragraph 2 of that article. Information was requested on whether, since the coming into force of the Covenant, any public emergency had been proclaimed in Barbados and, if so, whether implementation of provisions relating to it had been consistent with the provisions of the Covenant.

155. Commenting on the statement in the report to the effect that, since the Covenant was not *per se* part of the laws of Barbados, the questions dealt with in article 5 of the Covenant did not arise, members questioned the validity of this argument. They pointed out that it did not matter whether the Covenant was part of domestic law; rather, it was important that the Covenant could not be interpreted as imposing greater restrictions than were permissible under it that the Covenant could not be used as a pretext for restricting, or derogating from fundamental rights already existing in the State on the ground that the Covenant does not recognize these rights or recognized them to a lesser extent.

156. In connexion with article 6 of the Covenant, the view was expressed that the inherent right to life should be protected not only in relation to penal law but also in terms of social and humanitarian law. Information was requested on measures adopted with a view to enhancing public health and living standards and to reducing infant mortality and long-standing unemployment. Stressing that human life must have priority over all other consideration, members asked whether it was permissible under the laws of Barbados to kill thieves caught in *flagrante delicto* and whether the law expressly prohibited the imposition of death penalty on persons below eighteen years of age and the execution of pregnant women, as stipulated in the Covenant, and, if not, whether the Government intended to take steps to ensure that the provisions of article 6 were incorporated in the domestic law. It was also asked how often the death sentence had been carried out in Barbados in recent years and for what crimes; whether the Government had considered the abolition of that penalty and, if so, what the state of public opinion on the subject was.

157. As regard article 7 of the Covenant, members commended the information on prison conditions and the rules governing the treatment of prisoners and asked how those rules were actually monitored and applied, whether there were independent and impartial procedures by which complaints about ill-treatment could be received and investigated, what the functions and powers of Visiting Committees were, what provisions were there for maintaining family contacts by persons deprived of liberty, what provisions governed solitary confinement and to what extent the after-care of prisoners, referred to in the report, had been successful in rehabilitating them.

158. Commenting on article 9 of the Covenant, members thought that the formulation of section 13 of the Constitution dealing with the restrictions on personal liberty was ambiguous and widely drawn. They requested clarifications of the terms "reasonable suspicion", "reasonably suspected to be of unsound mind", "tried within a reasonable time" and "as soon as reasonably practicable" and wondered whether time limits could be more specific so as to demonstrate a willingness to give real meaning to the Covenant. In this connexion, reference was made to section 23 (1) of the Constitution which stipulated that no law shall make any provision that was discriminatory either of itself or in its effects and information was requested on the measures available in Barbados to ensure the supremacy of the Constitution in that respect. Questions were asked as to what legal safeguards there were to ensure that no person was detained on the ground of mental illness without good reasons and that those confined to mental institutions received adequate care; what the definition of "vagrants" was and how long they were deprived of liberty; whether the compensation for unlawful arrest was material or whether it would also entail a moral element and what rules applied if government officials were responsible for such an arrest.

159. In connexion with article 12 of the Covenant, it was noted that the Constitution provided for various restrictions on the movement or residence within and departure from Barbados of individuals, particularly non-citizens, as "reasonably required" in the interest, inter alia, of public safety and public order, and information was requested on the remedies available to persons whose freedom of movement was thus restricted.

160. With reference to article 14 of the Covenant, information was requested on the administration of justice, particularly on how the independence and impartiality of the judiciary were guaranteed, on how judges were appointed and whether they could be removed from office, whether labour courts existed and, if so, what their procedures

and competence were; and on whether the Government planned to provide free legal assistance to the accused if he did not have sufficient means to pay for it, as required under article 14 of the Covenant.

161. As regard article 17 of the Covenant, it was noted that the report dealt only with the questions of searches and information was requested on the laws providing the protection of privacy, family and correspondence, particularly against wire-tapping and electronic surveillance.

162. In relation to article 18 of the Covenant, clarification was requested of the statement in the report to the effect that no person shall be hindered in the enjoyment of his freedom of thought and of religion except with his own consent. Questions were asked as to the age at which a child could choose his own religion, how a religious community was defined and how many such communities existed in Barbados.

163. Commenting on articles 19, 21 and 22, members requested information on the number of newspapers published in Barbados including those which were controlled by the Government and others which might be less disposed towards the Government; on the number of political parties active in the country and on whether new parties could be formed and, if so, under what conditions; on whether the right to form trade-unions, to undertake collective bargaining and to strike, was recognized by law, and on whether there existed national human rights commissions in the country. Noting that the Constitution provided that, except with his own consent, no person should be hindered in the enjoyment of his freedom of expression, assembly and association, one member wondered whether the limitation implied in such consent was legally correct, as it would seem that the rights involved were so fundamental that they could not be waived. Information was sought on laws protecting national security, particularly those covering sedition and sedition-related offences and criticism of the Government and its officials.

164. With reference to article 20 of the Covenant, members noted the absence in the report of any information concerning the prohibition of war propaganda and of the advocacy of racial hatred and they wondered whether the laws of Barbados expressly provided for such prohibitions as required by the Covenant.

165. In connexion with article 23 and 24 of the Covenant, explanation was requested of the statement in the report that the celebration of any marriage could not be enforced by reason of any promise or contract and questions were asked as to whether men and women under the age of 18 could marry and, if so, under what

conditions; and what steps had been taken to ensure the equality of spouses in marriage. Information was also sought about the problems arising from the breakdown in the traditional concept of family and from the economic necessity for mothers to work, about the extent to which child-care and children born out of wedlock were problems in Barbados, and about the measures taken to safeguard the rights and welfare of children, including the right to acquire a nationality.

166. As regards article 25 of the Covenant, it was asked why at least seven years of residence was required for election to the House of Assembly; whether voting districts were delimited in such a way to ensure that the principle of "one man, one vote" was effectively applied; and whether the electoral law provided for the possible recall of a deputy and, if so, under what conditions such recall could be effected.

167. In relation to article 27 of the Covenant, members inquired whether ethnic, linguistic or religious minorities existed in Barbados and, if so, what their number was, and what measures had been taken to ensure their rights and the preservation of their cultural heritage.

168. Replying to questions raised by members of the Committee, the representative of Barbados informed the Committee that since the submission of the report in 1978 his Government had enacted legislation which went toward implementing some further provisions of the Covenant; that it viewed the right to life as embracing notions such as freedom of conscience, of association, of movement and of expression and protection from discrimination, inhuman treatment and deprivation of property; and that its stated position being to improve the quality of life for all its citizens.

169. As regards article 1 of the Covenant, he pointed out that this Government had always supported and often co-sponsored United Nations resolutions on self-determination for Namibia and other colonies and Non-Self-Governing Territories and that his country was helping to train Namibians.

170. In connexion with questions raised under article 2 of the Covenant he stressed that treaty-making power was vested in the executive and that when Barbados became a party to a treaty, legislations still had to be enacted, in appropriated cases, to give effect to its provisions unless there existed a body of law which would ensure compliance.

171. Responding to questions raised under article 3 of the Covenant, the representative stated that his Government was committed to the attainment of equality of the sexes, that there were no longer any fields of activity which were the sole preserve of men, that equality of

the sexes carried with it the right to equal pay for equal work and that the lead taken by the Government in that respect was being followed in the private sector. Moreover, the Government had established a Department of Women's Affairs and a Commission on the Status of Women. The Commission has submitted a comprehensive report, some recommendations of which had already been embodied in legislation. He also pointed out that the mother of a minor had the same rights to apply to the court in respect of any matter affecting the minor as were possessed by the father and that she could be awarded custody even if she was residing with the father. The term "spouse" had been introduced into the Succession Act, thereby creating equality between the sexes in that respect.

172. With reference to article 4 of the Covenant, he informed the Committee that no public emergency had been declared since 1937.

173. As to article 6 of the Covenant, he referred to the Sentence of Death (Expectant Mothers) Act which provided that, where a woman convicted of an offence punishable by death was found to be pregnant, the sentence passed on her should be life imprisonment instead of death.

174. With respect to article 9 of the Covenant, the representative pointed out that the law provided that a person taken into custody without a warrant should be released on his own recognizance if it would not be practicable to bring him before a magistrate within 24 hours and unless the offence appeared to be a serious one. Similar provision for release on recognizance was made even where a person under the age of 16 was apprehended with a warrant.

175. Replying to questions raised under article 14 of the Covenant, he stated that the Chief Justice and Puisne Judges were appointed by the Governor-General on the recommendation of the Prime Minister and after consultation with the Leader of the Opposition, and that a judge could only be removed from office for inability to discharge his functions or for misbehaviour. As to legal aid, he pointed out that it was available, including at the appeal stage, for a person charged with any capital offence such as manslaughter, infanticide, concealment of birth or rape, and that, at present, the Government was in the process of setting up a department with a view to widening the scope of legal aid.

176. In connexion with article 18 of the Covenant, he indicated that a very large number of denominations were represented in Barbados, and that the Anglican Church had been disestablished and disendowed in 1969 and it therefore had no supremacy over other

religious groups; and that the Government contributed to many religious organizations.

177. Responding to a question under article 25 of the Covenant, he stated that, in the light of the relevant articles of the Constitution, the seven-year period of residence as a qualification for election to the House of Assembly pertained only to Commonwealth citizens, other than citizens of Barbados.

178. The representative of Barbados regretted that time constraints had made it impossible to prepare a fuller response but that he would certainly draw the attention of his Government to the relevant summary records and to the questions raised by Committee members and emphasized that his Government looked forward to future dialogue with the Committee.

179. The Chairman of the Committee expressed the hope that the Government of Barbados would report in its further written replies on any relevant legislation enacted since the submission of the report and expressed the hope that copies of or extracts from new legislation which furthered the enhancement and enjoyment of human rights and fundamental freedoms be made available to members of the Committee.

2. GUYANA

Committee on Human Rights
CCPR/C/79/Add.121, 25 April 2000

1. The Committee considered the second periodic report of Guyana (CCPR/C/GUY/99/2) at its 1829th to 1830th meetings, held on 24 and 27 March 2000, and adopted at its 1836th meeting on 30 March 2000 the following comments:

A. Introduction

2. The Committee expresses its satisfaction at the submission of the second periodic report of Guyana. It welcomes the opportunity to examine the State party's report after over a decade in which the State party has failed to fulfill its reporting obligations under article 40 of the Covenant. The Committee regrets that the report deals with the situation only up to 1987 and that it fails to provide information on the practical implementation of rights protected by the Covenant.

3. The Committee welcomes that copies of legislation were provided by the State party during the session, but regrets that the delegation was unable to provide full information on the current situation in the State party in answer to the list of issues and the Committee members' questions. The Committee notes that the list of issues was provided to the State party some months before the session. Some helpful written information was provided to the Committee during the discussions but did not address all the questions posed.

B. Positive aspects

4. The Committee notes with satisfaction the efforts being made by the State party to harmonize many aspects of the domestic legal order with international standards in its transition to democratic rule.

5. The Committee welcomes the enactment of the Domestic Violence Act in 1996 and its extension to children.

C. Principal subjects of concern and recommendations

6. The Committee is concerned that not all Covenant rights have been included in the current Constitution and therefore cannot be directly enforced. No information was provided as to how the rights that are enumerated in the Constitution are given effect and how their violations are remedied. The Committee notes that a Constitutional reform process is near completion in the State party, but regrets that the Delegation could not provide specific information as to how the enjoyment of Covenant rights will be ensured by the new Constitution.

The State party should ensure that all Covenant rights are implemented in domestic law and should give consideration to including those rights in the new Constitution. It should also explain how the new Caribbean Court of Appeal will affect the remedies available to alleged victims of human rights violations.

7. The Committee regrets the continued application of the death penalty and is particularly concerned that in some cases the procedural safeguards of fair trial may not have been respected in imposing the death penalty, contrary to articles 6 and 14 of the Covenant.

The State party is encouraged to consider the abolition of the death penalty. The State party must take measures to ensure strict compliance with procedural safeguards in all criminal cases.

8. The Committee regrets the lack of information concerning the right to legal assistance in practice for persons charged with criminal offences and urges the State party to ensure that its obligations in that regard under article 14 of the Covenant are fully met.

9. The Committee regrets that the State party has not taken steps to implement the Committee's Views in respect of communication No. 676/1996 (*Yasseen and Thomas v. Guyana*) under the Optional Protocol.

The State party is urged to fully implement the Committee's Views in communication No. 676/1996 and to formally withdraw its reservation made on its re-accession to the Optional Protocol. The State party should consider adopting appropriate procedures for taking into account the Committee's Views under the Optional Protocol.

10. The Committee is deeply concerned about allegations that extrajudicial killings by the police take place in the State party and at information received alleging widespread police brutality. The Committee is further concerned that the State party was unable to provide information about specific incidents to which the Committee drew attention.

Allegations of extrajudicial killings and excessive use of force should be promptly investigated by an impartial body and measures taken to ensure the prosecution of offenders and to provide effective remedies to victims. All law enforcement officials should be thoroughly trained in international human rights standards, particularly those contained in the Covenant (arts. 6, 7 and 10).

11. The State party should include detailed information in its next report about the role and functions of the Police Complaints Authority, measures taken to ensure its independence and impartiality, its relationship with other police investigative mechanisms and the implementation and effectiveness of its decisions and recommendations (arts. 6 and 7).

12. The Committee is concerned that corporal punishment is still resorted to in the State party and regrets the lack of specific information on this issue.

The State party should take legal and other measures to eliminate this practice (art. 7).

13. The Committee is concerned at the low level of participation by women in the workforce and in the conduct of public

affairs. It regrets that the State party could not provide any information on the application and effect of the Anti-Discrimination Act of 1997 or the Equal Rights Act of 1990. It is also concerned at the apparent conflict between article 29 of the Constitution, which mandates equal rights for women and men, and article 149 (3) (b), which excludes from the prohibition on discrimination laws dealing with marriage, divorce, and inheritance.

The State party is urged to take positive measures to ensure equality of opportunity for women in all fields and to ensure that the principles of equality and non-discrimination on all grounds and in all areas of activity are fully implemented in the new Constitution.

14. The Committee is concerned that the Domestic Violence Act of 1996 appears to have been applied in very few cases and at the lack of information relating to its impact in reducing the level of violence against women.

Police and other law enforcement personnel should be trained to understand the importance of ensuring that women who are victims of violence are accorded equal protection and that preventive and punitive measures are enforced.

15. The Committee regrets that the law relating to the arrest and charge of suspects does not appear to ensure compliance with article 9 of the Covenant in that it does not provide for persons to be brought promptly before a judge or provide an enforceable right to compensation against the State in case of unlawful arrest. The Committee regrets deeply that the periods of pre-trial detention are prolonged for as long as three or four years.

The State party should review its laws on arrest and detention and should take effective legal and other measures to reduce the period of pre-trial detention and to ensure full compliance with article 9 ((3) and (5)) of the Covenant.

16. The Committee expresses its profound concern that children, including children under 10 years of age, are held in detention on remand.

The State party should take immediate steps to ensure that children are not held in detention together with adults and that young children are not held in detention at all (arts. 10 (2) and 24).

17. The Committee expresses deep concern over dire prison conditions (art. 10 of the Covenant), including poor sanitation and lack of adequate food and medical care, resulting in disease and death. This

is exacerbated by the excessive recourse to imprisonment as a punishment or as a preventive measure and by the overcrowding of prisons.

The State party is reminded of its obligation under article 10 to ensure that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. It is encouraged to consider greater use of alternative forms of punishment or preventive measures.

18. The Committee notes proposals to recruit part-time and temporary judges, to deal with the backlog of cases waiting to be tried.

The State party is urged to ensure that these measures do not undermine the competence, independence and impartiality of the judiciary.

19. The Committee is concerned that freedom of expression may be unduly restricted by reason of the government monopoly of radio broadcasting. It is also concerned at the lack of specific remedies for journalists who have been subjected to violence or harassment by the police or other authorities (art. 19).

The State party should remove restrictions on freedom of expression which are incompatible with article 19, paragraph (3), and should ensure that effective remedies are available to any person whose rights under article 19 of the Covenant have been violated.

20. The Committee is concerned at insufficient attention being paid to the need for multi-ethnicity within the police force, and at reports of considerable ethnic tension and at manifestation of incitement to discrimination, hostility or violence on racial grounds.

The State party should encourage recruitment to the police force of members of all ethnic communities, and ensure strict compliance with article 20 (2) of the Covenant by enforcing the prohibition of incitement to racial hostility and by taking measures to reduce ethnic tension between all the different groups in Guyana.

21. The Committee regrets the delay by the State party in amending the Amerindian Act, and is concerned that members of the indigenous Amerindian minority do not enjoy fully the right to equality before the law. It is particularly concerned that the right of Amerindians to enjoy their own culture is threatened by logging, mining and delays in the demarcation of their traditional lands, that in some cases insufficient land is demarcated to enable them to pursue their

traditional economic activities and that there appears to be no effective means to enable members of Amerindian communities to enforce their rights under article 27.

The State party should ensure that there are effective measures of protection to enable members of indigenous Amerindian communities to participate in decisions which affect them and to enforce their right to enjoy their rights under the Covenant.

22. The Committee draws the attention of the State party to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The third periodic report should be prepared in accordance with those guidelines, with particular attention paid to the implementation of rights in practice. It should indicate the measures taken to give effect to these concluding observations. The third periodic report should be submitted by 31 March 2003.

Committee on Human Rights
Report of the thirty-seventh session
Supplement N° 40 (A/37/40), 29 September 1982

249. The Committee considered the initial report of Guyana (CCPR/C/4/Add.6) at its 353rd, 354th and 357th meetings held on 5 and 7 April 1982 (CCPR/C/SR.353, 354 and 357).

250. The report was introduced by the representative of the State party who elaborated on the information provided in the report, giving more detailed references to the articles of the Constitution and legislative acts which were relevant to the articles of the Covenant.

251. Members of the Committee observed that the report was extremely concise, providing only a general legal framework with reference to the Constitution and statute law and it was pointed out that the Committee's task under the Covenant was not confined to comparing the laws of a State party with the normative standards established under the Covenant. Reference was made to a statement in the report denying the existence of any factors and difficulties affecting the enjoyment of the rights and freedoms provided for in the Covenant, and it was asked whether that meant that the rights and freedoms embodied in the Covenant were fully enjoyed in the country since the

coming into force of the Covenant in Guyana in 1977 and, if so, how Guyana had managed to avoid any of the difficulties encountered by most countries in fully implementing the provisions of the Covenant. Members of the Committee observed that the new Constitution of Guyana was a basic charter for the country's political life, characterized by a number of original features which could have important implications in the field of human rights. Questions were asked as to whether the change of Constitution was due to certain difficulties encountered under the previous constitution and, if so, what those difficulties had been and what innovations and remedies the new Constitution had introduced. Information was requested on the extent to which the Covenant was known in Guyana to the general public, to the courts, police and prison authorities and to all those responsible for the administration of public affairs. Noting that there was little point in ratifying an international treaty such as the Covenant if the citizenry of the country did not know about it, members asked whether the Government was taking action to make the authorities in the country at all levels as well as the public aware of the Covenant, and whether Government officials concerned were aware of the Committee's approach to its work, of its guidelines for the preparation of reports and of the general comments which were contained in its last report to the General Assembly.

252. In relation to article 2 of the Covenant, members noted that according to the report, the provisions of the Covenant may not be invoked before or directly enforced by the Courts, other tribunals or administrative authorities but that they could indirectly be enforced by the Courts to the extent that they are subsumed in comparable provisions of the Constitution, and the ordinary statute law of Guyana. They also referred to certain articles of the Schedule to the Constitution and asked whether, under their terms, the President could change any law, including the Constitution. Stressing that the provisions of the Covenant contained specific rights and freedoms and that they transcended those of the Constitution in that they were binding international treaty obligations, members requested information on the specific laws which had been enacted to implement the Constitution and to ensure that the rights stipulated in the Covenant were effectively enjoyed, on any national bodies responsible for implementing human rights and on any court decisions which might have been taken relating to the practical application of human rights provisions.

253. Noting that the ombudsman system could represent a very effective remedy but that it could be an excuse for a lack of other remedies, members requested information on the background to the establishment of this office in Guyana, how many cases were dealt with

each year, whether the ombudsman was responsible for reporting on his activities and, if so, to whom and in what form, and on both the successful and unsuccessful work of the ombudsman in protecting fundamental rights and freedoms. Information was also requested on all other available remedies, particularly on remedies available for someone who was subject to discrimination: on the jurisdiction of the High Court and on whether it covered all human rights or merely those specified in article 153 of the Constitution and whether, in practice, people had availed themselves of recourse to the High Court to ensure that their basic rights were safeguarded. In this connexion, reference was made to article 8 of the Constitution and it was asked who determined whether a law was inconsistent with the constitution and declared it null and void, whether the judiciary had the authority to do so and at whose request this could be done, and whether the power of review extended to the executive.

254. As regards article 3 of the Covenant, reference was made to the Committee's general comment 4/13, and more information was requested on the steps, in addition to purely legislative measures of protection, which had been or were being taken to give effect to the precise and positive obligations under this article, on the progress that was being made and on the factors and difficulties that were being met in this regard.

255. In connexion with article 4 of the Covenant, it was noted that article 150 (2) of the Constitution appeared to allow derogations that would be contrary to the provisions of article 4 of the Covenant which stipulated that measures derogating from obligations under the Covenant, in time of public emergency, could not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin and it was asked how, if that was so, such derogations could be justified and whether there had been any proclamation of emergency since the Covenant had entered into force in respect of Guyana.

256. Regarding article 6 of the Covenant, it was stated that implementation of this article required that the law must strictly control and limit the circumstances in which a person might be deprived of life by the State authorities and that one very important context in which that applied was the use of force by the police; and it was asked what rules applied to the use of force by the police, whether they were strictly enforced and whether the police received proper training and instruction in that regard. In this connexion, it was asked whether an investigation had been conducted concerning the mass deaths which occurred during the events at Jonestown as well as the death of the political activist Walter Rodney and, if so, what the findings had been. It

was also asked whether any consideration had been given to abolishing the death penalty in Guyana.

257. Commenting on articles 7 and 10 of the Covenant, members wondered whether, in the light of article 141 of the Constitution, antedating the Constitution there were some laws which authorized some form of inhuman or degrading treatment or punishment and, if so, how that could be explained. Information was requested regarding the procedures for reviewing and investigating complaints brought by persons detained in prisons or other establishments; on whether juvenile persons were separated from adults, on the opportunities for contact between detainees and relatives, and for independent supervision of conditions of imprisonment, and on whether prisoners were required to work and, if so, whether they were remunerated.

258. In relation to article 9 of the Covenant, it was asked in what circumstances and under what conditions a person could be subjected to preventive detention, whether any persons, including members of the opposition, were held in preventive detention or had been arrested and charged in the recent past and, if so, on what grounds and for how long. It was noted that the provision of the Constitution that any person who was arrested or detained should be informed "as soon as reasonably practicable" of the reasons for his arrest or detention, fell short of article 9 (2) of the Covenant which required that such person should be promptly informed of any charges against him and it was asked whether the right of habeas corpus, as called for in the Covenant, was duly provided for and respected in Guyana and what criteria applied in assessing reparation claims for the inconvenience suffered by persons who were subjected to wrongful arrest.

259. In connexion with article 14 of the Covenant, it was pointed out that a truly independent judiciary was a firm guarantee of the rights of individuals and that nothing should be done to impair that independence, and it was asked how the independence of the Guyanan judiciary was safeguarded, whether the President could appoint or dismiss judges, whether there were legal provisions to protect judges who arrived at decisions differing from the Government's notion of public order and whether there had been any complaints from judges that they had been subjected to pressure from any quarter.

260. As regards article 17 of the Covenant, information was requested on the provisions which had been adopted to guarantee the right to privacy as well as on any restriction on the exercise of this right and on the provisions which enabled agents of the State to enter the homes of individuals or to interfere with private correspondence.

261. In relation to articles 19 and 22 of the covenant, reference was made to a provision of the Constitution recognizing the need to ensure fairness and balance in the dissemination of information to the public, and it was asked what was done to that end and how that provision operated in practice, how many newspapers there were and how many of them belonged to the opposition; whether persons opposed to Government policies were free to present their views on state-controlled radio and television stations. It was asked what laws existed in Guyana concerning sedition, treason and offences against the State, how many people had been arrested, charged and convicted under such laws since 1977; and whether the perception of an immediate threat to the State was sufficient to secure the conviction of individuals who were not actually using force. Information was requested on trade unions and human rights organizations in the country and on the mode and extent of Government co-operation with them, as well as on whether the various political parties were on a footing of legal equality.

262. Commenting on article 25 of the Covenant, members requested detailed information on the electoral process, particularly on how elections were organized in practice, how lists of candidates were drawn up; what measures existed in Guyana to ensure that people could register as voters and what remedies they had in that regard; and whether there were any independent bodies to supervise elections so as to ensure the effective protection of rights under article 25 of the Covenant.

263. As regards article 27 of the Covenant, information was requested on the various ethnic groups in the country, including the Amerindian population; on any special efforts that were made to preserve their religion and culture and protect their rights as well as information on the racial composition of public bodies, and on the extent to which the Constitution allowed such groups to participate in public service.

264. The representative of the State party replied briefly to some questions relating to the organization of the judiciary in Guyana and apologized for not being able, owing to the shortage of time to prepare his replies, to reply to all the questions posed by members of the Committee. He assured the Committee, however, that he would refer its questions to his Government for consideration and reply and would inquire as to when a supplementary report might be submitted and inform the Committee accordingly.

3. JAMAICA

Committee on Human Rights
CCPR/C/79/Add.83, 19 November 1997

1. The Committee examined the second periodic report of Jamaica (CCPR/C/42/Add.15) at its 1622nd to 1624th meetings, on 23 and 24 October 1997, and subsequently adopted at its 1641st meeting held on 5 November 1997 the following comments:

A. Introduction

2. The Committee welcomes the second periodic report submitted by the State party and appreciates the delegation's readiness to resume its dialogue with the Committee, although it deplores the delay of more than 15 years in reporting. The Committee regrets that while the report provided useful information on the general legislative framework of Jamaica, it did not address consistently the actual state of implementation of the Covenant, nor did it always address, on an article-by-article basis, difficulties encountered in the course of its implementation.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee is aware of the difficult economic situation of Jamaica during much of the period covered by the second periodic report, as well as of the high rate of crimes of violence.

C. Positive aspects

4. The Committee appreciates that in the envisaged review of the Jamaican Constitution, any provisions in contradiction with the Covenant which might appear from the application of section 24 of the present Constitution, would be eliminated. It expresses the hope that the recommendation of the Constitutional Commission to the effect that the new Bill of Rights should explicitly refer to prohibition of discrimination on the grounds of sex will be implemented as part of this legislation.

5. The Committee welcomes the establishment in 1993 of the Police Public Complaints Authority, which allows Jamaican citizens to seek redress if they have been abused by police officers, and the requirement for this body to report publicly on its activities. The Committee further welcomes the establishment of a Public Commission

of Inquiry into the prison disturbances which occurred in several correctional facilities in August 1997, resulting in the loss of life of 16 inmates. At the same time, the Committee wishes to emphasize that the results of the investigations of and the action taken by these bodies should be disseminated as widely as possible and made available to the Committee.

6. The Committee appreciates that the imposition of capital punishment has been reviewed by the Jamaican authorities during the period under review, leading to the adoption of the Offences against the Person (Amendment) Act, 1992 and the concomitant adoption of procedures for legal representation, classification of offences, minimum periods to be served and an appellate system.

7. The Committee appreciates that on the basis of the classification of capital offences under the Offences against the Person (Amendment) Act, judicial decisions and a number of Views adopted by the Committee under the Optional Protocol, numerous death sentences were commuted, leading to a considerable reduction in the number of inmates under sentence of death.

8. The Committee welcomes the fact that draft legislation is currently being finalized with a view to improving the system of legal aid in Jamaica: under the proposed system, legal aid would be extended to all aspects of criminal proceedings and appeals, to constitutional motions, to prerogative writs and to the writ of habeas corpus, as well as to other civil proceedings. The Committee expresses the hope that the new Legal Aid Bill will be passed and will enter into force as soon as possible, and that sufficient resources will be allocated for its effective operation.

9. The Committee welcomes the current implementation of a programme for the modernization and the rebuilding of the prison estate. On the basis of the information provided by the delegation, such projects as have already been approved and are being implemented, such as the long-overdue modernization of St. Catherine District Prison and the building of a facility to replace the outdated Tower Street Adult Correctional Centre, will improve conditions of detention, overcrowding of prisons and other unsatisfactory conditions. The Committee welcomes the intention expressed by the delegation to amend administrative regulations listing objects that inmates, whatever their sentence, may keep in their possession, to the effect that a prisoner will be allowed to retain in his cell correspondence and will be assured access to legal documents relating to his case.

D. Subjects of concern and the Committee's recommendations

10. The Committee notes with the utmost regret Jamaica's notification of denunciation of the Optional Protocol. Unless withdrawn, this denunciation will become effective on 23 January 1998. The Committee affirms that:

- (a) Views of the Committee already adopted on communications under the Optional Protocol will retain their validity and will require implementation;
- (b) Communications already pending, or submitted before 23 January 1998, will not be affected by Jamaica's notification and will be considered by the Committee in due course;
- (c) Jamaica will continue to be bound by the provisions of the Covenant, and be subject to other monitoring functions of the Committee.

11. The Committee considers that the Governor-General's notification of 7 August 1997, unilaterally imposing timetables for the examination of communications under the Optional Protocol by the Committee, cannot be invoked as justification for any measure that would deviate from the Covenant, the Optional Protocol, or requests by the Committee for interim measures of protection.

12. The Committee is concerned at the incidence of domestic violence against women. Therefore:

The Committee recommends that increased efforts be made to sensitize the population to the need to respect women's dignity and that legislation should ensure ready access to remedies for violations of women's human rights, and that social and educational programmes be pursued to ensure the upholding of womens' rights by way of abolishing all discrimination.

13. The Committee notes with concern that serious deficiencies persist in the administration of the State party's prison system. These include conditions of imprisonment which the Committee considers incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners and article 10 of the Covenant; attention should be paid to the lack of sanitary facilities, lighting in cells, adequate diet, adequate training of prison staff, adequate facilities for visits of convicted prisoners (by relatives and by their legal representatives) and recurrent ill-treatment of inmates. In this regard:

Effective means of redress, without reprisals, should be available for detainees and prisoners regarding complaints of ill-treatment

by police or prison warders; the Boards of Visitors should examine all such complaints and report to the prison governor. The Committee recommends that an independent prison inspectorate be established which would report publicly on its findings.

14. While noting current endeavours to reform the system of legal aid, the Committee remains concerned about the state of current legal aid representation. This is particularly disturbing for cases involving capital punishment, where unavailability of legal aid amounts to a violation of article 6 juncto article 14 of the Covenant. Therefore:

The Committee urges the State party to monitor on a continuing basis the availability and quality of legal aid representation, and to ensure that experienced counsel is assigned to individuals accused of capital and other serious offences. The Committee emphasizes that adequate remuneration of lawyers acting under the Poor Prisoners' Defence Act at all stages of arrest and subsequent proceedings would greatly assist in providing a proper defence of clients in a proper manner. Legal aid should be available for obtaining the presence of defence witnesses for the purposes of trials.

15. The Committee is deeply concerned about the fact that the Flogging Regulation Act, 1903 and the Crime (prevention of) Act, 1942 are still in force, which provide for and regulate corporal punishment both as a penalty for certain crimes and as a penalty for breach of prison rules of other regulations. In this regard:

The Committee recommends that both Acts be repealed, as they are contrary to article 7 of the Covenant.

16. The Committee regrets the lack of published information about the alarmingly high incidence of the use of firearms by the police and security forces. Therefore:

The Committee urges the State party to investigate all such incidents and to make available to the public the outcome of such investigations; in particular, an inquiry should be completed on the Tivoli Gardens incident in March 1997 and its results published.

17. With respect to the system of administration of justice and the conduct of criminal trials, especially in capital cases, the Committee is concerned that, while there has recently been some progress in reducing delays in hearings of cases at all stages of judicial procedure between the initial charge and the final appeal, further efforts should be

made to reduce delays in the hearing of cases. This applies in particular to the delays between dismissal of capital appeals by the Court of Appeal of Jamaica and the hearing of a petition for special leave to appeal by the Judicial Committee of the Privy Council. Therefore:

The Committee recommends that appropriate legal provisions be adopted to ensure prompt issue of a reasoned judgment by the Court of Appeal.

18. The Committee is concerned that the State party has failed to adhere strictly to article 9, paragraph 3, of the Covenant and to domestic statutory time limits on pre-trial detention. Therefore:

The Committee urges that such time-limits be closely observed, so as to reduce the opportunity for beatings and other forms of police brutality such as have been alleged.

19. The Committee is concerned that not all cases of death at the hands of the police or security forces are subject to a coroner's inquest. Therefore:

The Committee emphasizes that all such deaths should be inquired into and that inquests ordered under the Coroners Act which are adjourned pending the consideration by the Department of Public Prosecutions of potential charges must be reopened if no prosecution ensues.

20. The Committee has noted the delegation's information that wire-tapping remains an exceptional administrative measure. It considers that current administrative rules are insufficient to secure compliance with article 17 of the Covenant. Therefore:

The Committee urges the Jamaican authorities either to discontinue wire-tapping or to adopt precise legislation governing its administration, which should include appropriate mechanisms for judicial oversight.

21. The Committee draws the attention of the Government of Jamaica to the provisions of the guidelines regarding the form and contents of periodic reports from States parties and requests that its next periodic report, due on 7 November 2001, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Jamaica.

Committee on Human Rights
Report of the thirty-seventh session
Supplement N° 40 (A/37/40), 29 September 1982

253. The Committee considered the initial report (CCPR/C/1/Add.53) submitted by the Government of Jamaica at its 291st, 292nd and 296th meetings held on 14 and 16 July 1981 (CCPR/C/SR.291, 292 and 296).

254. The report was introduced by the representative of the State party who stated that his Government gave the strongest support to the promotion of human rights both at the international and local levels; that the protection of individuals from the abuse of their rights by others was enshrined in the Constitution which was the supreme law of the country and that the purpose of the restrictions imposed on some civil and political rights was to protect the rights of others and the public interest.

255. Members of the Committee, while regretting that the report which had been due since 1977 was submitted only in 1980, commended Jamaica for the detailed character of the report, its consistency with the guidelines of the Committee and the seriousness with which it had been prepared. The report also had the merit of including a number of provisions from different internal laws designed to give effect to the general constitutional norms of Jamaica, particularly since the Covenant could not be directly invoked before the national courts and since domestic legislation was, therefore, necessary. In this connexion, reference was made to a statement in the report to the effect that certain rules of customary international law were automatically applied in Jamaica and it was asked to which rules of customary international law the report had referred and whether such rules were regional in scope, such as the rights of territorial asylum recognized in America. Information was also requested on the actual progress made in the enjoyment of human rights in Jamaica and on any factors and difficulties, if any, affecting the implementation of the Covenant as stipulated in article 40, paragraph 2, thereof.

256. In connexion with article 1 of the Covenant, it was asked what repercussions the establishment of a new international economic order might have in Jamaica on the civil and political rights set forth in the Covenant. Noting the reference in the report to agreements concluded by Jamaica with multinational corporations, information was

sought on the extent to which the practices of such co-operation had an adverse impact on the right to self-determination itself and on the right of a people to maintain effective control over its natural resources; and on whether Jamaica had provided material assistance to other peoples striving to achieve their right to self-determination in accordance with the relevant General Assembly resolutions. Information was also requested on the institution of Governor-General as head of the Executive and on the compatibility of such an institution with self-determination.

257. With regard to article 2 of the Covenant, members of the Committee noted that the provisions of this article contained a general prohibition of discrimination. However, the Jamaican Constitution specified fewer grounds on the basis of which discrimination in Jamaica was prohibited than did the Covenant and it was asked whether there were any other legislative provisions prohibiting discrimination on such important grounds as sex, language, national or social origin, property, birth or other status; and to what extent the provisions of the Covenant ensured to all those who lived in Jamaica the enjoyments of Covenant rights on an equal basis. Some members expressed concern over certain provisions in Section 24 of the Constitution which permitted restrictions of a discriminatory character contrary to article 2 with regard to the rights of privacy, freedom of movement, expression, association and of assembly, and asked for assurances that appropriate attention should be given to the specific obligations undertaken by Jamaica under the Covenant when applying these provisions of the Covenant.

258. Noting that the Covenant had not been directly incorporated into Jamaican domestic law, members asked what publicity the Covenant and the Optional Protocol had been given in Jamaica; whether national institutions for the promotion of human rights had been established; whether any thorough legal inquiry had been undertaken in Jamaica with a view to eliminating any inconsistencies between the domestic law and the Covenant; whether a citizen who claimed that his rights had been violated could invoke the provisions of the Covenant directly in court and the extent to which courts would give weight to those provisions as opposed to existing jurisprudence; whether the Supreme Court or the Court of Appeal could hold a Jamaican Act of Parliament invalid as contrary to the Constitution; whether any ruling of that kind had ever been used by the courts to grant remedies to persons affected by unconstitutional legislations, and if so, what remedies were there and how often people resorted to them. Information was also sought on the status, functions and activities of the Jamaican Council for Human Rights; on the discretionary powers of the Ombudsman to ensure respect for civil and

political rights; and on the relationship between the Ombudsman and the Supreme Court.

259. With regard to article 3 of the Covenant, members of the Committee noted that no mention had been made of practical measures, in addition to purely legislative measures, that had been taken to implement equal rights between men and women. Information was sought on whether, in Jamaica, a woman could voluntarily terminate her pregnancy and if so, in what circumstances, on the number of women lawyers in Jamaica, on the percentage of female students in schools and universities, on the percentage of women Members of Parliament and on the percentage of women in the diplomatic corps.

260. Commenting on article 4 of the Covenant, members asked what guidance was given to the Governor General in proclaiming a state of emergency between June 1976 and June 1977; who was responsible for determining the existence of a "threat to the life of the nation"; which rights had been derogated from during the state of emergency and for what reasons; whether the Government had informed the other State parties of such derogations, as stipulated in article 4, paragraph 3, of the Covenant. Some members pointed out that section 24 (4) and (6) of the Constitution, when read together could be so interpreted as to permit discrimination contrary to the provisions of article 4 of the Covenant. In this connexion it was asked whether section 3 (2) of the Emergency Powers Act related to Jamaican citizens or to foreigners, since that provisions referred only to "persons".

261. With regard to article 6 of the Covenant, it was noted that the Governor General was empowered under the Constitution to exercise the prerogative of mercy. Questions were asked as to whether the prerogative could be exercised in the case of a person who had been sentenced to death and to some other sentence; whether the death penalty had ever been imposed for high treason and other serious crimes; and whether the examination of the abolition of the capital punishment by a Committee of Parliament in Jamaica was still in its initial stages or whether some progress had already been made. Stressing that the right to life required the control of the use of fire arms by the police, some members asked whether the principle of proportionality was applied by the authorities and whether the court of Jamaica had had the occasion to apply that principle in cases of that kind.

262. In connexion with article 7, information was requested in the implementation of the prohibition of torture and other degrading treatment, on whether it was open to the courts to review a legislatively fixed sentence with a view to determining whether, in the circumstances

of the case, the sentence amounted to cruel, inhuman or degrading treatment, particularly in legislation relating to public order; on the forms of corporal punishment which were still practiced in Jamaica and on the existing rules applicable to solitary confinement. Noting that infringement of the prohibition of medical or scientific experimentation without the free consent of the person concerned was considered to be an offence at common law, it was asked whether Jamaica did not have any more up-to-date legislation to ensure compliance with the provisions of this article.

263. With regard to article 8 of the Covenant, one member referred to ILO Convention 105 concerning the abolition of forced labour, ratified by Jamaica in 1962, and recalled that a United Kingdom statute of 1894, incorporated into Jamaican legislation, provided that seamen of the merchant navy could be brought back by force on board their ships and it was asked whether such provisions were still in force.

264. With respect to article 9 of the Covenant, it was asked whether a citizen could be expelled from Jamaica; and what justification was there for the possible deprivation of personal liberty under section 15 of the Constitution in "the case of a person who had not attained the age of 21 years, for the purpose of his education or of his welfare." Questions were also asked on the nature and the burden of proof that lay on a person seeking redress for breach of his fundamental right to liberty. Misgivings were expressed regarding the deprivation, under the same section, of the liberty of vagrants and it was asked how that term was interpreted and in what circumstances a person of that description could be deemed a menace to society. Information was requested on the exact nature of preventive detention, its duration and the circumstances in which it was ordered and on whether a person arrested without legally valid grounds was entitled to bring an action against that person and, in the event of insolvency of the person originally responsible for the arrest or detention, against the State.

265. As regards article 10 of the Covenant, members commended the Rules for Prison Officers, which stated that "Every prison Officer...shall treat prisoners with kindness and humanity". They stated, however, that prisoners should have the possibility of bringing complaints to persons independent of the police authorities, who listened to them and whose duty it was to ensure that their complaints were properly investigated and that action was taken on them. Another vulnerable class of detainees were persons detained in mental institutions to whom reference was made in section 15, paragraph 1, of the Constitution. It was increasingly realized that more adequate safeguards were necessary to ensure that those persons are not detained

without proper cause and that they would receive proper treatment while detained. Members asked what prison rules existed in Jamaica regarding family visits to prisoners, in particular their frequency and what were the rules governing correspondence and contacts between a prisoner and his family. One member was disturbed to note that, under Jamaican law, it appeared to be possible to sentence a child of 14 to spend the rest of his life in prison.

266. As regards articles 12 and 13 of the Covenant, reference was made to the apparent conflict between the provisions of the Immigration Restriction (Commonwealth Citizens) Act, the Aliens Act mentioned in the report, and the general rule whereby and alien had no right to enter Jamaica. In this connexion it was noted that the term "alien" in the Covenant was intended to cover anyone not a citizen of the country concerned and would therefore apply to a Commonwealth citizen; that the Immigration Registration Act indicated that the procedural safeguards required by article 13 of the Covenant would appear to apply only to persons ordinarily resident in Jamaica continuously for a period of five years whereas article 13 was designed to apply to any alien lawfully in the territory of a State party. Similarly, the Alien Act, which referred to aliens who were not Commonwealth citizens, did not appear to comply sufficiently with the requirements of article 13 concerning the review of the case and the opportunity for a person to submit his reasons against expulsion. It was suggested that the provisions of the two Acts be reviewed with the view to amending them to give full effect to the provisions of article 13 of the Covenant.

267. Clarification was requested on the implementation of various provisions of article 14 of the Covenant. Questions were specifically asked on how the independence of the judiciary was ensured in Jamaica; on the appointment, transfer and promotion of judges; on whether, in Jamaica, there were emergency courts and courts with non-professionals judges; and on how legal assistance was provided in practice. Regarding a reference in the report to the Gun Court Act, which had established a special court and special procedures to deal with cases of possession of fire arms, questions were asked as to whether the requirements of due process as laid down in article 14 were met in the Gun Court and whether there was a right of appeal as required by article 14, paragraph 5, of the Covenant. Members also inquired whether any of the rights set forth in the Constitution relating to fair trial had been held by a court to have been infringed and, if so, what remedies had been granted.

268. With regard to article 17 of the Covenant, it was noted that interference could be arbitrary, even though it was lawful, and that was

true where a law was formulated in unduly broad terms conferring broadly defined powers without adequate control, as in the case of police interference. Questions were asked as to what exceptions the Suppression of Crime Act had permitted to the general rule as laid down in the Constitution which provided that, except with his own consent, no person shall be subject to the search of his person or of his property or the entry by others on his premises; whether interference with correspondence was prohibited in Jamaica; and whether there was any law in Jamaica protecting individuals from electronic surveillance and eavesdropping.

269. In relation to articles 18 and 19 of the Covenant, it was noted from the report that the restrictions permissible under the Jamaican Constitution appeared wider than those allowed under the Covenant which provided for the possible imposition of certain restrictions upon the exercise of the right, but not upon the right itself and it was asked how the relevant provisions of the Constitution were implemented in practice since they concerned basic human rights, *inter alia*, freedom of thought, conscience or religion, freedom of expression. Members also requested information on the existing relationship between the press and the Government and on the age at which a child could choose his belief or religion.

270. In connexion with article 20 of the Covenant, it was pointed out that the information given in the report was mainly concerned with internal armed conflict, insurrection and the creation of discontent, dissatisfaction and ill-will, whereas article 20 of the Covenant was concerned with the prohibition of propaganda for war in general, and of any advocacy of national, racial or religious hatred. Members asked whether a person might be punishable under the provision of section 3 of the Treason Felony Act of Jamaica mentioned in the report without having done any act on the grounds that his thoughts constituted a threat to State security.

271. With regard to article 22 of the Covenant, it was asked whether the forming of political parties was covered by legislation, and if so which authority or body decided whether a particular political party complied with the provisions of the law; how many trade unions there were and whether they could conclude collective bargaining agreements; and whether foreign residents could join trade unions. It was also asked whether the regulations under the Emergency Powers Act of Jamaica had been considered in connexion with the ILO instruments on the freedom of trade unions; whether the ratification by Jamaica of ILO Conventions had created any particular problems for

Jamaica and, if so, what the government had done to solve those problems.

272. With regard to articles 23 and 24 of the Covenant, clarification was requested on the system of marriage contracts and questions were asked as to what legal system was regarding the family estate; who was considered to be the head of the family; whether Jamaica had ratified the Convention on the nationality of married women and what were the implications of marriage between a Jamaican national and a person of foreign nationality; whether grounds for divorce were the same for men and women; at what age young people could marry; whether the age of marriage corresponded to the age at which sexual relations were not a criminal offence and whether widowers and widows were in a position of equality where inheritance was concerned. It was noted that according to the report the Status of Children Act had removed the status of illegitimacy. However, some provisions of this Act bore evidence that children were not treated with absolute equality. Members asked whether legal action taken by the mother of an illegitimate child could lead to legitimization of that child.

273. With reference to article 25 of the Covenant, it was asked how the political parties existing in Jamaica were formed, who was entitled to form them; whether the constitution of a political party was subject to certain conditions and whether a party based on a fascist or anarchist ideology could legally be formed; whether Jamaica applied the one man vote rule whether the voting districts were divided, so as to give all persons equal political rights irrespective of where they lived; what legal provisions ensured the fairness of elections and at what age one was eligible to vote.

274. With reference to article 26 of the Covenant, it was pointed out that what was required was not merely equality before the law but also equal protection of the law; that Section 24 of the Constitution furnished some possible grounds for discrimination beyond what was permissible under the Covenant since the prohibition of discrimination did not apply for example with respect to the imposition of taxation or appropriation of revenue nor, for that matter regarding qualifications for service as a public officer, police officer or member of the defence force. It was also asked whether, since article 26 required that the law should prohibit discrimination, special legislation had been enacted in Jamaica particularly, since Jamaica was a multireligious and multiracial community.

275. In relation to article 27 of the Covenant it was noted that the Constitution had not entirely covered the provisions of this article. Information was requested on the composition of the Jamaican

population, on how ethnic minorities were treated and protected; on measures taken to defend their culture and ensure the representation of ethnic minorities in Parliament.

276. The representative of the State party replied to a number of questions put to him by members of the Committee as summarized in the preceding paragraphs.

277. With regard to questions concerning the application of rules of customary international law in Jamaica, he stated that the Jamaican courts would apply the applicable criteria to determine whether a rule was generally recognized one in international law, and the Jamaican courts would recognize that rule as part of Jamaican jurisprudence. He also informed the Committee that the Government would include information on any factors and difficulties encountered in implementing the covenant when it submitted written answers, pursuant to article 40 of the Covenant.

278. Replying to questions raised under article 2 of the Covenant, the representative stated that the fundamental rights and freedoms of individuals were guaranteed in chapter III of the Constitution. The limitations which were permissible were designed to ensure that the enjoyment of those rights and freedoms did not prejudice the enjoyment of the rights of others or the public interest. When a person appeared before tribunals and administrative authorities, he enjoyed the protection of the Constitution and other laws of Jamaica. Any alleged infringement of his fundamental rights and freedoms could be brought before the Supreme Court under section 25 of the Constitution for redress, without prejudice to any other course of action which was available. Section 25, paragraph 2, of the Constitution in fact was couched in the broadest terms and therefore afforded very extensive remedies. As regards the jurisdiction of the Courts, he stated that section 25 of the Constitution contained a clear and express reference to the power of judicial review with respect to chapter III. No lack of clarity had been detected by the Jamaican courts and there had been cases brought under provisions similar to section 25 in West Indian jurisprudence. The Supreme Court had in fact on many occasions considered the constitutionality of legislation and made pronouncements thereon. On such instance concerned the Gun Court Act where, on appeal, the Judicial Committee of the Privy Council had declared certain provisions of that Act to be unconstitutional.

279. Discriminatory legislation was prohibited under section 24, paragraphs 1 and 2 of the Constitution. The protection afforded by the Constitution over ordinary legislation was entrenched under section 49 and strengthened by section 2, whose provisions, taken together, gave

supreme force to the Constitution and therefore provided the citizen with greater protection. As regards the status and activities of the Jamaican Council for Human Rights, the representative assured the Committee that those remarks would be brought to the attention of the proper authorities in Jamaica.

280. With regard to questions raised in respect of article 3 of the Covenant, the representative stated that his Government was fully aware of its obligations to promote and respect civil and political rights on the basis of equality as between the sexes and to create conditions for equality by affirmative action. Much was being done to promote and protect equal rights for women and, to that end, a Government unit with that specific responsibility had been established in Jamaica. There were many women in Jamaican diplomatic service, including several of ambassadorial rank, and in all spheres of public affairs.

281. Concerning the role of the Governor-General in connexion with the provisions of article 4 of the Covenant, the representative stated that the Governor-General's office had been established under the Constitution, which required him to act in accordance with the advice of the Cabinet, except in certain defined areas. Her Majesty in the person the Governor-General was the titular head of the State and the Constitution was clear on where effective executive power lay.

282. In connexion with article 6 of the Covenant, the representative stated that under the provisions of section 90 of the Constitution the Governor-General was given the power to exercise the prerogative of mercy for all offences, including that of murder. In the case of a conviction for murder, the Judge sent a report to the Jamaican Privy Council which after considering the report, advised the Governor-General as to whether the prerogative should be exercised. There had been instances of that discretion being used in murder cases. On the matter of capital punishment, debate was current in Jamaica and was being actively considered by a bi-partisan parliamentary committee. That committee had asked for more time to make appropriate recommendations to Parliament. Replying to a question relating to proportionality with respect to the use of firearms by the police, he explained that proportionality was one of the major factors to be considered by the Courts under the ambit of the phrase "reasonably justifiable". It would be quite open to the Courts to find that a killing to protect oneself from serious harm was not an infringement of the right to life while a killing to resist a minor theft was such an infringement. The terms used in the Constitution were clearly open to interpretation by the Courts.

283. Replying to a question raised under article 9 of the Covenant, he said that a citizen of Jamaica could not be expelled from his own country. Section 16 of the Constitution concerning the protection of freedom of movement, made the expulsion of a Jamaican citizen unconstitutional.

284. As regards article 10 of the Covenant the representative stated that the fundamental rights and freedoms of the individual were a subject which formed part of the training of police and security forces who were thus made aware not only of their power but of the rights and freedoms of all persons in Jamaica.

285. Regarding article 14 of the Covenant, the representative pointed out that all successive Governments of Jamaica had recognized the independence of the judiciary as being one of the fundamental requirements of the Constitution, in particular having regard to the entrenched constitutional provisions guaranteeing the fundamental rights and freedoms of the individual. The independence of the judiciary was secured in chapter VI, section 49 of the Constitution, and its main characteristics were security of tenure, security of remuneration, and protection from removal from office. Sections 100 and 106 of the Constitution concerning the Supreme Court and Court of Appeals laid down an elaborate procedure governing the removal of judges from office. He also stated that there were only two grounds for removal, "inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause)" or "misbehaviour". As a first condition, the Governor-General was required to appoint a tribunal of persons holding or who had held high judicial office to inquire into the question of whether the matter should be referred to the Judicial Committee of Her Majesty's Privy Council. The Judicial Committee must then advise whether the Judge concerned ought to be removed from office.

286. The representative commented that there were no non-professional judges in Jamaica and that judges were not elected. All matters relating to the enforcement of the fundamental rights and freedoms affirmed in chapter III of the Constitution were heard by the Supreme Court or, on appeal, by the Court of Appeal or the Judicial Committee of the Privy Council. All the Courts in Jamaica were staffed by professional judges whose independence was secured by the provisions of the Constitution. Nevertheless, for certain purposes administrative tribunals had had to be set up to hear specific issues they were staffed by persons who were not members of the judiciary but who had particular skills in the area of the competence. For instance, the Labour Relations and Industrial Disputes Act, which established the

Industrial Disputes Tribunal contained provisions requiring that the Tribunal should consist of a Chairman and two Deputy Chairmen appointed by the Minister with sufficient knowledge of, or experience in, labour relations, and of not less than two members appointed by the Minister from a panel supplied by organizations representing employers and an equal number of members appointed by him from a panel supplied by organizations representing workers.

287. With regard to the burden of proof under section 15 of the Constitution, he said that a distinction had to be made between civil and criminal proceedings. A person applying to the Supreme Court for redress regarding an alleged infringement of his right to personal liberty under section 15 would merely have to establish that he had in fact been deprived of his liberty. The burden of proof did not involve adducing negative evidence to exclude the operation of the exceptions. Once the complainant had established the deprivation of his liberty, it would then be for the authority concerned to establish, on the evidence, that it was entitled to claim the operation of an exception.

288. As regards article 19 of the Covenant, the representative stated that in Jamaica the press was free, effective and not controlled by the Government. Relations were based on mutual respect and the common desire to see Jamaica advance as a free and progressive society. In fact, the history, tradition and practices of the country ensured and required a free press.

289. Replying to the questions concerning article 25 of the Covenant, he pointed out that the Constitution contained certain provisions on the electoral system such as voting. It had been amended twice, once to lower the voting age to 18 and then to remove certain disabilities affecting senators. An impartial Electoral Commission had recently been established on which representatives of both major parties were equally represented. The national election of 1980 and the local elections of 1981 had both been administered by the Commission and had served to inspire confidence in it in Jamaica and elsewhere.

290. Finally, the representative of Jamaica informed the Committee that the questions and comments of members would be brought to the attention of the appropriate authorities and that the most serious consideration would be given to all views expressed. His Government would provide to the Committee written replies to the points not adequately covered and additional information where necessary.

4. SAINT VINCENT AND THE GRENADINES

Committee on Human Rights
Report of the forty-fifth session
Supplement N° 40 (A/45/40), 4 October 1990

244. The Committee considered the initial report of Saint Vincent and the Grenadines (CCPR/C/26/Add.4) at its 953rd and 954th meetings, held on 20 March 1990 (CCPR/C/SR.953-SR.954).

245. The report was introduced by the representative of the State party, who said that his country, despite its small size and population, was resolutely determined to respect the rule of law and to protect the fundamental rights of its citizens. The Constitution which had been elaborated in 1979 when the country obtained full independence from the United Kingdom, substantially protected all the civil and political rights covered in the Covenant, and appropriate legal machinery had been established to enforce those rights. He also noted that the Constitution provided for appeals in all cases to be made to the Judicial Committee of the British Privy Council and that there were no restrictions on access to legal remedies and redress.

246. Members of the Committee thanked the representative for the supplementary information provided in his introductory remarks. They noted, however, that the report had not been prepared in accordance with the Committee's guidelines and, in particular, lacked sufficient information on administrative measures and practices and on the interpretation actually given by the courts to the provisions of the Constitution.

247. With reference to article 2 of the Covenant, members of the Committee wished to know what the precise status of the Covenant was in the judicial system and domestic legislation of the country; whether the Covenant could be invoked before or directly enforced by the courts; whether there had been any judicial decisions regarding the implementation of the Covenant or any references to its provisions by a court; what guarantees existed to prevent derogation from the norms of the Covenant by legislation; how citizens could claim their rights under the Covenant if the law allowed such derogation; and what criteria were used to determine when application could be made to the High Court as a court of first instance. Additionally, members wished to know how extensively, and at what levels of society, the Covenant had been published and whether the current dialogue between the State party and the Committee was public knowledge. It was also observed that Section

1 of the Constitution did not seem to cover such non-discrimination requirements laid down in article 2, paragraph 1, of the Covenant as language, national or social origin and birth or other status.

248. With regard to article 3 of the Covenant, members wished to know whether women nationals married to foreigners and living abroad could pass their nationality on to their children born abroad in the same way as men could and what was the percentage of women in high schools, universities and the professions. Members noted that the Sections of the Constitution corresponding to article 4 of the Covenant did not indicate which rights admitted of no limitation or derogation and asked how, under the circumstances, the non-derogability of such rights was ensured.

249. With regard to article 6 of the Covenant, members of the Committee expressed special concern over the fact that the age limit for the application of the death penalty was clearly incompatible with the Covenant and requested further details about legislation covering the death penalty and about its implementation. They also wished to know whether the application of the death penalty was limited to the most serious crimes; how many prisoners were currently under sentence of death; whether there were any plans for the abolition of the death penalty; how resort to lethal force, and the use of firearms more generally, were regulated; and how often the police had killed someone in performing an arrest. Clarification was also requested of the provisions of Section 2 of the Constitution which appeared too broad in listing cases where deprivation of life might occur without criminal offence.

250. In connection with article 7 of the Covenant, members of the Committee wished to know whether there had been any judicial determination as to whether the imposition of corporal punishment was degrading; what the justification was for the introduction of corporal punishment under the Criminal Code; whether there was a minimum age for such punishment; and whether such punishment was applied in the schools. They also asked whether the right not to be subjected to medical and scientific experimentation without consent was guaranteed by law.

251. With regard to article 8 of the Covenant, members of the Committee wished to receive information regarding military conscription and the protection of conscientious objectors.

252. Concerning article 9 of the Covenant, members of the Committee observed that the period of seven days for notification of the reasons for detention seemed excessive and wished to know what the

justification was for such a long delay. With regard to provisions relating to the deprivation of liberty of persons of unsound mind, it was asked whether suspicion constituted an adequate basis for such action or whether a court order was also necessary. Members also wished to know whether Section 16(2) of the Constitution included the right to compensation for unlawful arrest or treatment of vagrants. In addition, they requested clarification of Section 3(b) of the Constitution, regarding deprivation of liberty for contempt of court.

253. With reference to article 10 of the Covenant, members of the Committee wished to receive information concerning allegations of overcrowding, poor sanitary conditions, the lack of recreational facilities and the beating of prisoners; on police procedures for investigating complaints from prisoners, and the result of any investigation carried out; and on recidivism and the social rehabilitation of prisoners. They also wished to know whether regular prison inspections were carried out by persons independent of prison authorities; whether training of prison officials included information on the Standard Minimum Rules for the Treatment of Prisoners; whether juveniles were housed separately from adults in prison; and at what age adolescents were considered to be criminally responsible.

254. In connection with article 11 of the Covenant, members wished to know whether debtors could be imprisoned for the non-payment of a debt, which would be incompatible with article 11, and whether anyone had been imprisoned for non-compliance with a court order under Section 3 of the Constitution.

255. With reference to article 12 of the Covenant, members wished to know whether there was complete freedom of movement in the territory and whether the constitutional reference to restriction to designated areas referred only to persons free on bail. Clarification was also requested of Section 12 of the Constitution, dealing with the restrictions on freedom of movement of non-citizens; of cases where exceptions were allowed in respect of foreigners in ensuring the protection of fundamental rights; and of other laws, if any, under which the rights of aliens were protected.

256. Regarding article 14 of the Covenant, members of the Committee wished to receive information concerning the excessive backlog of cases awaiting preliminary inquiries and on the steps that had been taken to improve the situation; on the independence and security of tenure of judges; on constitutional provisions, if any, relating to the right of appeal; and on the circumstances under which a person could be tried in his absence. Members also wished to know whether the Judicial and Legal Commission was concerned with the appointment of

all judges or only those at the lower levels and whether there were any legal aid schemes.

257. In connection with article 16 of the Covenant, members of the Committee wished to know how the rights of all persons to recognition before the law was guaranteed in the legal system of the country.

258. Members of the Committee wished to receive information regarding constitutional or legislative provisions safeguarding the rights covered in article 17 of the Covenant, particularly in respect of surveillance and wire-tapping.

259. With reference to article 19 of the Covenant, members requested clarification of the statement in the report that no one could be hindered in the enjoyment of freedom of conscience and expression except with his own consent. They also expressed concern about Section 64 of the Criminal Code, which provided for a term of imprisonment for anyone publishing a false statement and which, in the view of members, was incompatible with article 19 of the Covenant and with the protection of freedom of the press. In addition, members wished to know how the ownership and control of the media was organized; whether a television system existed and, if so, whether it was State-run or privately owned; and whether a licence was required to start a newspaper.

260. With regard to article 22 of the Covenant, members wished to know whether the right to collective bargaining by trade unions was guaranteed; whether civil servants were allowed to join a trade union; whether the right to strike was restricted in any way; and whether there were special provisions governing strikes by persons employed in essential services.

261. With reference to article 23 of the Covenant, members of the Committee wished to know whether there were any restrictions on the right to marry; what was the marriageable age; whether minors of both sexes enjoyed equality and whether equality of spouses in areas such as household management was ensured.

262. In connection with article 25 of the Covenant, information was requested as to the conditions and authority under which Parliament might disqualify a person as a registered voter and as to the right of citizens to appeal against such decisions. Members also wished to know why ministers of religion were precluded from serving in Parliament.

263. With regard to article 26 of the Covenant, members wished to know whether there were any languages, other than English, in common use and whether a person who spoke such a language would be at a disadvantage before the courts.

264. With reference to article 27 of the Covenant, members of the Committee wished to know whether minority groups existed and, if so, whether they were entitled to preserve their culture, practice their religion and use their own language.

265. In his response to questions raised by members of the Committee under article 2 of the Covenant, the representative explained that the Constitution was the supreme law and that any law in conflict with it was considered null and void. The Covenant had not been incorporated into domestic legislation because some of its provisions were in conflict with Section 1 of the Constitution but usually a rule of common law was found to resolve such problems. In recent years, some consideration had been given to the possibility of political unification with Dominica, Saint Lucia and Grenada and if such a union should materialize the new State would have to adopt a new Constitution that could incorporate other human rights provisions. While the public had not been made aware of the current meeting with the Committee, reports on the meeting would be given to the media after the representative's return to Saint Vincent.

266. In his reply to questions raised under article 6 of the Covenant, the representative said that the discrepancy regarding the minimum age for application of the death penalty would be raised with the Cabinet on his return. Capital punishment was limited to high treason, murder and genocide, and was carried out only in the case of brutal murder, there being no distinction in legislation between first and second degree murder. However, in most cases of murder the death sentence was commuted and was applied only when the population was highly inflamed. With the exception of the anti-drug unit, the police were not armed. People were rarely shot to death by the police but when this did occur a coroner's inquest was required. No police official had ever been prosecuted for complicity in a shooting.

267. Responding to questions asked under article 7 of the Covenant, the representative explained that in the past, corporal punishment had taken the form of caning and flogging, but that the latter had been abolished in 1983. Caning of juveniles was still retained under carefully controlled conditions, including medical supervision. The purpose of such punishment was correction, not brutality. Corporal punishment was an institutionalized cultural norm within his country which could not be ignored, and its abolition would meet with general

public resistance. It was believed that such punishment was needed in a country lacking an extensive welfare service, as it provided necessary discipline in the home and at school and experience had shown that no negative effects had resulted from it.

268. In response to the question raised under article 8 of the Covenant, the representative said that conscription did not exist in his country since there was no military service. Therefore the question of conscientious objection did not arise.

269. In response to questions raised by members of the Committee under article 9 of the Covenant, the representative stated that while the right to compensation for wrongful arrest or imprisonment had not been established, damages could be obtained where the normal common law provided a remedy.

270. In reply to questions raised under article 10 of the Covenant, the representative said that although prison conditions were far from ideal, this was not due to a lack of consideration or sympathy on the part of those in authority and did not involve wholesale violations of human rights. New prison facilities were planned which would place emphasis on vocational training and rehabilitation. All prisoners, except those with a propensity for violence or who tried to escape, were allowed daily recreation. In cases where a prison guard was suspected of having beaten a prisoner, prison authorities had taken disciplinary measures but such cases did not occur frequently. A prison-visiting committee existed, including ministers of religion and medical doctors appointed by the Governor-General, which visited prisons quite regularly and heard complaints from prisoners. Unfortunately, at present juveniles could not be separated from adult prisoners because of lack of space.

271. Responding to questions raised under article 11 of the Covenant, the representative confirmed that there were provisions in the law for imprisonment for debt and acknowledged that this was in contravention of article 11.

272. With reference to questions raised by members of the Committee under article 12 of the Covenant, the representative explained that there was complete freedom of movement in the country but that an alien required a land-holding licence. The Constitution gave Parliament the power to restrict the movement of non-citizens, but as no laws giving effect to that provision had been enacted it was impossible to say how that provision would be applied in practice.

273. In response to questions raised under article 14 of the Covenant, the representative explained that the backlog of cases in

magistrates' courts was essentially due to budgetary restrictions, which made it impossible to recruit additional magistrates and support staff and to provide adequate courtroom facilities. However, the situation had improved somewhat over the past two years as a result of the liberalization of certain procedures. The independence of the judiciary was not stipulated in the Constitution but was provided for in other instruments and a judge's salary could not be reduced during his tenure. Under sections 98 and 99 of the Constitution the right of appeal was limited only in a few procedural matters, such as a decision to try a sex-related case in camera. Most other decisions of judges could be appealed against, even to the Privy Council in London. Saint Vincent could not at present afford to provide comprehensive legal aid and could do so only to those charged with capital offences. However, many lawyers agreed to defend the poor without payment. Additionally, a first step in establishing a legal aid system had been taken in a recently enacted law, which gave the Solicitor-General the right to handle certain administrative cases free of charge for those who could not afford lawyers.

274. With regard to questions raised under article 17 of the Covenant, the representative said that the law provided no special protection against surveillance such as telephone tapping but did contain provisions against tampering with the mail.

275. Responding to questions raised by members of the Committee under article 19 of the Covenant, the representative said that certain public officials were required to take an oath of secrecy, which was in effect a voluntary surrender of the right to freedom of expression. Section 64 had been considered necessary to prohibit false statements likely to cause fear or alarm or to disturb the public peace, but it was not intended to curb freedom of speech and, as worded, could not do so since there were legal safeguards to protect a person making a statement in innocence. The Section of the Criminal Code in question had recently been challenged before the High Court and the Committee would be informed of the High Court's ruling. There was one radio station in the country, operated as a public corporation free of government control, and one privately owned television station, which provide broadcasting time to all political parties during the 1989 elections. There were three privately owned national newspapers and all political parties had journals of their own which were published without government interference of any kind.

276. In response to questions raised under article 22 of the Covenant, the representative said that the right to organize trade unions was ensured to everyone, including civil servants. The right to strike

was also ensured, even in essential services. Recognition of trade unions was not compulsory but was obtained usually, after a period of struggle.

277. With reference to questions raised under article 23 of the Covenant, the representative said that all legal disabilities had been removed from children born out of wedlock despite accusations against the Government from certain sections of society that it was thereby undermining the status of marriage. Information concerning the right to pass nationality to children, which was a complicated matter, would need to be supplied to the Committee at later date.

278. In response to questions raised under article 25 of the Covenant, the representative stated that the 1989 elections had been free and fair, as had been attested by the many foreign observers who had witnessed them.

279. In reply to questions raised under article 27 of the Covenant, the representative explained that there were no identifiable minority groups as such. Seventy-five per cent of the population were descended from Africans, 15 per cent from Europeans, and the rest from Indians and Caribbeans. There was one universal language, English, with no dialects and no major variations; for that reason the framers of the Constitution had not considered it necessary to refer to discrimination on the grounds of language.

General observations

280. Members of the Committee thanked the representative for his full and candid replies to their questions and, in general, expressed satisfaction with the efforts that were being made to observe and protect human rights in Saint Vincent and the Grenadines. They believed that although certain derogations from the Covenant by omission could probably be corrected without the need to constitutional amendments the removal of other inconsistencies, such as those relating to capital punishment for persons below the age of 18 and imprisonment for debt, would clearly require legislative action. In addition to the two problems just cited, members also expressed concern about certain other matters, such as the use of corporal punishment, prison conditions, the independence of the judiciary and possible restrictions on freedom of speech and freedom of the press. Members considered that a constructive dialogue had begun between the Committee and the State party, which, they hoped, would set a fruitful example for all the countries of the Caribbean region.

281. The representative of the State party thanked the members of the Committee for their remarks and stated that the dialogue had

provided him with a better understanding of the Committee's concerns about the implementation of the Covenant. He assured the Committee that the documents needed to complete his replies to questions raised would be submitted in the near future and that the next periodic report of his country would be more comprehensive. In concluding consideration of the initial report of Saint Vincent and the Grenadines, the Chairman thanked the representative for his frank responses, which had allowed a very fruitful dialogue with the Committee.

5. SURINAME

Committee on Human Rights
CCPR/CO/80/SUR, 4 May 2004

1. The Committee considered the situation of civil and political rights in Suriname at its 2054th and 2055th meetings (CCPR/C/SR.2054 and 2055), held on 22 and 23 October 2002 in the absence of a report, but in the presence of a delegation. At its 2066th meeting (CCPR/C/SR.2066), held on 31 October 2002, it adopted provisional concluding observations pursuant to rule 69A, paragraph 1, of its rules of procedure. Pursuant to the provisional concluding observations, the Committee invited the State party to submit its second periodic report within six months. The State party submitted its report within the deadline set by the Committee. The Committee considered the second periodic report of Suriname at its 2173rd and 2174th meetings (CCPR/C/SR.2173 and 2174), on 17 and 18 March 2004. At its 2189th meeting (CCPR/C/SR.2189), held on 30 March 2004, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report, which contains detailed information on Surinamese legislation in the area of civil and political rights, and the opportunity to resume its review of the human rights situation in Suriname. It regrets the very long delay in submitting the report, which was due in 1985, and the scarcity of information on the human rights situation in actual fact, which makes it difficult for the Committee to determine whether the State party's population is able fully and effectively to exercise the rights guaranteed by the Covenant.

3. The Committee welcomes the willingness of the State party to cooperate and to resume its dialogue with the Committee on the

application of the rights guaranteed by the Covenant in Suriname, as evidenced by the presence of a delegation during the Committee's seventy-sixth session in October 2002 and during the present session. The Committee appreciates the efforts made by the delegation to provide answers to its questions. It regrets that the delegation was not in a position to provide full information on the current situation of civil and political rights in the State party, or to respond specifically to several of the issues raised by members of the Committee.

B. Positive aspects

4. The Committee welcomes the reforms in the State party's legislation since the review of the initial report in 1980, in particular with respect to the creation of democratic institutions and the recognition, in the Constitution of 1987, of fundamental human rights and freedoms.

5. The Committee welcomes the fact that the Covenant takes precedence over domestic law and that provisions of the Covenant may be invoked directly in the domestic courts.

6. The Committee welcomes the delegation's information that human rights training is provided for the police, the judiciary, teachers and students and recommends that the State party extend such training to other parts of the Surinamese population.

C. Principal subjects of concern and recommendations

7. The Committee is concerned at the continued impunity of those responsible for human rights violations committed during the period of military rule. In particular, investigations into the December 1982 killings and the 1986 Moiwana massacre remain pending and have not yet produced concrete results. The information supplied by the delegation that all such cases are still being investigated is disturbing, especially given the lapse of time since their occurrence. The Committee further considers that this situation reflects a lack of effective remedies available to victims of human rights violations, which is incompatible with article 2, paragraph 3, of the Covenant.

The State party should give special priority to bringing to justice the perpetrators of human rights violations, including human rights violations committed by police and military personnel. The perpetrators of such acts must be tried and punished if found guilty, regardless of rank and political status. The State party should take all necessary measures to prevent the recurrence of

such acts. Victims and their relatives should be provided with adequate compensation.

8. The Committee regrets that the State party has not provided detailed information concerning the implementation of the Committee's findings in its Views on communications Nos. 146/1983 and 148-154/1983 (*Baboeram et al. v. Suriname*).

The State party is urged to implement the Committee's findings on communications Nos. 146/1983 and 148-154/1983. The State party should consider adopting appropriate procedures for implementing the Committee's Views under the Optional Protocol.

9. The Committee regrets that the State party has not provided the information requested on the domestic application of article 4 of the Covenant and whether national legislation further spells out the modalities under which article 23 of the Constitution may be invoked. The Committee has no information as to which factors are considered "a threat to the life of the nation" justifying derogation from particular rights, or which factors justify continued derogation.

The State party should ensure that the implementation of article 23 of the Constitution is in conformity with article 4 of the Covenant. Instances of detention during a public emergency should be strictly limited.

10. The Committee notes that while the State party has not carried out judicial executions for almost 80 years, the death penalty remains on the statute books for the offences of aggravated murder, premeditated murder and treason.

The Committee encourages the State party to abolish the death penalty and accede to the Second Optional Protocol to the Covenant.

11. While the Committee notes that the State party is taking measures to investigate and punish police officers involved in incidents of ill-treatment of detainees, including beatings and sexual abuse of detainees (especially during the initial stages of detention), it remains concerned that such incidents continue to be reported (arts. 7 and 10).

Allegations of ill-treatment in custody should be investigated by an independent mechanism, and those held responsible should be prosecuted and receive appropriate punishment. Victims of such treatment should receive full reparation, including fair and adequate compensation. Appropriate human rights training should continue to be given to law enforcement personnel.

12. The Committee notes with concern the high incidence of domestic violence and the absence of appropriate legislation to protect women against such violence. It notes the delegation's additional information that acts of domestic violence may be prosecuted under alternative provisions of the Criminal Code (arts. 3 and 7).

The State party should take legal and educational measures to combat domestic violence. It is invited to educate the population at large about the need to respect women's rights and dignity.

13. While the Committee has noted the efforts made by the State party to deal with the situation regarding trafficking in women, in particular through legislation and international cooperation, it remains concerned about the slow progress in implementing those policies (arts. 3 and 8).

The State party should ensure that effective measures are taken to combat trafficking in women.

14. While noting the State party's acknowledgment that there are problems with lengthy pre-trial detentions, as well as its denial that incommunicado detention is practised, the Committee remains concerned that domestic law provides for the possibility that a detainee may not be brought for the first time before a judge until 44 days after his detention and about reports that prisoners are kept in incommunicado detention, and that in both cases this apparently occurs without access to a lawyer (art. 9, paras. 3 and 4).

The State party should correct the above practice forthwith, as it is incompatible with article 9, paragraphs 3 and 4, of the Covenant. It should amend its relevant legislation without delay to ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge, in conformity with the provisions of article 9, paragraph 3, of the Covenant.

15. While acknowledging the efforts made by the State party to reform its prison system and construct new prison facilities to overcome the problem of overcrowding, the Committee expresses its concern at the persistence of poor prison conditions and serious overcrowding. It also notes that the backlog in the adjudication of cases encountered by the judicial system contributes to this situation.

The State party should take appropriate measures to reduce the number of persons in detention and to improve prison conditions in order to comply with article 10 of the Covenant. Additional resources should be allocated to the judiciary, in order to reduce the number of detainees in pre-trial detention.

16. The Committee regrets that the State party has not provided information, as requested, about the role of military courts, their jurisdiction and composition, and how the State party ensures their independence and impartiality.

The State party should ensure that military courts, if operating, function in accordance with the rights set out in the Covenant, in particular in accordance with the rights laid down in article 14. The State party should provide the Committee with the relevant information.

17. The Committee is concerned about the compatibility with the Covenant of the low age of criminal responsibility in Suriname (10 years), having regard in particular to reliable information about the ill-treatment of children in detention and the long delays in pending trials.

The State party should revise its legislation with regard to the age of criminal responsibility, which at its present level is unacceptable under international standards. The State party should inform the Committee as to how its practice complies with articles 10, paragraph 2 (b), 14, paragraph 4, and 24 of the Covenant.

18. The Committee is concerned that the current Asian Marriage Act provides for "arranged marriages" and sets the minimum age for marriage at 13 years for female and 15 years for male citizens of Asian descent. These ages are incompatible with articles 3 and 26 and article 24, paragraph 1, of the Covenant. Marriage at such a young age, and in particular arranged marriages, is also incompatible with article 23 of the Covenant, which stipulates that no marriage shall be entered into without the free and full consent of the intending spouses. While the State party submits that citizens of non-Asian descent also may marry under this Act, it has not responded to the Committee's request for statistics on how many non-Asians have actually done so (arts. 23 and 24).

The State party should take steps to change the current marriage legislation and to bring it into conformity with the Covenant.

19. While noting the State party's effort to establish a "nucleus centre" to provide schooling in the interior of the country, the Committee remains concerned at reports indicating that as few as 40 per cent of children living in the interior of the country attend primary school, thus depriving many children of the possibility of attending school on an equal footing with children in other parts of the country (art. 26).

The State party should ensure that all children are afforded equal opportunities for access to schooling, and that school fees do not prevent them from receiving primary education.

20. While the Committee welcomes the State party's Gender Policy Programme, including a timetable for reviewing several provisions in domestic laws that are discriminatory against women, it remains concerned that discriminatory legislation in relation to gender still exists, including in the Personnel Act, the Identity Act, the Nationality and Residence Act and the Elections Act (arts. 3 and 26).

The State party is invited to eliminate any existing legislation that discriminates in relation to gender.

21. The Committee is concerned at the lack of legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources. It regrets that logging and mining concessions in many instances were granted without consulting or even informing indigenous and tribal groups, in particular the Maroon and Amerindian communities. It also notes allegations that mercury has been released into the environment in the vicinity of such communities, which continues to threaten the life, health and environment of indigenous and tribal peoples. The latter are also said to be victims of discrimination in employment and education, and generally with respect to their participation in other areas of life (arts. 26 and 27).

The State party should guarantee to members of indigenous communities the full enjoyment of all the rights recognized by article 27 of the Covenant, and adopt specific legislation for this purpose. A mechanism to allow for indigenous and tribal peoples to be consulted and to participate in decisions that affect them should be established. The State party should take the necessary steps to prevent mercury poisoning of waters, and thereby of inhabitants, in the interior of the State party's territory.

22. The State party should widely publicize the present examination of its second periodic report by the Committee and, in particular, these concluding observations. The State party is further invited to make publicly available, including to the Committee, the findings of the Commission to Prepare an Institution Charged with Investigating Violations of Human Rights in Suriname.

23. The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information, within one year, on the implementation of the Committee's recommendations contained in paragraphs 11 and 14 above. The State party's third periodic report should be submitted to the Committee by 1 April 2008.

Committee on Human Rights
Report of the thirty-fifth session
Supplement N° 40 (A/35/40), 18 September 1980

275. At its 223rd, 224th and 227th meetings, held on 16 and 18 July 1980 (CCPR/C/SR.223, 224 and 227), the Committee considered the initial report (CCPR/C/4/Add.4) submitted by the Government of Suriname.

276. The report was introduced by the representative of the State party who, after giving a historical account of his country's struggle against colonial rule and under-development, stated that a change in the political sphere had taken place in his country on 25 February 1980 as a result of a coup d'état on that day and the establishment of the National Military Council, which had completely taken over the political, civil and military power. On 15 March 1980 the President of the Republic had reassigned executive power to a civilian government, thus creating greater confidence in a better future among the majority of the population. However, the National Military Council continued to function alongside the civilian Government. At present the country was ruled by the Government inaugurated on 15 March 1980 and was strongly supported by the National Military Council which participated in the administration through two cabinet ministers.

277. The representative of Suriname pointed out that his Government recognized that it had not been formed in accordance with the rules laid down in the Constitution, which stipulated that a Government should be formed by means of elections. But, because of the present situation and the fact that national security still required an increased measure of alertness, the country had to be ruled in close consultation with the National Military Council. One of the first acts of the new Government was to extend the term of Parliament for one year in order to prepare the holding of national elections probably in October 1982, a date by which the Government expected to have laid solid grounds for a new democratic government. He stressed, however, that elections would be held only if the Government was completely convinced that it was absolutely impossible for the country to return to the conditions existing before the coup of February 1980. He quoted the Government declaration of 1 May 1980 in which details of national objectives and a programme of work were given. In this declaration the Government has declared that renewal of the political, social, economic and educational systems was required to ensure that the nation would be ruled according to the best democratic traditions; that a Committee

would be appointed to study the amendments to be made to the present Constitution; that the electoral system would be revised; that the composition of Parliament would be based on the principle of proportional representation; and that the entire population of Suriname would have the opportunity of participating in public affairs.

278. The representative also indicated that on 3 July 1980 the Prime Minister of Suriname informed the former colonial power that it no longer valued her guardianship and that it wished to be recognized as an equal partner. Independence was finally achieving greater meaning for the country.

279. Members of the Committee expressed their appreciation for the additional information provided by the representative of the State party and expressed great interest in the resolution of Suriname, a country which had recently undergone major political changes, to plan an ambitious development programme in all walks of life with a view to enhancing the situation of human rights for its population. Members of the Committee also commended the readiness of Suriname, so soon after the recent fundamental political change, to engage in a fruitful dialogue with the Committee as shown by the presence of its representative at this session.

280. Members of the Committee noted that the report had been transmitted by a Government that had repudiated and overthrown and that the report might not, in many respects, reflect the present situation in Suriname. Since it was not possible to predict what form the Constitution would take, members of the Committee thought that perhaps the role which the Committee might best play was to highlight some matters which the Committee set up to draft amendments to the Constitution might usefully consider with regard to the implementation of the provisions of the Covenant. The Government of Suriname was advised to consider the appointment of a special committee to examine the provisions of the Covenant with a view to enabling it to fulfill to the best of its ability the commitments entered into by Suriname under the Covenant. Since Suriname was in the throes of evolution, the Committee should be kept informed of any difficulties encountered in the course of building a new society and of the way in which it may have proved possible to solve them. They expressed the wish in this regard that a new report be submitted at a future date containing information on the measures taken to implement the rights provided for in the Covenant in the new political context.

281. It was noted that Suriname was a very young country, having achieved independence only in 1975. By and large, colonial Powers left their colonies only reluctantly and tried to maintain their

influence over their former colonies through various means. That fact had to be taken into consideration when examining the human rights situation in Suriname. However, members of the Committee expressed the hope that Suriname recognized that, though the enjoyment of a number of rights were bound to be affected by the degree of development or under-development of a country, nevertheless most basic human rights recognized in the Covenant were required to be protected and ensured in all circumstances, particularly as derogations under article 4 of the Covenant were subject to strict and specific limitations.

282. With reference to the statements in the report to the effect that, under the legal system of Suriname, international agreements did not directly acquire force of law, that the Surinamese legislation in the field covered by a certain international agreement was brought into harmony with that agreement and that legal regulations would not be applicable if their application was incompatible with provisions of treaties adhered to by Suriname, members of the Committee asked what position the Covenant had in the present legal system, and whether any person who considered that his rights under the Covenant had been violated could invoke its provisions before the courts and, if that was not the case, what remedies were available for him in this respect. It was also asked whether the Constitutional Court referred to in the Constitution had ever existed and, if so, which cases it had been called upon to decide; whether there were any administrative tribunals still in existence and, if so, what powers they had; whether the judiciary had jurisdiction in disputes between individuals and the State in both civil and criminal matter; whether a judge trying a case would still have the right, stipulated in the Constitution, to declare illegal the application of a law which proved to be contrary to the provisions of article 1 of the Constitution; and what guarantees provided for in the Constitution were still available to citizens.

283. With reference to article 3 of the Covenant, members of the Committee expressed their appreciation for the new Government's commitment to the realization of full equality between men and women. The Constitution forbade discrimination on the basis of sex but that did not apparently reflect the true situation of women whose position in Suriname was still inferior to that of men. They expressed the hope that Suriname would find it possible to take measures to ensure that women achieve equality with men.

284. In connexion with article 4 of the Covenant, members of the Committee asked whether the Surinamese parliament had pronounced on the continuation of the state of emergency recently declared in the

country. Information was requested on the decree of 20 May 1980 which seemed to have conferred on the Government extraordinary legislative powers to derogate from the Constitution but according to which the Government was apparently not authorized to promulgate decrees or regulations that affected fundamental rights. The representative was requested specifically to confirm that that decree did not infringe any of the provisions of articles 6 to 27 of the Covenant with particular reference to the rights provided for in articles 18, 19, 21 and 22 of the Covenant. He was also requested to indicate which of the constitutional provisions had been suspended following the coup d'état.

285. As regards article 6, information was requested on the steps taken to put into effect the public health insurance scheme for civil servants and for the economically disadvantaged as promised in the Government declaration of 1 May 1980. Members of the Committee commended the fact that the death penalty had not been exercised for a very long time. However, it was asked whether Suriname had given any consideration to abolishing the death penalty. Clarification was requested concerning the "major crimes" which would warrant imposition of capital punishment. Since the law stated that a pregnant woman could not be executed, it was asked whether she could be executed once she had given birth.

286. As regards articles 7 and 10 of the Covenant, it was observed that the report made almost no reference to the machinery established to ensure respect for the provisions of the Covenant with regard to torture and other inhuman treatment as well as to the obligation to respect the inherent dignity of a person even when deprived of his liberty for any crime that he may have committed. It was asked what was the present position in that respect and whether action could be taken against members of the police or of prison administrations in the event that they abuse their authority.

287. Commenting on article 9 of the Covenant, members of the Committee expressed concern at the excessive length of the period of detention preceding an appearance before the courts as stated in the report and wondered what the present position was and whether there was any system of bail in Suriname.

288. In relation to article 14 in conjunction with article 2, paragraph 3, of the Covenant, members noted that, in its declaration of 1 May 1980, the Government was planning to set up special courts to try members of the previous administration charged with corruption and they enquired about the particular reasons which had prompted the Government to decide that the normal judicial process was not appropriate, whether the Government intended to entrust the same

body with the task of investigation and trial and, if so, whether the guarantees of fair trial an accused person possesses in normal judicial proceedings would still be available to him. In this connexion, it was asked whether the measures envisaged for the special courts were in effect derogations under article 4 of the Covenant and, if so, whether the Government envisaged complying with the strict and specific requirements of article 4 of the Covenant. As regards the judiciary, it was asked who appointed the judges, on what condition, what their qualifications were, what the duration of their term was and how the Government guaranteed their independence. Referring to an article in the Constitution stipulating that everyone was entitled to legal aid, one member asked whether there was any specific law on that matter.

289. Commenting on article 19 of the Covenant, members requested clarification on the statement in the Government declaration of 1 May 1980 to the effect that the press and mass media would have an important role to play in the country's renewal process and that the Government considered it essential that a certain measure of organization in accordance with national standards should be effected within the Surinamese press. Was the Government planning to give all the social classes the opportunity to express themselves through the communication media? It was also asked whether censorship had been established for the mass communication media and, if so, for how long it was meant to continue.

290. As regards article 22 of the Covenant, information was requested on any measures that may have been adopted under the new Government concerning freedom of association, particularly trade union rights and freedoms.

291. In connexion with articles 23 and 24 of the Covenant, it was noted, according to the Government declaration of 1 May 1980, that previously a married woman did not enjoy the same rights as her husband who could easily repudiate her. Clarification was asked on the measures which the Government planned to take to remedy the situation. It was also asked who was considered to be the head of the family, the husband, the wife or the two parents equally. Could a woman, after bearing a certain number of children, terminate a subsequent pregnancy without committing a crime? Information was requested concerning the legal position of "natural" children as compared with that of children born in wedlock. Was it possible for a natural child to have his paternity recognized? Did he have inheritance rights and, if so, how did those rights differ from those of legitimate children? As the Constitution stated that children "acquired the nationality of their parents at birth", what happened in the case of a

mixed marriage? Did the child acquire the nationality of the father alone, which would imply discrimination against the rights of the mother?

292. With reference to article 25 of the Covenant, clarification was requested on the statement of the representative in his introduction to the report regarding the Government's intention to hold elections only if it was "completely convinced" that it was absolutely impossible to return to the conditions that existed before 25 February 1980. It was pointed out that, since there could be no absolute guarantee of the fulfillment of such requirement, the only conclusion that could be drawn was the postponement of elections indefinitely. It was also observed that the Government intended to promulgate a new law on political parties and it was asked in what respects the new law was intended to restrict freedom to establish political parties in the country.

293. Commenting on article 27 of the Covenant, members of the Committee asked what the ethnic minorities were; whether they were protected pursuant to any particular law; what provisions the new Government intended to enact to enable minorities to preserve their own culture while participating on an equal footing with the rest of the population in the country's political life; and how land claims were being dealt with. As Suriname was made up of various entities drawn from different cultural backgrounds, it was hoped that the present Government would decide not to allow itself to be swayed, when carrying out its policy, by any considerations of a racial kind, in keeping with the provisions of articles 26 and 27 of the Covenant.

294. Replying to questions raised by the members of the Committee, the representative gave further details on the legal situation in Suriname since the coup d'état of 25 February 1980. He indicated that, on 14 June 1980, the military council transferred to civilian jurisdiction all persons in its custody, including persons allegedly involved in a counter-coup. The civilian authorities had dealt leniently with those people who had been mistreated and in some cases even tortured by the military during their detention. Most of those persons had now been released. In the case of those persons who had been brought to trial, lighter sentences had been imposed on them in view of the punishment which they had already undergone. Under the Amnesty Act introduced by Parliament, it was not possible to bring military personnel to trial for acts committed during the period 25 February to 15 March 1980 when the military had held absolute power. It had been determined that the persons taken into custody by the military because of alleged corrupt practices had not been mistreated during their captivity and that the

only injustice inflicted on them had been the arbitrary deprivation of freedom.

295. The representative stated that the constitutional court was not yet functioning and indicated that this was so because Parliament had failed to designate its representatives to sit on the court, although the other members had already been nominated some time previously. He stressed that there was still a procedure for verifying that legislation was consistent with section I of the Constitution. Before a law could be enforced, it had to be sent to the Attorney General for comments and in case the President did not approve of a law he could withhold assent without which the law could not be implemented. With regard to the right of an individual to invoke a conflict between a provision of the law and one or more provisions of section I of the Constitution, the judge could rule that the law concerned was inapplicable to the special case.

296. Replying to questions raised under article 3 of the Covenant, he stated that women in Suriname were entitled to hold any job and that there was already a female university rector in Suriname. There were of course low-paid jobs which were mostly held by women, but if a man wanted to do them he would be paid the same wages as a woman.

297. In connexion with article 4 of the Covenant, he pointed out that neither a state of emergency nor a state of siege had been proclaimed in Suriname, even though a de facto state of emergency had existed for one or two months after the coup. As to the statute of 20 May 1980, he stressed that it was a law in the formal sense as it had been approved and even amended by Parliament. The law enabled the Government to take extraordinary legislative measures with a view to carrying out the programme set forth in the Government Declaration of 1 May 1980. By that statute, the powers delegated to the Government were subject to certain restrictions under which the Government could not take any measures affecting the fundamental rights set forth in section I of the Constitution. The special powers would end on the day on which the new Parliament convened. He also stated that the powers conferred by the statute, which authorized the Government temporarily to amend or suspend existing laws by decree had not yet been used and Parliament could at any time revoke the powers thus delegated to the Government. He stressed that the sole purpose of the statute had been to enable the Government to fulfill an enormous task under very difficult circumstances and that the statute had been approved unanimously by Parliament.

298. As regards article 6 of the Covenant, he stated that health care in Suriname was excellent, that the infant mortality rate was only 5

to 10 per thousand and that major diseases were under control. He reiterated the fact mentioned in the report that the death penalty had not been enforced in his country for more than 50 years and he doubted whether it would ever again be applied. The reason why a procedure for execution still existed in the Code of Criminal Procedure was that some members of Parliament had been unwilling to abolish the death penalty which was considered a deterrent. The death sentence could, according to the law, be imposed only for murder, first degree manslaughter and piracy.

299. Replying to questions raised under articles 7 and 10 he informed the Committee that the Attorney General and the Supreme Court took great care to ensure the humane treatment of the individual and that there had been cases in which police and prison officers had been dismissed and prosecuted for abuses inflicted upon persons under detention.

300. As regards article 9 of the Covenant, he pointed out that the basic purpose of the article covering detention in the Code of Criminal Procedure was to limit the time during which an individual could be held in custody. However, there were a number of built-in safeguards to prevent an individual from being held in custody for longer than was absolutely necessary for the investigation of his case. Detention for more than seven days could be ordered only by a judge and only if the Public Prosecutor adduced evidence pointing to the commission of an offence. All such detention decisions were subject to appeal. The guarantee of habeas corpus had been strengthened by article 21 of the Code of Criminal Procedure which prohibited use of any methods intended to force a suspect to confess.

301. In connexion with questions raised under article 14 of the Covenant, he stated that there had been no interference with the existing judiciary, that judges had begun to hold sessions three days after the coup had taken place, that the courts were competent to deal with administrative cases and that they frequently did so. The members of the Supreme Court, the ordinary judges and the Attorney General were appointed for life. Before a person could become a judge, five years of training were required. Moreover, candidates had to take a psychiatric test, to be of good behaviour, to be masters or doctors of law and to be at least thirty years of age. Judges were appointed by the President of the Republic on the advice of the Supreme Court.

302. Replying to questions concerning article 19 of the Covenant, he pointed out that some form of regulation seemed necessary since the press had a responsibility to individuals and to the community but that the reform was likely to be purely technical, that

except for the period extending approximately from 25 February to 15 May 1980, the press and mass media had not been censored and that the relevant provisions of the Constitution prohibiting restrictions of human rights and freedoms to a greater extent than was provided for therein remained valid and respected, since the tradition in Suriname was built on the assumption that human rights could be restricted only for reasons of public order and public morality.

303. As regards article 22 of the Covenant, the representative informed the Committee that the trade unions were now better organized, that they had their own regulations, that they held meetings and that they enjoyed all other trade union rights.

304. As to the questions put under articles 23 and 24, he stated that a provision of the Civil Code still in force denied married women the right to conduct their own business affairs but that, under the same code, a woman could apply to a judge for authorization to take over, partly or completely, the management of family affairs if her husband was profligate. The new Government had already prepared a bill with a view to ensuring uniformity of treatment for spouses. However, Hindu or Moslem children at the age of 12 in the case of girls and 14 in the case of boys were still able to marry, and that Moslem law enabling men to repudiate their wives was still in force in Suriname. Abortion was prohibited except when recommended on medical grounds. He also stated that since 1963 it had not been necessary for a child in Suriname to be recognized by his mother in order to inherit from her, but that a child would inherit from his father only if recognized by him. However, the Government planned to introduce a law eliminating unequal treatment of legitimate and illegitimate children in the law of inheritance.

305. In relation to article 25 of the Covenant, the representative referred to the concern expressed by some members concerning future elections for Parliament, following an earlier statement that he made while introducing the report of his country, and pointed out that the conditions that he mentioned in that respect were not impossible to meet, particularly considering the efforts his Government was undertaking to prepare the ground for a new society. Although the outcome would largely depend on the Government's assessment of the situation at the time, the next elections could not be considered to have been postponed indefinitely. The new Government's legislation had only one aim and that was to secure the implementation of the socio-economic system and to adapt the former laws to that system and to ensure protection and respect for human rights. As regards political parties the legislation envisaged for their organization had, as one of its

aims, the abolition of the practice followed whereby political parties borrowed money before an election but refused to pay it back, or the practice whereby leaders of political parties could not be removed because of the lack of internal democracy within the party system.

306. Finally, the representative of Suriname pointed out that it would be useful for Committee members to visit the reporting State in order to obtain a broader view of the situation there, that he had noted the suggestions made by members of the Committee concerning his country's report, that he would convey them to his Government and that an additional report would be transmitted to the Committee when a measure of stability had been achieved in Suriname.

6. TRINIDAD AND TOBAGO

Committee on Human Rights
CCPR/CO/70/TTO, 3 November 2000

1. The Committee considered the joint third and fourth periodic reports of Trinidad and Tobago (CCPR/C/TTO/99/3) at its 1870th and 1871st meetings (CCPR/C/SR.1870 and 1871), held on 17 October 2000, and adopted its concluding observations and recommendations at its 1891st meeting (CCPR/C/SR.1891), on 31 October.

A. Introduction

2. The Committee regrets the delay in submission of these reports, but welcomes the information set out in the report and the accompanying material. Supplementary written answers were received in time for them to be considered by the Committee.

B. Positive aspects

3. The Committee welcomes the setting up, in the Ministry of the Attorney-General and Legal Affairs, of a Human Rights Unit, its activities in clearing the backlog in reporting under the Covenant and the human rights treaties, and its other initiatives to improve the protection for human rights.

4. The Committee commends improvements to the remedies provided in cases of domestic violence, together with specialized personnel now available to assist victims, including the Domestic Violence Unit set up by the Ministry of Culture and Gender Affairs.

5. The Committee takes note with satisfaction of the institution of the independent Police Complaints Authority and looks forward to rapid proclamation of the Act extending its powers.

6. The extension of legal aid, both in terms of geographical distribution and of the tribunals before which it is available, as well as the raising of fees so as to attract higher quality advocates increase compliance with article 14.3 (d).

C. Concerns and recommendations

7. The Committee places on record its profound regret at the denunciation of the Optional Protocol. In the light of the continued existence of the death penalty, and despite assurances by the delegation that proposals to extend the death penalty have been rejected, it recommends that:

- (a) In relation to all persons accused of capital offences, the State party should ensure that every requirement of article 6 is strictly complied with;
- (b) In the event of a reclassification of murder being brought into effect for persons tried and convicted thereafter, those already convicted of murder should be entitled to similar reclassification, in accordance with article 15.1; and
- (c) The assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty.

8. Upon ratifying the Covenant, the State party accepted obligations under articles 2.1 and 2.2 to ensure that all individuals subject to its jurisdiction should enjoy Covenant rights and, insofar as they are not already in place, to take the necessary steps to adopt measures to give effect to those rights.

The State party may not rely on limitations in its Constitution as grounds for non-compliance with the Covenant but should put in place the necessary laws to achieve such compliance.

9. The Committee is concerned that a thorough review of domestic law, to ensure compliance with the Covenant norms, has not yet been completed.

The State party should, for example, align the limitations imposed by article 4 of the Covenant with domestic measures to be taken in cases of public emergency, so as to:

- (a) Comply with the categorization of an emergency as a threat to the "life of the nation";
- (b) Respect the prohibition on derogation contained in article 4.2; the State party should establish that measures permitted under emergency powers are so compatible;
- (c) Ensure that any derogations from the State party's obligations under the Covenant do not exceed those strictly required by the exigencies of the situation.

10. The Committee is concerned at the lack of remedies under domestic legislation, including the Constitution, for victims of discrimination within the full ambit of articles 2.3 and 26 of the Covenant.

The State party should ensure that remedies are available for the full range of discriminatory situations falling within the protection given by those articles, and should include in its next report information on the extent to which this has been achieved.

11. The Committee urges that priority be given to all necessary preparations, so as to bring into force by proclamation at the earliest possible date the Equal Opportunities Act 2000 particularly in respect to the advancement of women.

The State party should, thereafter, introduce amending legislation to extend the provisions of the Act to those suffering discrimination on grounds of age, sexual orientation, pregnancy or infection with HIV/AIDS.

12. In relation to sexual harassment in the workplace, the Committee notes the judicial decision in *Bank Employees' Union v. Republic Banks Ltd*, Trade Dispute 17 of 1995, where it was held that a person had been properly dismissed from his employment where his conduct, on the facts of the case, was properly classified as sexual harassment.

The adequacy of judicial remedy should be kept under review and legislation passed if necessary.

13. The Committee is disturbed to learn that apart from prohibiting corporal punishment for persons under 18 years of age, the State party is still practising the punishments of flogging and whipping which are cruel and inhuman punishments prohibited by article 7.

Sentences of flogging or whipping should immediately be abolished.

14. The Committee regrets that problems relating to the police force (such as corruption, brutality, abuse of power and obstacles placed in the way of police personnel who seek to correct such practices) identified over the last decade, have still not been rectified. It is concerned that there is little reduction in the numbers of complaints of harassment and battery submitted in 1999 and 2000.

The Plan of Action now in preparation should reinforce reforms already made and ensure that the culture of the force genuinely becomes one of public service; dereliction of duty, harassment and battery (among other things) by police officers should be the subject of swift disciplinary or criminal proceedings (arts. 2.1, 2.2. and 7).

15. The Committee supports the expressed concern of the Trinidad and Tobago Police Complaints Authority about the inadequacy of reports from the Police Complaints Division and failure of that Division adequately to report on continuing complaints in important categories.

The Complaints Division should improve the contents of its reports and accelerate its reporting process so as to enable the Police Complaints Authority thoroughly to fulfill its statutory functions and so that violations of articles 7 and 9.1 may be properly investigated.

16. The Committee is concerned about chapter 15.01 of the Police Act which enables any policemen to arrest persons without a warrant in a large number of circumstances. Such a vague formulation of the circumstances in the Act gives too generous an opportunity to the police to exercise this power.

The Committee recommends that the State party confine its legislation so as to bring it into conformity with article 9.1 of the Covenant.

17. The Committee expresses its concern over prison conditions; whilst accepting that the opening of and phased introduction of prisoners into the new maximum security prison will, together with the impact of non-custodial sentences reduce the population held in out-dated establishments, the conditions in these establishments are incompatible with article 10.

The new publication and implementation of the new commission's report on giving effect to the Standard Minimum Rules for the Treatment of Prisoners should be given priority.

18. The Committee recommends that legal limitations on abortion be reappraised and that restrictions which may risk violation of women's rights be removed from the law, by legislation if necessary (arts. 3, 6.1 and 7).

19. The Committee is concerned that the existing laws on defamation could be used to restrict criticism of the Government or public officials.

The State party should proceed with its proposals to reform the law of defamation, ensuring a due balance between protection of reputation and freedom of expression (art. 19).

20. The Committee has long awaited information on follow-up of its views as pressed in response to communications.

Complete replies should be given as to the grant of remedies as recommended by the Committee, in full compliance with article 4.2 of the Optional Protocol.

21. The Committee requests the State party to submit the fifth periodic report by 31 October 2003. It requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in the State party.

Committee on Human Rights
Report of the forty-third session
Supplement N° 40 (A/43/40), 28 September 1988

44. The Committee considered the second periodic report of Trinidad and Tobago (CCPR/C/37/Add.7) at its 764th to 767th meetings, held on 29 and 30 October 1987 (CCPR/C/SR.764-SR.767).

45. The report was introduced by the representative of the State party, who said that by electing a new Government, on 15 December 1986, the people of Trinidad and Tobago had changed a régime that had ruled the country for 30 years and had taken an important step towards achieving greater democracy. A Constitution Review Commission had been appointed to study possible amendments to the Constitution and the public had also been invited to submit its

views on that subject. A number of potentially significant institutional innovations of relevance to human rights had been discussed at the Eighth Caribbean Community Summit, held in 1987 in Saint Lucia, including the possibility of establishing a Caribbean court of appeal and a Caribbean human rights commission. The Government was currently in the process of following up on a number of such proposals. On 1 July 1987, it had granted amnesty to eligible illegal immigrants from Commonwealth Caribbean countries. A new citizenship bill, providing for the possibility of holding dual citizenship, was also receiving consideration by Parliament as a matter of priority. Trinidad and Tobago took a great deal of pride in the peaceful political and civil evolution of the country's democratic system.

Constitutional and legal framework within which the Covenant is implemented

46. With regard to that issue, members of the Committee wished to know what significant changes, if any, had occurred that were relevant to the implementation of the Covenant since consideration of the initial report, what the legal status of the Covenant was compared with domestic law, particularly law existing when the Constitution had first come into force, whether the High Court of Justice was guided by the provisions of the Covenant in interpreting the Constitution, whether it was possible to invoke the Covenant before a court, whether any legal remedy could be sought on the basis of an alleged violation of the Covenant not covered by domestic law and whether there had been cases in which damages had been awarded for the infringement of human rights by the State. Members also asked whether activities relevant to the implementation of the Covenant had been undertaken by the ombudsman since the consideration of the initial report and with what results, what efforts had been undertaken to disseminate information about the Covenant and the Optional Protocol and what factors and difficulties, if any, had affected the implementation of the Covenant.

47. Regarding the reference in section 6 of the Constitution to "existing laws" which might affect rights and freedoms contained in sections 4 and 5 of the Constitution, members requested examples of such laws and asked what specific areas of law were involved in the findings of the Privy Council on two cases that had been referred to it. In addition, members wished to know to what extent the spheres of competence of the Court of Appeals and the Privy Council coincided and the extent to which the competence of the latter affected the interpretation of the Covenant, how many appeals there were each year to the Privy Council, how much such an appeal cost and to what extent

the poor were able to avail themselves of that recourse, and how much time elapsed between a judgment by the High Court and its resolution on appeal to the Privy Council.

48. In her reply, the representative of the State party explained that the main difficulty in implementing the Covenant was one of human resources, since there were many urgent issues requiring attention. The Covenant could not be regarded as constituting a sufficient basis in itself for redress in the courts, since no effort had been made to enact legislation to incorporate it in domestic legislation. While the courts would be aware of international law on a particular point, they would not be able to apply such provisions. Nevertheless, in a recent case, in order to determine whether a law was “reasonably justifiable”, a judge had referred to the Covenant in concluding that there had been an infringement of human rights. The term “existing law” referred to the body of common law which Trinidad and Tobago had inherited, as well as to the laws enacted under the 1962 Constitution. The judgments delivered in two 1979 cases heard by the Privy Council had indicated that existing law was not invalidated by the entry into force of the Constitution even where such laws appeared not to be in conformity with sections 4 and 5.

49. Concerning the dissemination of information relating to human rights, the representative said that the media, members of the legal profession and governmental and non-governmental organizations had alerted the population to their rights and to the procedures available for seeking redress. Social studies programmes in the schools highlighted the freedoms contained in the Universal Declaration of Human Rights. The fact that the Committee had currently before it a case of a prison inmate in Trinidad and Tobago provided an indication of the people’s awareness of the Optional Protocol.

Non-discrimination and equality of the sexes

50. With reference to that issue, members of the Committee asked why section 4 of the Constitution did not prohibit discrimination on the ground of political and other opinion and how a victim of discrimination on that ground would obtain effective redress, to what extent the Constitution and laws of Trinidad and Tobago were in conformity with articles 2, paragraph 1, and 26 of the Covenant, what the law and practice was to protect the various ethnic groups from discrimination in areas such as access to employment and housing and how the rights of aliens were restricted as compared with those of citizens. Regarding equality of the sexes, it was asked what difficulties, if any, were encountered by women with regard to the effective

enjoyment of equal rights provided for in chapter 1, part 1, of the Constitution and whether the authorities at all levels were taking positive action to ensure that women were adequately protected. Members also requested statistical data on women's participation in political, economic, social and cultural life, including their proportion in schools, universities, the civil service, and in parliamentary and other governmental organizations.

51. In her reply to the questions raised by members of the Committee, the representative of Trinidad and Tobago noted that neither the Constitution nor any other statutory measure contained any restriction on the right to freedom of opinion and expression, apart from statements which were in contempt of court, blasphemy, sedition and defamation, but that it might be useful in the future to incorporate into law a broad and positive enunciation of the right to freedom of political opinion. There was no discrimination based on race or religion and, in practice, the follow-up given to an application for housing was never based on ethnic or religious consideration. Aliens, once they acquired resident status, enjoyed equal treatment to the extent permitted by that status. Trinidad and Tobago did not regard itself as a country of asylum for refugees, owing to its economic and demographic situation, but applications for refugee status were examined with dispatch and humanity.

52. With reference to the equality of the sexes, the representative said that the situation in Trinidad and Tobago was not entirely satisfactory, since men were at the head of most institutions and women had only limited access to promotion. The existence of some relatively eminent and influential women tended to convey an inaccurate impression of the real role of women in society. However, the Government had signed the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, of 18 December 1979) and would soon ratify it and even incorporate it into national legislation. It had also given its approval for an expert group meeting on women and development. Subsequent to the 1986 elections, there was one woman member of the Cabinet out of 11, three women Deputy Ministers, four women Directors in the Civil Service, 18 women at the head of important departments and 10 women out of the 67 members of both House of Parliament. Women also occupied a prominent place in schools and universities.

State of emergency

53. With reference to that issue, members of the Committee wished to know what the current position of Trinidad and Tobago was with respect to its reservation concerning article 4, paragraph 2, of the Covenant, whether there had been a state of emergency since the entry into force of the Covenant during which one or more of the rights enumerated in article 4, paragraph 2, had been derogated from and what safeguards and remedies were available to the individual during a state of emergency, particularly in case the writ of habeas corpus was suspended. They also asked whether a person who had been detained during a state of emergency could apply to an ordinary court for a ruling on the lawfulness of his detention, whether a particular legal text declared not reasonably justified by a court was automatically annulled or was tabled before Parliament and what would happen if the President dissolved Parliament after the proclamation of a state of emergency. Clarification was also requested of section 13 of the Constitution, which seemed to permit derogation from fundamental rights even in periods other than states of emergency. Some members suggested that, in view of the serious implications of the State party's reservation to article 4, paragraph 2, the problem of possible derogations from the provisions of the Covenant during a state of emergency should be considered by the Constitution Review Commission.

54. In her reply, the representative of the State party said that her Government had not given consideration to withdrawing its reservation to article 4, paragraph 2, of the Covenant. The President was empowered under the Constitution to proclaim a state of emergency provided that the scope and nature of the disturbance was such as to be likely to endanger public safety or to deprive the community of essential services. During states of emergency, persons could be detained for up to six months, by virtue of a special Act that could be passed during that period, but such an Act had the force of law only during the state of emergency and became null and void thereafter. If a person was still in detention when the Act ceased to have effect, he could claim his release through the habeas corpus procedure. The Constitution stipulated that any law or executive action that infringed upon an individual's human rights could be declared null and void by the Supreme Court. In that connection, it was to be noted that the Constitution made provision for a person lawfully detained during a period of public emergency to have his case reviewed by an independent and impartial tribunal. No special tribunal currently existed, since the legal instrument establishing it had been repealed in 1978. During periods of public emergency, the President was not empowered to override or amend provisions of the

Constitution, such as those establishing Parliament and the Supreme Court. There had not been a state of emergency in Trinidad and Tobago since 1970.

Right to life

55. With reference to that issue, members of the Committee wished to know how many times the death penalty had been pronounced and how often it had been carried out since the entry into force of the Covenant for Trinidad and Tobago, how many people had been pardoned by the Amnesty Act promulgated in August 1986, how many were still awaiting execution and how long they had been waiting, whether the ruling by the High Court in favour of some convicted persons could be applied to other persons still under sentence of death and why the Government did not avail itself of its right to pardon such persons. It was also asked whether the list of offences involving the death penalty was restrictive and whether the sentence was always carried out in the same way.

56. Members of the Committee also requested additional information regarding article 6 of the Covenant in accordance with the Committee's general comments Nos. 6 (16) and 14 (23), the activities of the National Committee for the Abolition of the Death Penalty and the Government's attitude towards those activities. They wished to know further what measures had been taken by the Government in the field of health care, particularly with a view to reducing infant mortality and raising life expectancy, whether there were regulations governing the use of firearms by the police, how many persons had lost their lives as a result of the excessive use of firearms by the police, the military and other law enforcement agencies, whether investigations had been carried out to establish responsibility in such cases, whether those responsible had been prosecuted or disciplined and whether the Government had given thought to organizing special courses for law enforcement officials.

57. In her reply, the representative said that the issue of the death penalty was under discussion in her country and that since the entry into force of the Covenant in 1978 no death sentence had been carried out. On the twenty-fifth anniversary of independence, on 31 August 1986, the President had pardoned 12 persons although 8 were still awaiting execution. The Committee would be informed in due course of the outcome of the Constitution Review Commission's work, which would influence the direction of government policies relating to the death penalty and the amnesties.

58. On the measures taken to reduce infant mortality and to raise life expectancy, the representative stated that infant and maternal mortality had declined notably between 1970 and 1981, although rates were still far too high. Regarding the use of firearms by the police forces, the Government was determined to take action against unlawful killings by public officers. In 1985, a Commission had been appointed to investigate the factors leading to the unnecessary use of force by policemen and in 1986 the Commissioner of Police had been arrested. Members of the police and security forces received continuous training on all issues relating to the proper performance of police duties. Recommendations relating to the need for higher levels of training and for raising the level of qualifications required at the time of recruitment were recently put into effect.

Liberty and security of person

59. With reference to that issue, members of the Committee wished to know whether the practice in Trinidad and Tobago was consistent with article 9, paragraph 3, of the Covenant, whether there was a statutory maximum period of pre-trial detention, what measures had been taken to ensure that persons arrested or detained were brought to trial within a reasonable time or were released, what the average time was between arrest and trial in a case of murder or another serious offence, under what conditions release on bail could be granted, whether bail was available to all categories of the population regardless of their means and whether there were any other possibilities for release pending trial. It was observed that the heavy work-load of the courts hardly justify excessive delays. Additional information was also requested on the remedies available to persons who believed that they were being detained wrongfully.

60. In her reply, the representative explained that magistrates and judges might grant bail to any person charged with an offence not involving the death penalty. In particular, offenders under 16 who could not be brought forthwith before a magistrate immediately could be released, with or without bail. Parliament had before it a draft bill for the refusal of bail in cases of trafficking in narcotic drugs, possession of firearms, armed robbery and rape. As to pre-trial detention, the representative stated that there was a statutory limit of 48 hours within which any person arrested had to be brought before a judge, and that any person falsely or wrongfully arrested could lodge a complaint against the official responsible for the arrest. Nevertheless, she acknowledged that the accumulation of cases on court lists and the attendant delays, obstacles and frustrations could lead to a loss of confidence in the administration of justice. Some improvement was

expected to result from the establishment of a proposed family court and a small claims court. In addition, a jury amendment Act concerning preliminary inquiry procedures had been drafted and special courts had been established to deal with offences relating to narcotics and firearms. Parliament also had before it a draft bill designed to increase the resources of the judiciary to enable the Ministry of Justice to recruit judges in order to speed up the legal process.

Treatment of prisoners and other detainees

61. With reference to that issue, members of the Committee wished to know whether the Prison Rules established under the West Indian Prison Act of 1883 had been replaced, how prisons were currently organized, whether prison regulations were known and accessible to prisoners, what steps had been taken to improve prison conditions and whether prisoners could lodge complaints with a court or social agency. They also asked whether police and prison officials have been made aware of the United Nations Standard Minimum Rules for the Treatment of Prisoners, whether such officials had ever been charged for violating the rights of prisoners and, if so, what penalties or punishment had been imposed and under what procedures complaints of mistreatment could be lodged. It was also asked whether children under the age of 10 were subject to penal law and whether such offenders were placed in orphanages irrespective of whether or not they had parents, whether, in connection with the Debtor's Act, the provisions of article 11 of the Covenant were fully respected, whether keeping condemned persons on death row for a prolonged period could amount to cruel and inhuman treatment and why it had been necessary to keep a special budget for the judiciary.

62. In responding to the questions that had been raised, the representative of the State party said that the question of prisons and prison rules was being examined under the general question of law reform, for which a Law Reform Commission had been established. The Standard Minimum Rules for the Treatment of Prisoners had been adapted without deviation from their spirit and purpose. Most of the Rules had been applied and any problems encountered were likely to have been caused by budgetary, cultural and security constraints. It was universally recognized in the country that prison conditions left much to be desired and that had led to the establishment of two commissions of inquiry in the past. In his report tabled in Parliament in May 1986, the ombudsman had drawn attention to a number of practices which, in his opinion, were condemnable, and had made a number of relevant recommendations. The use of excessive force against a person was a criminal offence and offenders could be prosecuted. The normal liability

of police and prison officials under civil and criminal law was supplemented by codes of discipline which specifically provided that prisoners were not to be subjected to any form of torture. However, some violations of the codes of discipline had recently been reported. All prisoners were interviewed on admission, when regulations concerning treatment and discipline, complaints procedures, and information on their rights and obligations were explained to them. Abstracts of the prison rules were posted at accessible points. The special budget for the judiciary had been requested in order to give the judiciary the flexibility to respond more rapidly to the requirements of justice.

Right to a fair trial

63. With regard to that issue, members of the Committee wished to receive additional information on article 14 of the Covenant in connection with the Committee's general comments No. 13 (21), legal guarantees for a fair and public hearing by a competent, independent and impartial tribunal, the organization and functioning of the bar and the provisions of the Legal Aid and Advice Act, particularly in respect of its compatibility with article 14, paragraph 3, of the Covenant. It was also asked how soon after arrest a person could contact his family or a lawyer, whether there was a special procedure for the removal of a judge of the Supreme Court and by whom and for what reasons he could be removed, whether the registry of the Supreme Court was completely under the control and supervision of the courts, through whom the necessary resources for the preparation of case records were provided and whether there had been delays in the provision of such resources, whether women were allowed to sit on juries and whether in certain cases juries were sequestered until the end of the case and, if so, whether there was any special arrangement to allow women to opt out of jury service. In addition, one member asked why it was deemed necessary to amend the Constitution in order to allow for the appointment of temporary judges, since it appeared that that could be done under section 104 of the Constitution.

64. In replying, the representative of Trinidad and Tobago explained that the salaries of judges were paid from the Consolidated Fund and could not be reduced. The procedure governing the removal of a judge from office was provided for in the Constitution but had never been utilized. Under the Jury Act, women were also required to serve on juries and juries could be sequestered on certain occasions. The previous Government had used retired judges and eminent members of the bar as temporary judges, but that situation had created problems and had therefore been stopped. The usefulness of reverting to that

practice was recognized, but was not favoured by everyone and had accordingly been placed before the Constitution Review Commission for consideration.

Freedom of movement and expulsion of aliens

65. With reference to that issue, members of the Committee wished to know whether there were any restrictions on travel abroad other than those relating to tax payments, how many people had been denied the right to leave the country for being in arrears in the payment of their taxes or for any other reasons, how long it normally took to obtain a tax clearance exit certificate and whether departure taxes were levied on persons leaving the country. Noting that the measures taken to prevent tax evasion were clearly allowable under article 12, paragraph 3, of the Covenant, members asked whether on that basis the Government of Trinidad and Tobago envisaged the possibility of withdrawing its reservation to article 12, paragraph 2, of the Covenant.

66. Members also wished to receive additional information on the position of aliens, in accordance with the Committee's general comment No. 15 (27) and wished to know whether an appeal against an expulsion order had suspensive effect, whether aliens were entitled to have recourse to the courts to challenge decisions relating to deportation and whether, and under what circumstances, a citizen could be deported.

67. Replying to questions raised by members of the Committee, the representative of the State party explained that the Tax Clearance Certificate procedure was simple and took less than an hour if the individual had no arrears; if there were outstanding taxes, the certificate was withheld until they were paid. The requirement of a certificate could be waived if the purpose of the trip was to obtain medical treatment. The taxes covered by the certificate related to income, property, interest and investment. The Government placed no other restrictions on travel abroad and the certificate itself was valid for every trip taken during one year.

68. Responding to other questions, the representative said that her Government was aware of the difficulties experienced by illegal aliens, especially those coming from the Commonwealth Caribbean and it had therefore decided that all citizens of those countries who had been in Trinidad and Tobago illegally before 16 December 1986 and who were not facing criminal charges would be granted an amnesty and a period of a year to apply for permanent residence leading to citizenship. The number of illegal aliens concerned was estimated at between 115,000 and 200,000. In addition, any alien against whom an expulsion

order was issued had the right to appeal. While the appeal was being processed, the order was suspended. However, bail could be refused if there was justification for such refusal.

Right to privacy

69. With reference to that issue, members of the Committee requested details on protection against arbitrary and unlawful interference with privacy, family, home and correspondence, particularly with regard to postal and telephone communications. It was also asked whether evidence obtained in violation of the right to privacy could be used in the courts and, if so, whether such instances had occurred and what the reaction of the court had been, whether authorities other than judges could order a house to be searched and under what circumstances and whether wire-tapping was authorized by law.

70. In replying, the representative of Trinidad and Tobago stated that the Constitution recognized the right to privacy. No authority had the right to interfere with the individual's right to privacy, family, home or correspondence, save as provided for by law. During a state of emergency interference with privacy was not arbitrary if carried out in accordance with the provisions of the Constitution. In the case of Maharaj v. Attorney-General it had been contended that evidence produced in court had been gathered illegally. The local courts had ruled in favour of the State but Mr. Maharaj had been granted permission to present his case to the Privy Council which had decided in his favour. Wire-tapping was not permitted. Search warrants could be issued by a justice of the peace, magistrate or judge.

Freedom of religion and expression, prohibition of war propaganda and advocacy of national, racial or religious hatred

71. With reference to that issue, members of the Committee requested further information on laws and regulations pertaining to recognition of religious sects by public authorities and on controls exercised on the freedom of the press in accordance with the law. They also asked whether the prohibition against publishing "blasphemous ... matter" was consistent with the right to freedom of expression under article 19 of the Covenant, whether individuals could be arrested or detained for expressing political opinions, whether public funds were allocated to religious denominations and, if so, whether the criteria in that respect had been established in such way as to avoid any discrimination, whether any teachers at denominational establishments whose salaries were paid by the State enjoyed the status of civil servants

and whether the criminal penalties for infringement of freedom of religion had actually been applied. With reference to two cases that had occurred in 1983, it was asked whether religious movements were protected against the false portrayal of their convictions.

72. In connection with freedom of expression, members asked whether any reforms were under consideration or before the Parliament, whether it was planned to establish an independent telecommunications authority, whether the foreign press was distributed in the country and whether it was possible to appeal against a decision banning a publication.

73. In her reply, the representative of the State party explained that the coexistence of different confessions and creeds was a fact of life in her country. Some religious denominations had entered into an agreement with the State in respect of education whereby the Government paid the emoluments of teachers in religious schools, but such funds were not intended for places of worship as such. Religious denominations could apply to the Parliament for approval and if accepted the denomination concerned was granted official status.

74. The Constitution provided that the rights to freedom of conscience, religious belief and observance, thought and expression could not be abrogated, abridged or infringed by law and that alterations of those constitutional provisions would require the support of two thirds of all the members of each House of Parliament. The Constitution also specified that the right of a parent to provide for the education of his child in the school of his choice was a fundamental right. There were no discriminatory restrictions on the establishment and maintenance of charitable and humanitarian institutions. Teachers at denominational establishments enjoyed the same opportunities for promotion as teachers at public schools, and they could request a transfer to the public education system.

75. Roman Catholics represented the largest percentage among Christians. There were no statistics on the number of non-believers, atheists or agnostics. All members of the population were bound to respect the rights of others and the various religious groups were united in an inter-religious organization, which helped to enhance the atmosphere of non-discrimination and tolerance in the country. The construction of places of worship was guaranteed by the Constitution and was subject to approval by the planning authorities.

76. The press was not subjected to any governmental censorship or control. The Government was endeavouring to ensure equal access to the media and an independent authority had been

established for that purpose. Some foreign publications could be prohibited if they were found to harm the national interests, but an appeal could always be lodged.

Freedom of assembly and association

77. With reference to that issue, members of the Committee requested clarification of the term “recognized majority union” used in paragraph 61 of the report. They also wished to know how many political parties there were in Trinidad and Tobago and whether they were all represented in Parliament, what the ideological, ethnic, religious or other criteria underlying their establishment were and why some persons had been disqualified from membership of the House of Representatives and some other public bodies. Regarding freedom of assembly, they wished to know whether any restrictions had been placed on the exercise of that right and whether the organizers of a public march or meeting could contest a decision of the police imposing conditions on or prohibiting such events.

78. In addition, it was asked how many registered trade unions there were, what their total membership and the proportion of their members in relation to the number of workers was, whether there were trade-union federations and who had the right to decide whether a union had broken the law. Members also requested information on the activity and the role of non-governmental organizations concerned with human rights.

79. Replying to the questions that had been raised by members of the Committee concerning political parties, the representative of the State party noted that about 20 parties were registered, but only 4 had presented candidates at the latest elections. At elections, the parties usually presented a candidate of the same ethnic origin as the predominant group in the constituency concerned; thus, some minorities might feel excluded although they could be represented in the parties and hold seats in the Senate. The disqualification of certain persons from membership of the principal public bodies had been based on the principle of conflict of interest since the persons concerned were in charge of services that were essential to the country.

80. A trade union could apply to the Registration Recognition and Certificate Board at the place of work for recognition by the employer concerned. The union that obtained the largest number of votes during a secret ballot would be recognized as the majority union. That did not prevent the registration of minority unions, but employers negotiated only with the majority union unless another union had obtained almost the same number of votes, in which case it would also

be permitted to take part in the negotiations. As a general rule, workers were free to organize themselves in accordance with established procedures. Trade unions were all affiliated with the Trade Union Congress.

81. Referring to freedom of assembly and the means of recourse open to the organizers of meetings or marches, the representative acknowledged that if a prohibition was announced only 24 hours before an event was due to take place, very little could be done by way of recourse. In the exercise of that right, account had to be taken of considerations relating to security and any disadvantages to the general public. Authorization to hold demonstrations was not normally refused. Non-governmental associations were not subject to special regulations and the Government was determined to consult them to a greater extent in the future.

Protection of the family and children, including the right to marry

82. With reference to that issue, members of the Committee requested fuller information on the equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution and on the system of protection of children. In addition, they inquired whether discrimination was still practiced against children born out of wedlock, particularly in the matter of succession, and whether such children were entitled to full or partial recognition.

83. In her reply, the representative of the State party referred to certain legislative provisions whose purpose was to remove the legal disabilities of children born out of wedlock and to remedy the disadvantages faced by women and children stemming from their extramarital status. Efforts had been made to ensure respect for the rights of children, particularly when problems were encountered in regard to the exploitation of labour, child abuse and juvenile delinquency. The term "illegitimate" was no longer in use, and the principal concern of the authorities was to ensure that a child born out of wedlock received maintenance support. Such a child could also take his father's name. In cases where the father died intestate, his children had the same inheritance rights whether born in or out of wedlock.

84. With reference to that issue, members of the Committee observed that paragraph 75 of the report stated that there were no minority groups in Trinidad and Tobago. They wished to receive an explanation of that statement in the light of the fact that various ethnic and religious communities existed in the country.

85. In her reply, the representative pointed out that, while there were no minority groups in the country from a statistical standpoint, it could equally be claimed that all the population belonged to minorities. Two important groups constituted 81.5 per cent of the population. Likewise, although there were numerous religious groups, none of them was really predominant and it could well be said that the country as a whole was composed of religious minorities.

General observations

86. Members of the Committee expressed appreciation to the representative of the State party for their collaboration. Although they had not been able to reply to all the numerous and specific questions that had been raised, their responses had helped to supplement the very brief second periodic report submitted by Trinidad and Tobago. While progress had been made in Trinidad and Tobago regarding the recognition of fundamental rights, which was remarkable in a society of such religious, cultural and racial diversity, a number of areas of concern still remained. These included questions relating to the death penalty and the lengthy period of waiting and uncertainty in prison to which persons sentenced to capital punishment were exposed, excessive use of firearms by the police, the length of pre-trial detention, states of emergency, the right to leave the country, the situation of women and of children born out of wedlock and the wide latitude enjoyed by the State in respect of derogations from certain fundamental rights. It was agreed that the Committee's concerns and comments in the foregoing regard would be brought to the attention of the authorities of Trinidad and Tobago and that the required additional information would be supplied.

87. The representative of the State party thanked the members of the Committee for the keen and critical interest they had shown in her country's second periodic report and assured them that her delegation would do its utmost to provide replies to the questions that had remained unanswered.

88. In concluding the consideration of the second periodic report of Trinidad and Tobago, the Chairman reiterated the importance of maintaining an adequate dialogue between the Committee and the States parties and thanked the State party's representative for the assurances she had provided in that regard.

Committee on Human Rights
Report of the fortieth session
Supplement N° 40 (A/40/40), 19 September 1985

84. The Committee considered the initial report on Trinidad and Tobago (CCPR/C/10/Add.9) at its 550th, 551st and 555th meetings, held on 25 and 29 October 1984 (CCPR/C/SR.550, 551 and 555).

85. The report was introduced by the representative of the State party who expressed her Government's regret that its submission, which had been due in 1980, had been delayed. Since the report did not provide sufficient information, particularly with regard to the actual situation of human rights in the country and the implementation of the provisions of the Covenant, the representative provided additional information in her introduction about the relationship between the Covenant and her country's constitutional system and legislation, as well as measures that had been adopted by the Government to give effect to the rights recognized under various articles of the Covenant.

86. By way of general background, the representative of the State party noted that Trinidad and Tobago had achieved its independence on 31 August 1962 and had inherited all its basic laws from the British tradition. It had retained the Westminster system of government with a bicameral legislature, a titular Head of State, a party system which provided the Executive, and an independent judiciary. The country had remained a constitutional monarchy from 1962 until 1976, when a Republican Constitution was promulgated and the Queen was replaced as Head of State by a President. The Republican Constitution had maintained and continued to guarantee the fundamental freedoms and human rights that had been enjoyed earlier by the citizens of Trinidad and Tobago and also guaranteed the independence of the judiciary. The Government of Trinidad and Tobago had observed those fundamental rights and freedoms scrupulously over the past two decades and her country took pride in being an open and tolerant society.

87. With regard to article 2 of the Covenant, the representative stated that, while the Covenant itself had not been given the effect of law in her country, there was nevertheless a direct juridical relationship between the country's domestic legislation and the provisions of the Covenant. Moreover, the Constitution established the responsibilities, rights and freedoms of nationals without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

88. Although there were no specific laws expressly prohibiting discrimination, equality before the law was ensured by provisions of the Constitution, legislation, international conventions and common law. The concept of equality before the law was also deeply rooted in the legal practice and institutions of Trinidad and Tobago. No one was precluded on grounds of race, colour, sex or religion from initiating legal proceedings, and legal practitioners could not refuse their services to a client on any ground except personal unavailability or the existence of a conflict between their duty and their interest.

89. Under the Legal Aid and Advice Act, the Legal Aid and Advisory Authority had been established in 1977, which made it possible to make legal aid and advice readily available to persons of small or moderate means, with the costs of such assistance being wholly or partly defrayed by funds provided by Parliament. That had made it possible to grant wider public access to the courts, without distinction as to race, colour or ethnic origin.

90. The creation of an ombudsman under the Constitution could also contribute to implementation of the rights recognized in the Covenant, although the ombudsman's powers were limited to administrative actions. After investigating any alleged act of injustice by public authorities the ombudsman could make such recommendations for redress as he saw fit to the public agency or authority concerned. Where, in his opinion, sufficient remedies had not been provided within the time he had specified, the ombudsman could submit a special report to Parliament - a potential step that was clearly viewed with the utmost seriousness by government departments.

91. The possibility of resort to the ombudsman did not in any way restrict the aggrieved party's right of recourse to the courts. Any person alleging that his rights were being or were likely to be denied could apply to the High Court, which had original jurisdiction in such cases and could provide appropriate protection or remedy. Appeals against orders or decisions of the High Court could lie to the Court of Appeals or ultimately to the Judicial Committee of the Privy Council in London.

92. The Bureau on Human Rights, a private non-governmental organization, had been established in 1978. It monitored the observance of human rights in the country and served to ensure their continued enjoyment under the law.

93. Regarding article 3 of the Covenant, there had been no serious charges of inequality of the sexes in Trinidad and Tobago. There was a National Commission on the Status of Women whose members

were drawn from both the private and the public sector and which served as an advisory body to the Government. The Commission met on a monthly basis and concentrated on such areas as the situation of rural women; education, training and employment; health and welfare; the legal status of women; and the improvement of the status of women generally. Some of the Commission's special activities related to the question of women in the workplace, women and the laws, domestic violence, the changing role of women in society, the portrayal of women by the media and women in small business. The Commission was also actively promoting the establishment of child welfare centres.

94. The Commission had recently submitted comments on the Occupational Safety and Health Bill as well as on the Sexual Offences Bill, also under active consideration by the Government. It had also updated a publication originally issued in 1975, entitled *Legal Status of Women in Trinidad and Tobago*, which served to educate women about their legal rights and how such rights could be enforced.

95. The women of Trinidad and Tobago were generally and fully protected under the country's laws and that was exemplified also through their participation in the Government and in the conduct of both private and public affairs. The equal role of women in the country's political, economic and social development was quite significant and public service was open to all without sexual discrimination.

96. Trinidad and Tobago had not yet signed the Convention on the Elimination of All Forms of Discrimination against Women since not all of the relevant agencies in the country had submitted their views and opinions upon its provision. Trinidad and Tobago was a party, however, to the ILO Discrimination (Employment and Occupation) Convention, 1958, as well as to the Slavery Convention of 1926 and to Institutions and Practices Similar to Slavery.

97. With regard to article 4 of the Covenant, the representative noted that, in apparent derogation of sections 4 and 5 of the Constitution, certain exceptional powers had been conferred on the President and Parliament in the interest of preserving the common good during periods of public emergency. To minimize the possibility of abuses, the exercise of such exceptional powers was expressly circumscribed under the provisions of sections 7 to 11 of the Constitution. During a state of emergency in 1970, when the country had been temporarily disoriented by an attempt to introduce change by unconstitutional means, all of the provisions embodied in the Covenant and guaranteed under the Constitution had been observed.

98. The death penalty was still applicable in Trinidad and Tobago in cases of premeditated murder or treason. The provisions of article 6 of the Covenant were well respected and the rights of the accused were amply protected. Public debates regarding the abolition of the death penalty in recent years indicated that opinion was almost equally divided on the subject. Currently, some 15 to 20 persons were either awaiting trial for murder or the execution of death sentences.

99. Turning to article 9 of the Covenant, the representative of the State party noted that the right to liberty and security of person was fully guaranteed in the Constitution, the device of habeas corpus offering an important safeguard in that connection.

100. With regard to articles 12 and 13 of the Covenant, the representative stated that the right of freedom of movement was fully ensured under the constitution and could be curtailed only for reasons of State security or of public health, as provided for the relevant immigration, nationality and public health laws, which also covered the expulsion of aliens.

101. As to articles 14, 15 and 16 of the Covenant, the representative stated that Trinidad and Tobago's legal machinery was almost entirely in conformity with the Covenant's provisions.

102. The rights affirmed in articles 17 to 19 of the Covenant were widely accepted and understood in Trinidad and Tobago. The Government took continuing action, particularly in the fields of education, culture and information, to combat prejudices and to promote understanding, tolerance and friendship among the population of differing racial and national origins. Topics designed to promote understanding of Trinidad and Tobago's history and cultural diversity had been incorporated into the school curriculum as a further means of developing awareness of fundamental rights and freedoms. In 1980, Hindi had been included in the school curriculum in recognition of the importance of that language to the development of the Indian community which represented over 40 per cent of the population.

103. With regard to article 20 of the Covenant, incitement to racial hatred was punishable under the criminal laws of Trinidad and Tobago. Meetings, marches and processions that could promote national, racial or religious hatred or incite discrimination, hostility or violence were dealt with under the Summary Offences (Amendment) Act. There were no associations whose purpose was to promote discrimination or violence on the basis of colour, race or ethnic origin and no such association could be legally incorporated.

104. As provided in articles 21 and 22 of the Covenant, the right to peaceful assembly and the right to form or to join trade unions were both enshrined in the Constitution and were fully applied and respected.

105. The fundamental right to protection of family and children, covered under articles 23 and 24 of the Covenant, was also guaranteed under the Constitution and its enjoyment was ensured by the Government. Marriage was covered by the Marriage Ordinance, the Hindu Marriage Ordinance and the Muslim Marriage and Divorce Ordinance -none of which made reference to distinctions based on race or colour. All children born in the country were required to be registered and were automatically entitled to citizenship.

106. Turning to article 25 of the Covenant, the representative of the State party noted that participation in the conduct of public affairs at any level and access to public service were open to all citizens. There were no laws prohibiting persons of any race from standing for election, which the multi-ethnic composition of the country's legislative bodies clearly confirmed.

107. Finally, with regard to article 26 of the Covenant, the representative reaffirmed her Government's resolute opposition to discrimination of any kind and its commitment to racial, cultural and religious equality, equality before the law and equality of opportunity.

108. Members of the Committee welcomed the report, expressing particular satisfaction with the additional information contained in the representative's introductory statement -a most useful supplement to the written report, which did not give sufficient details on laws and practices. Several members noted with special satisfaction that the provisions of the Covenant had been generally well observed in Trinidad and Tobago.

109. With regard to article 1 of the Covenant, given the international importance of the right of self-determination, information was requested regarding the State party's solidarity with peoples struggling for independence, in particular the peoples of Palestine and Namibia. Additional information was also requested concerning the degree to which economic independence had been achieved by Trinidad and Tobago.

110. Members of the Committee noted, in connect with article 2 of the Covenant, that each State party undertook both to respect and to ensure the rights recognized in the Covenant. While those rights seemed to be generally respected in Trinidad and Tobago, members wished to know how they were ensured. They wondered whether the provisions

of the Covenant had been incorporated into domestic legislation and, if not, what their legal value was and by what procedures they could be incorporated. They asked whether the Covenant could be invoked in the courts and vis-à-vis the authorities and how and by whom treaties were approved.

111. With regard to article 3, additional information was requested as to whether both sexes enjoyed equal opportunities to all levels and as to the proportion of the sexes in the educational system, in the civil service, at the management level and in political life.

112. Questions were raised concerning the compatibility of the constitutional emergency powers with article 4, paragraph 2, of the Covenant. Trinidad and Tobago's reservation of the right not to apply article 4, paragraph 2, of the Covenant in full was seen as a serious inconsistency with the object and purpose of the Covenant within the meaning of article 19 (c) of the Vienna Convention on the Law of Treaties and it was asked whether the Government would consider withdrawing that reservation; whether there were any legal remedies that could be pursued by detainees during a period of public emergency if the writ of habeas corpus had been suspended. Additional information was also requested about the nature of emergency powers referred to in article 7, paragraph 1, of the Constitution.

113. With regard to article 6 of the Covenant, members asked for additional information about the rate of infant mortality and about the Government's progress in reducing it. They also asked what regulations governed the use of firearms by the police; whether incidents involving the use of firearms by the police had been investigated; and whether the Government of Trinidad and Tobago could keep the possible abolishment of the death penalty under continuing review.

114. In connection with article 7 of the Covenant, members asked whether police or prison officials had ever been charged with violations of human rights such as cruel or inhumane treatment of detainees and, if so, what the outcome had been.

115. Members of the Committee noted that at times long delays occurred between a person's arrest and trial, which was not consistent with article 9 of the Covenant and which could give rise to serious miscarriages of justice. It was asked what steps had been taken to remedy that situation. In addition, members wondered whether there had been any instance in which the right to compensation for unlawful arrest or detention, recognized under article 9, paragraph 5, had been invoked.

116. With regard to article 10 of the Covenant, members requested information on whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were being observed and whether any problems had arisen in that respect; whether detainees were made familiar with those Rules and whether there were adequate procedures for ensuring that their complaints received due consideration. It was also asked whether there was a system in Trinidad and Tobago for prison inspections to be carried out by persons independent of prison authorities, whether accused persons were segregated from convicted persons, and whether accused juveniles were separated from adults and otherwise treated in accordance with article 10, paragraph 3.

117. Referring to article 12 of the Covenant, one member asked what effect "citizenship of the Commonwealth" had on the right to travel and whether there were any restrictions on the freedom of citizens to leave the country or to emigrate.

118. Members of the Committee requested information, in connection with article 14, on several aspects of Trinidad and Tobago's judicial structure and judicial processes, including: the number of judges, how many of them were women, what the qualifications were for appointment to judgeships and to what degree different sectors of society were reflected in the judiciary; whether judges could be removed from office; whether the Director of Public Prosecutions was subject to the authority of the Attorney-General; what the Supreme Court's relationship was to the High Court and the Court of Appeal; whether, in addition to habeas corpus, other procedures such as mandamus or certiorari also existed; whether there was some type of means test to determine the eligibility of persons for legal aid through the Legal Aid and Advisory Authority; and whether the ombudsman was sufficiently independent and enjoyed sufficient status and prestige to be taken seriously.

119. Referring to article 18 of the Covenant, members of the Committee requested additional information regarding the enjoyment of the right to freedom of thought, conscience and religion, particularly as to whether all religions were treated equally by the State.

120. One member noted, in connection with article 19 of the Covenant, that, while the Constitution of the State party prohibited discrimination on the grounds of race, origin, colour and sex, it did not do so on the grounds of political opinion. Since that appeared to be an essential matter, an explanation was requested.

121. In connection with article 22 of the Covenant, one member, noting that labour law in Trinidad and Tobago appeared to be based on the Industrial Relations Act, asked what law was applicable to labour in the agricultural sector.

122. Referring to article 23 of the Covenant, members of the Committee wondered whether family law applicable to Hindu and Muslim marriages was in keeping with the provisions of the Covenant. Information was also sought as to the exact situation regarding the status of illegitimate children. It was also asked whether marriage laws guaranteed free and full consent to marriage, whether they fulfilled the conditions required under article 23, paragraph 4, and whether they assured the equality of rights and responsibilities of spouses. Members further inquired whether *de facto* marriage was recognized in Trinidad and Tobago as common law marriage with all its legal consequences.

123. With regard to article 25 of the Covenant, information was requested as to how a criminal conviction affected a person's status as a citizen, whether there was a limitation of political rights, and, if so, whether it was based on the gravity of the offence or the penalty imposed.

124. Members of the Committee asked for information on how Trinidad and Tobago interpreted article 27 of the Covenant, in particular whether minorities existed in the country or whether all groups were seen as forming part of the same society or nation; if there were minority groups, whether the Government helped them actively in preserving their culture and autonomy and whether any special legislation had been enacted on their behalf?

125. Replying to questions raised by members, the representative of the State party first addressed the suggestion that her Government should consider withdrawing its reservation concerning article 4, paragraph 2. In view of the serious nature of the question, she said that it would have to be referred to the relevant Ministry in her country which would supply a timely answer. She was certain that her answers to the numerous questions that had been raised, together with further written replies to be submitted later, would establish the prerequisites for initiating a dialogue between her country and the Committee.

126. In answer to the question about the use of firearms by law enforcement officers, the representative noted that traditionally the police in Trinidad and Tobago had been unarmed, but that more recently they had been issued weapons, particularly when investigating

certain criminal matters and drug trafficking. When such firearms were used the circumstances were always investigated.

127. As to the possible abolition of the death penalty, the representative informed the Committee that the subject had been discussed recently at a seminar convened by her country's Bar Association, but that her Government was looking for a wider public debate on the matter and a larger degree of consensus before taking any further action. She stressed, however, that no convicted prisoner on death row had been executed in her country within the past five years.

128. Responding to questions about the treatment of prisoners, particularly young offenders, the representative explained that children under 16 were tried by a juvenile court, access to which was restricted to those directly involved in the case. If convicted, young offenders were sent to industrial schools where they received further education, skills training and rehabilitation. New regulations were being drafted currently which would further liberalize access to educational opportunities and training and permit juvenile offenders to spend a weekend at their homes every two months. A new Youth Training Centre had been under construction since 1981 and its programme would be designed to train, instruct and counsel young offenders and develop their potential as well as a sense of discipline.

129. The standard minimum rules of the Prison Service conformed to the United Nations Standard Minimum Rules for the Treatment of Prisoners. Prisoners had the legal right to address confidential complaints about their treatment to the ombudsman who could investigate and recommend corrective action. No information was available to suggest that prisoners had complained of non-compliance with standard minimum rules nor had any of the ombudsman's reports to Parliament indicated negligence in complying with those rules.

130. However, complaints had been voiced against the long delays in bringing serious cases to trial, which were due mainly to the shortage of judges and the difficulties the Government had experienced in recruiting persons of suitable background and caliber for appointment to the bench. The Chief Justice had continued to draw attention to the problem in his annual addresses but no definitive solution had as yet been found.

131. Concluding her replies to questions concerning prisoners, the representative noted that, except for being deprived of their liberty and not being entitled to vote or to stand for election if serving sentences in excess of one year, prisoners had the same rights as other citizens.

132. Turning to the questions raised by members of the Committee concerning the judiciary, the representative of the State party recalled that the appointment, qualifications, tenure and oath of office of judges were covered in sections 104 to 107 of the Constitution and that such appointments were made by the President, acting on the advice of the Judicial and Legal Service Commission. There were at present 19 judges, one of whom was a woman—the second to become a judge in Trinidad and Tobago. The removal from office of judges—a complex procedure—was covered in sections 136 and 137 of the Constitution, but no judge had as yet been removed from office. Judges could neither be transferred to another court nor downgraded during their terms of office and their salaries could not be lowered but only increased by statute.

133. The High Court sat in Port-of-Spain, San Fernando and Tobago and judges were rotated on a monthly basis according to the case-load. The independence of the judiciary was guaranteed both by the Constitution and in practice, with the Bar, the opposition parties, the press and the public acting as watch-dogs to ensure that there was no breach of such a hallowed principle.

134. In response to questions concerning freedom of religion, the representative of the State party reiterated that freedom and equality of all religions were guaranteed by the Constitution, that the Church and the State were separate and that all rights and freedoms covered in the Covenant were fully recognized and observed in practice.

135. Trinidad and Tobago's population, broken down by religion affiliation, consisted of: Roman Catholics - 33.6 per cent; Anglicans - 15 per cent; Hindus - 25 per cent; Muslims - 5.9 per cent; Presbyterians - 3.9 per cent; and others - 16.6 per cent. Religious instruction was compulsory in primary schools with the various denominations providing their own instructors.

136. Responding to questions raised by members concerning the legal system and arrangements for legal aid, the representative noted that the Legal Aid and Advisory Authority maintained a list of about 200 lawyers in private practice who could act for clients under the legal aid system. There was a means test, with qualifying income being set at \$7,000 net of rent, maintenance and household expenses. Upon direct application to the Legal Aid Authority, legal aid could be obtained for cases leading up to the Privy Council. In criminal cases, accused persons with legal counsel were referred to the Legal Aid Authority by the court. In order to provide better service, the Authority had opened area offices throughout the country; the number of applications had nearly quadrupled since 1978.

137. Regarding the status of the Director of Prosecutions, the representative referred to section 90 of the Constitution, which dealt with the appointment, tenure and functions of that officer, emphasizing that the Director acted entirely independently of the Attorney-General in the conduct of criminal prosecutions.

138. Turning to questions concerning the ombudsman, the representative noted that sections 90 to 98 of the Constitution contained the relevant constitutional provisions and that the current incumbent was a distinguished lawyer and a highly respected retired judge. While it was true that failure to implement a recommendation of the ombudsman was not punishable, in cases where the complaint involved a government department or authority the ombudsman was bound to submit a special report to Parliament. Concerned officials could ultimately be subjected to severe disciplinary actions including summary dismissal, reduction in rank or pay and reprimands or fines, which made it quite evident that the ombudsman's proceedings were taken very seriously by officials and government departments.

139. Concerning Trinidad and Tobago's commitment to self-determination and to solidarity with the peoples of Namibia and Palestine, the representative pointed out that her country had consistently joined with other third world nations in supporting measures adopted in the United Nations and the specialized agencies—and indeed in numerous other forums—for the self-determination of peoples. In particular, consistent support had been given to the struggle for the independence of Namibia and for due recognition of the rights of the Palestinian people.

140. With regard to questions concerning the signing and ratification of treaties, she noted that such acts were the responsibility of the Executive and did not require prior or subsequent Parliamentary approval. Where legislative action was required to give effect to treaty obligations, Parliament was requested to enact such legislation.

141. In response to members' questions concerning minorities, she noted that in her country's view the Carib Indian population—which together with the Arawaks had been the original inhabitants of Trinidad and Tobago—was small in size and not readily distinguishable as a separate ethnic group at the present time. However, the Community Development Division in the borough of Arima assisted in various activities aimed at preserving the remaining elements of Carib-Indian culture. If the term "minorities" were to be applied to elements in Trinidad and Tobago's population of African, East Indian, Chinese, Syrian, Lebanese, Portuguese, European or mixed origin, it would be clearly seen that members of such ethnic groups played equal

and responsible roles in political, civil and cultural life, with all of them being represented in Parliament, the Senate, municipal bodies and county and village councils as well as in the public service and various State and private enterprises. Participation in political parties, in education and in every form of national activity also cut right across ethnic and racial lines.

142. Referring to questions posed by members regarding education in Trinidad and Tobago, the representative of the State party said that school was compulsory for children aged between 6 and 12, that despite limited school places and other difficulties every child of compulsory school age attended school in public or private schools, that there was equality of the sexes, although not all schools were mixed schools, and that, in the near future, the Government would be integrating nursery education fully into the existing school systems.

143. In reply to information which had been requested by a member of the Committee on the peoples' customs and practices in her country, the representative replied that Trinidad and Tobago, being an amalgam of peoples from every continent in the world, had continually worked to mould the various cultural elements into one nation and a distinctive people. The ethnic breakdown of the population was the following: Negro 40.8 per cent, East Indian 40.7 per cent, white 0.5 per cent, Chinese 0.9 per cent, mixed 16.3 per cent, and other 0.8 per cent.

144. Referring briefly to economic developments, the representative of Trinidad and Tobago stated that her country was moving away from a plantation economy towards industrialization. At the political level Trinidad and Tobago respected the principles and fundamental freedoms in its Republican Constitution and remained committed to the maintenance and promotion of human rights.

145. In conclusion, she expressed regret that she had been unable to reply to many important questions, but assured members that more comprehensive replies would be submitted in good time.

146. The members of the Committee expressed their gratitude to the representative of Trinidad and Tobago for her co-operation and the most interesting information she had supplied to the Committee and said that they were looking forward to continuing the dialogue with her country.

C. Caraïbe francophone

1. HAÏTI

Comité des droits de l'homme
Cinquantième session, Supplément No 40 (A/50/40), 4 février 1996

224. Compte tenu des événements passés et des événements en cours qui affectent en Haïti les droits de l'homme garantis par le Pacte international relatif aux droits civils et politiques, et conformément au paragraphe 1 b) de l'article 40 du Pacte, le Comité a demandé au Gouvernement haïtien, le 27 octobre 1994, de présenter au plus tard le 31 janvier 1995 un rapport, éventuellement succinct, décrivant en particulier la mise en oeuvre des articles 6, 7, 9, 10 et 14 du Pacte pendant la période actuelle, pour examen par le Comité à sa cinquante-troisième session. Suite à cette demande, le Gouvernement haïtien a présenté, le 27 février 1995, un rapport (CCPR/C/105) qui a été examiné par le Comité à ses 1397^e et 1398^e séances, le 27 mars 1995. Le Comité a adopté¹³ les observations ci après.

1. Introduction

225. Le Comité se félicite de l'esprit de coopération manifesté par le Gouvernement de l'État partie et de sa volonté de nouer avec lui un dialogue constructif sur l'application du Pacte en Haïti, comme en témoignent l'élaboration du rapport spécial et l'envoi d'une délégation de haut niveau pour présenter celui ci. Le Comité note que, si le rapport contient des informations sur les mesures constitutionnelles et législatives prises en vue de donner effet aux articles 6, 7, 9, 10 et 14 du Pacte, il ne fournit cependant pas de renseignements sur la pratique concernant les droits de l'homme ni sur les difficultés affectant la mise en oeuvre des dispositions du Pacte dans le pays. Conscient des difficultés que doivent affronter toutes les divisions de l'administration haïtienne depuis le rétablissement du gouvernement légitime, le Comité sait gré à la délégation de s'être efforcée de répondre aux questions posées au cours du dialogue et de remédier ainsi, dans une certaine mesure, aux lacunes du rapport.

2. Facteurs et difficultés ayant une incidence sur l'application du Pacte

226. Le Comité note qu'Haïti commence seulement à émerger d'une longue dictature militaire qui a eu des effets dévastateurs et qui a permis de graves violations des droits de l'homme, notamment des exécutions sommaires, des tortures et autres traitements inhumains et dégradants, ainsi que des arrestations et des détentions arbitraires. Le pays vient à peine d'engager un processus de redressement et d'amorcer la transition vers la démocratie. Le Comité relève encore que, malgré les efforts déployés par le Gouvernement, les comportements politiques et sociaux qui continuent de prévaloir dans le pays ne sont pas propices à la promotion et à la protection des droits de l'homme. La violence et les désordres continuent de désorganiser la société et un grand nombre d'armes continuent d'être détenues par des groupes paramilitaires et par la population en général. Le dysfonctionnement du système judiciaire et des problèmes sociaux et économiques profondément enracinés affectent la mise en oeuvre des dispositions du Pacte.

3. Aspects positifs

227. Le Comité accueille avec satisfaction le rétablissement des autorités légitimes en Haïti et les efforts considérables déployés par le Gouvernement actuel pour garantir le respect des droits de l'homme. Il se félicite en particulier, à cet égard, de la création, par décret présidentiel, d'une Commission nationale de vérité et de justice chargée d'enquêter sur les violations des droits de l'homme et d'aboutir à la justice pour les victimes de pareilles violations. Il note aussi que la création d'un corps de police civile, séparé de l'armée, constitue un pas important en ce sens. Il se félicite que l'on ait commencé de former des juges et des fonctionnaires de police.

228. Le Comité note avec satisfaction l'adoption d'un certain nombre de lois affectant directement l'établissement et le développement d'institutions et de politiques conçues en vue de la protection des droits de l'homme, comme la loi récente mettant tous les groupes paramilitaires hors la loi, la loi sur les collectivités territoriales, qui supprime l'ancien système autocratique des chefs de section et prévoit l'élection des autorités locales par la population, ainsi que la loi électorale. Le Comité se félicite aussi de l'ouverture du processus qui permettra des élections législatives en juin 1995 et des élections présidentielles en décembre 1995.

4. Principaux sujets de préoccupation

229. Compte tenu des conditions générales qui prévalent en ce moment en Haïti, le Comité n'a pas formulé expressément toutes les préoccupations que lui inspirent les incompatibilités existant entre la législation haïtienne, y compris la Constitution et les dispositions du Pacte.

230. Le Comité se déclare préoccupé par les effets que pourrait avoir la loi d'amnistie, telle qu'elle a été convenue pendant le processus qui a abouti au retour des autorités haïtiennes légitimes. Il craint que l'amnistie, même si elle vise exclusivement les crimes politiques commis dans la foulée du coup d'État ou sous le régime passé, n'entrave les enquêtes concernant des allégations de violations des droits de l'homme, comme des exécutions sommaires et extrajudiciaires, des disparitions, des tortures et des arrestations arbitraires, des viols et des agressions sexuelles, qui auraient pour auteurs des membres des forces armées et des agents des services nationaux de sécurité. À cet égard, le Comité tient à souligner qu'une amnistie au sens large risque de susciter un climat d'impunité pour les auteurs de violations des droits de l'homme et de saper les efforts déployés pour rétablir le respect des droits de l'homme en Haïti et empêcher que ne se produisent à nouveau les violations massives des droits de l'homme commises dans le passé.

231. Le Comité souligne qu'il importe d'enquêter sur les violations des droits de l'homme, de déterminer les responsabilités individuelles et d'accorder une juste réparation aux victimes, et déplore que la Commission nationale de vérité et de justice ne se soit pas encore mise à l'oeuvre.

232. Le Comité craint que le fait de n'avoir pas dépisté les auteurs de violations des droits de l'homme et de ne les avoir pas exclus des rangs de l'armée, de la police et de la magistrature ne compromette gravement la transition vers la sécurité et la démocratie. Le Comité s'inquiète aussi de ce que des membres des forces armées et des agents des services de sécurité ou de groupes paramilitaires continuent de violer les droits de l'homme. Il note avec une profonde inquiétude que les autorités civiles n'exercent pas un contrôle pleinement efficace sur les militaires. Il constate avec préoccupation que la composition, le commandement et les effectifs des forces armées n'ont pas été définis clairement.

233. Le Comité se déclare préoccupé par les nombreux problèmes affectant le bon fonctionnement du système judiciaire, notamment la durée excessive de la détention provisoire et le surpeuplement des prisons. Il tient à souligner à cet égard que, faute

d'un sérieux effort pour réformer le pouvoir judiciaire et rétablir le bon fonctionnement du système judiciaire, les efforts déployés pour renforcer la primauté du droit et promouvoir le respect des droits de l'homme risquent d'être gravement compromis.

234. Les allégations concernant le travail forcé des mineurs, qui est proscrit par l'article 8 du Pacte, inquiètent le Comité.

5. Suggestions et recommandations

235. Eu égard au fait que la loi d'amnistie a été adoptée avant le rétablissement des autorités légitimes, le Comité prie instamment l'État partie d'appliquer cette loi d'une manière qui soit compatible avec le Pacte et d'exclure de son champ d'application les auteurs de violations passées des droits de l'homme.

236. Le Comité souligne que l'État partie est tenu, en vertu du paragraphe 3 de l'article 2 du Pacte, de garantir que les victimes de violations passées des droits de l'homme disposeront d'un recours utile et seront indemnisées. Il souhaite vivement que la Commission nationale de vérité et de justice se mette à l'oeuvre dès que possible et que d'autres mécanismes soient mis en place pour enquêter sur les violations des droits de l'homme commises par des membres de la police, des forces armées et autres services de sécurité, ainsi que du pouvoir judiciaire, de manière à garantir que des personnes impliquées de près dans de telles violations ne soient pas affectées à ces emplois.

237. Le Comité recommande, afin que la sécurité de la population soit garantie, de suivre clairement une politique visant à désarmer les groupes paramilitaires et de prendre des mesures efficaces pour réduire le nombre d'armes détenues par la population.

238. Le Comité recommande d'entreprendre une réforme en profondeur du pouvoir judiciaire à l'effet de créer une magistrature indépendante et impartiale qui préservera les droits de l'homme et fera respecter la primauté du droit.

239. Le Comité recommande avec force à l'État partie de confirmer son intention de signer les protocoles facultatifs se rapportant au Pacte en déposant les instruments requis de ratification ou d'adhésion auprès du Secrétaire général de l'Organisation des Nations Unies. En adhérant au premier Protocole facultatif, le Gouvernement haïtien affirmerait son engagement en ce qui concerne les communications émanant de particuliers qui prétendent être victimes d'une violation des droits de l'homme et contribuerait à protéger les droits de l'homme des particuliers dans la période difficile que le pays connaît.

240. Le Comité exige que le respect des droits de l'homme soit reconnu comme faisant partie intégrante du processus de réconciliation et de reconstruction nationales. À cette fin, il recommande d'incorporer toutes les dispositions du Pacte dans la législation nationale; il recommande au Gouvernement et au parlement de créer, en tant que mesure de confiance, des institutions spéciales, ouvertes aux particuliers, chargées de veiller à la mise en oeuvre des droits de l'homme dans la vie courante; il recommande de dispenser une formation approfondie dans le domaine des droits de l'homme aux juges, aux membres de la police et aux militaires; il recommande enfin de veiller à ce qu'une éducation dans le domaine des droits de l'homme soit assurée à tous les niveaux de l'enseignement.

241. Le Comité prie instamment l'État partie de faire connaître les mesures qu'il aura prises comme suite aux suggestions et recommandations qui précèdent, en même temps qu'il présentera son rapport initial, qui aurait dû être communiqué au plus tard le 6 juillet 1992, et que le Comité s'attend à recevoir avant le 1er avril 1996.
