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

**Third periodic reports of States parties due on 11 April 1991**

**BARBADOS\* \*\* \*\*\***

[10 July 2006]

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\* This document contains the third periodic report of Barbados, due on 11 April 1991. For the second periodic report and the summary records of the meetings at which the Committee considered those reports, see document CCPR/C/42/Add.3 and (CCPR/C/SR ...).

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\*\* Annexes are available for consultation in the files of the Secretariat.

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## **Introduction**

The present document contains the third to sixth periodic reports of Barbados combined into a single document. The State party has noted and considered the Committee's concluding observations to its second report as well as the observation made on the occasion of the oral presentation in March of 2005. As requested by the Committee the State party has endeavoured in the present report to comment on those observations. The State party has also provided further information and statistics valid through to March 2006.

The report is divided into two main sections. The first is a general section which gives information about Barbados, its population, political structure and the legal framework within which human rights are protected. The second section takes a brief but comprehensive look at Barbados' efforts to implement the provisions of the articles of the Convention, including the legislative and administrative policies, judicial decisions and practical initiatives relevant to the protection of civil and political rights.

## PART I

### I. LAND AND PEOPLE

1. Barbados (area: 430 sq. km/166 sq. miles) is the most easterly of the Caribbean islands, located at 13° 10` north and 59° 35` west. The island is 34 km (21 miles) long and 23 km (14 miles) wide, and is of mainly coral limestone formation, except for the eastern district called the Scotland District. Barbados is relatively flat, rising from the west coast in a series of terraces to a ridge in the centre. The highest point is Mount Hillaby, which rises to 340 metres above sea level.
2. Barbados has a tropical climate. Temperatures seldom fall below 20° Centigrade or rise above 31 °Centigrade. Annual rainfall averages 1,254 mm at sea level to 1,650 mm at the highest point.
3. The coast largely consists of long stretches of sandy beaches. The recreational and economic value of these beaches and the marine reserves have made tourism one of the island's chief income-generating services. The tourism sector grew 6.9 per cent in 2004 and contributing some 12.4 per cent to the Gross Domestic Product (GDP) in the same year.<sup>1</sup>
4. For administrative purposes the island is divided into 11 parishes. The capital, Bridgetown, is situated in the parish of St. Michael. The parishes of St. Michael and Christ Church are significantly more developed and populated than other parishes, accounting for 54 per cent of the population.<sup>2</sup>
5. Barbadians generally enjoy a relatively high quality of life; the country was ranked first among developing countries and thirtieth globally in the United Nations Development Programme (UNDP) Human Development Report for 2005. Barbados has one of the highest per capita incomes in the Caribbean, which was estimated at BDS\$ 16,900<sup>3</sup> (US\$ 8, 450) for 2004 and a provisional estimate of GDP at factor cost of BDS \$4831.0 million in 2005. In 2005, the rate of inflation was 2.4 per cent. Unemployment fell to 9.8 per cent in 2004 as compared to 11.0 per cent in a comparable period of 2003; the average unemployment rate was 8.6 per cent for males and 11.3 per cent for females.
6. Barbados is a Small Island Developing State (SIDS), with a fragile natural resource base and an open economy with a narrow range of exports and a heavy dependence on imported goods. Its main foreign currency earners are the tourism industry, manufacturing, banking, the financial services sector, the sugar industry and other agricultural activities.
7. During the early 1990s, the country was faced with serious domestic and external economic imbalances which necessitated the introduction of a Stabilisation Fund programme with the assistance of the International Monetary Fund (IMF). This programme included contractile fiscal and monetary measures which resulted in a reduction of the public service and generally high rates of unemployment. The stabilisation measures were successful in reducing

these imbalances. From 1993 to 2000, Barbados experienced an unprecedented eight years of positive annual economic growth, recording an increase in real GDP from BDS\$ 784.1 million (US\$ 392.05 million) to BDS\$ 1014.1 million (US\$ 507.05 million) over that period.

8. Over the first nine months of 2001, real GDP contracted by approximately 1.5 per cent, in contrast to the recorded annual growth rate of 3 per cent for the previous eight years. The reduction in economic activity reflected the slowdown in the global economy, as well as adjustments in some sectors to compensate for increasing trade liberalisation. This situation was further exacerbated by the terrorist attacks of 11 September 2001, the impact of which was felt keenly in the tourism sector. Tourist arrivals plummeted by some 12.9 per cent during the last quarter of 2001, leading to an overall decline of 5.9 per cent in arrivals for that year.

9. The Government implemented a 90-day plan to minimise the impact of the terrorist attacks on the domestic economy. The measures articulated in that plan focused on maintaining a satisfactory level of economic activity, ensuring the continued viability of local producers and preserving employment. A significant slowing in the rate of decline of growth in the export sector and positive growth in the non-export sector afforded a modest economic recovery in 2002. Real growth in the non-export sector rose by 0.9 per cent and growth was also recorded in the production of utilities. There was a marked improvement in the tourism sector in the second half of 2002, limiting decline to under half of that of 2001. GDP per capita remained unchanged at BDS\$ 15,900 (US\$ 7,950) in 2002 and inflation was estimated at 0.2 per cent. Since the recovery of 2002, the Barbados economy has continued to grow. At the end of 2004 the annual rate of growth in GDP was estimated at 3.7 per cent.<sup>4</sup>

**Table 1**

**Gross domestic product (GDP) at current factor  
for the period 1997-2005**

Year	GDP at current factor (BDS\$ million)
1997	3 628.5
1998	3 912.4
1999	4 138.0
2000	4 291.0
2001	4 264.5
2002	4 310.3
2003	4 338.1
2004	4 569.0
2005	4 831.0

*Source:* Central Bank of Barbados - Economic Review, 2005.

**Table 2**

**Annual rate of growth in GDP for the period 1997-2005**

Year	Annual rate of growth in GDP (%)
1997	3.3
1998	4.4
1999	3.3
2000	3.4
2001	-2.6
2002	0.5
2003	2.0
2004	3.7
2005	3.0

*Source:* Central Bank of Barbados.

**Table 3**

**Annual rates of inflation for the period 1995-2005**

Year	Rate of inflation (%)
1995	1.9
1996	2.4
1997	7.7
1998	-1.3
1999	1.6
2000	2.4
2001	2.8
2002	0.2
2003	1.6
2004	1.4
2005	2.4

*Source:* Central Bank of Barbados Annual Report, 2005.

10. Barbados is one of the most densely populated countries in the world with a population of 268, 792 persons and a population density of 1,619.2 persons per square mile.<sup>5</sup> There is a relative balance in the male/female distribution of the population, with males accounting for approximately 48.1 per cent of the population (129,241) and females, 51.9 per cent (139, 551). The number of children under the age of 18 is 66, 314 or 24.7 per cent of the population and there is an average life expectancy of 76. 4 years. According to the United Nations Human Development Report of 2005, Barbados' population grew by 0.33 per cent in 2005.

11. The demographic makeup of the Barbadian population is based on the circumstances of its history. There are six major ethnic groups in Barbados - Black, White, Chinese, East Indian, Arab and Mixed. Within Barbados' particular socio-cultural context, the terms "Black" and "Afro-Caribbean" are synonymous and refer to the descendents of African captives brought from the west coast of Africa during the seventeenth, eighteenth and early nineteenth centuries. The term "White" refers to Euro-Caribbean persons who are the descendants of planters, indentured servants and other European migrants who came to the island after its colonisation by the British in the seventeenth century.

12. There has been some miscegenation between these two dominant races, which has resulted in a bi-racial group of persons, which identify themselves and are identified as "Mixed". Although many Black and White Barbadians acknowledge distant ancestry from both racial groups, the tendency is for persons to identify themselves wholly with one group or the other, based on prominent physical characteristics such as hair texture, skin pigmentation and eye colour. There is also miscegenation across other ethnic groups, although to a considerably lesser extent than that occurring between Whites and Blacks. However the census data available do not provide a breakdown of the specific ethnic origins of mixed-race persons.

13. Other population groupings are smaller and were introduced to Barbados through immigration to the island during the late nineteenth and early twentieth centuries.

14. In the 2000 Census, approximately 92.9 per cent of the population identified themselves as Black and the remaining 7.1 per cent comprises persons of White, East Indian, Chinese, Arab and Mixed ancestry.

**Table 4**

**Population by age group and ethnic origin**

Age group (both sexes)	Ethnic origin							
	Total	Black	White	Chinese	East Indian	Arab	Mixed	Other
Total	250 010	232 507	7 982	118	2 581	66	6 561	195
Under 5 years	17 239	15 974	444	6	215	1	592	7
5 to 9 years	18 749	17 503	458	9	214	5	549	11
10 to 14 years	18 613	17 403	429	7	190	6	569	9
15 to 19 years	18 636	17 644	349	13	153	2	464	11
20 to 24 years	17 804	16 868	265	5	224	6	425	11
25 to 29 years	19 738	18 534	506	7	249	4	428	10
30 to 34 years	19 588	18 380	484	10	260	2	429	23
35 to 39 years	21 257	19 835	657	10	243	6	492	14
40 to 44 years	20 055	18 679	661	11	222	7	453	22
45 to 49 years	16 774	15 464	658	11	196	9	415	21
50 to 54 years	13 638	12 460	668	5	159	7	327	12
55 to 59 years	9 583	8 713	516	2	91	3	241	17
60 to 64 years	8 925	8 170	424	8	52	1	262	8
65 years and over	29 411	26 880	1 463	14	113	7	915	9

*Source:* 2000 Population and Housing Census.

15. There is a formal separation in Barbados between Church and State, and religious freedoms are constitutionally guaranteed. Barbadians enjoy a rich religious heritage and this is reflected in the numerous denominations which can be found throughout the island. Though adherents to the Christian faith account for the majority of the populace, minority religious groups such as Hindus, Muslims, Jews and Rastafarians play a significant role in the social consciousness of the Barbadian community and their religious views are freely expressed and disseminated.

**Table 5****Population by sex and religion**

Religion	Both sexes	Male	Female
Total	250 010	119 926	130 084
Adventist	13 726	5 989	7 737
Anglican	70 705	32 240	38 465
Baha'i	178	79	99
Baptist	4 689	1 942	2 747
Bretheren	1 600	646	954
Church of God	4 966	2 031	2 935
Hindu	840	430	410
Jewish	96	53	43
Jehovah Witness	4 902	2 005	2 897
Methodist	12 665	5 299	7 366
Moravian	3 352	1 387	1 965
Mormon	214	89	125
Muslim	1 657	882	775
Pentecostal	46 726	18 686	28 040
Rastafarian	2 859	2 245	614
Roman Catholic	10 443	4 492	5 951
Salvation Army	1 057	417	640
Other Christian	16 609	7 243	9 366
Other Non-Christian	1 293	667	626
None	43 245	28 391	14 854
Not stated	8 188	4 713	3 475

*Source:* 2000 Population and Housing Census

16. The official language of Barbados is English and the island has a literacy rate of 98 per cent. Education is considered to be an important pillar of Barbados' development and consequently the Government has consistently invested more than 7 per cent of its GDP (from 1993 to 2000) in the provision of education services at the primary, secondary and tertiary levels. Education facilities for children as well as adults can be found in all the 11 parishes and these facilities are made available by the Government, the Church (various denominations) and the private sector. Education is free and compulsory from ages 5-16 years, and is available and accessible to all, regardless of sex, ethnic or racial background.

**Table 6**  
**Population by highest level of education and ethnic origin**

Highest education level	Ethnic origin							Total
	Black	White	Chinese	East Indian	Arab	Mixed	Other	
Nursery/Infant	600	22	2	14	8	21	1	660
Primary	56 243	807	10	495	8	1 231	28	58 822
Composite/Senior	17 016	185	1	86	1	307	7	17 603
Secondary	101 736	3 340	35	1 108	26	2 624	72	108 941
University	11 260	1 550	24	311	17	720	44	13 926
Other tertiary	22 851	1 374	15	220	7	888	18	25 373
Other institution	2 020	124	3	51	2	69	8	2 277
None	410	8	1	21	-	12	3	455
Not stated	4 388	128	21	60	4	97	7	4 705
<b>Total</b>	<b>216 524</b>	<b>7 538</b>	<b>112</b>	<b>2 366</b>	<b>65</b>	<b>5 969</b>	<b>188</b>	<b>232 762</b>

*Source:* 2000 Population and Housing Census.

17. According to the statistical data in Table 6, the percentage of persons who have pursued tertiary education is greater across all minority groups than that of the Black population. 38.8 per cent of White respondents have attended University or another tertiary institution; likewise 36.9 per cent of Arabs, 22.4 per cent of East Indians, 34.8 per cent of Chinese, 26.9 per cent of the Mixed population. The figure for Blacks is only 15.75 per cent.

**Table 7**  
**Population by parish and ethnic origin**

Parish	Ethnic origin							
	Total	Black	White	Chinese	East Indian	Arab	Mixed	Other
St. Michael	83 684	78 510	1 499	24	1 504	11	2 092	44
Christ Church	49 497	43 363	3 225	60	544	50	2 163	92
St. George	17 868	16 953	593	1	79	1	223	18
St. Phillip	22 864	21 657	608	2	103	1	484	9
St. John	8 873	8 355	180	-	33	-	305	-
St. James	22 741	20 609	1 179	20	192	3	719	19
St. Thomas	12 397	11 895	251	9	46	-	190	6
St. Joseph	6 805	6 555	128	-	15	-	106	1
St. Andrew	5 254	5 172	30	-	3	-	47	2
St. Peter	10 699	10 280	242	2	24	-	147	4
St. Lucy	9 328	9 158	47	-	38	-	85	-
Barbados	250 010	232 507	7 982	118	2 581	66	6 561	195

*Source:* 2000 Population and Housing Census.

18. There is no clear distinction between the population of the rural and urban areas in Barbados. This is due mainly to the size and topography of the island, its well developed network of paved roads, bus service and efficient telecommunications services. Consequently, goods and services are equally accessible in “rural” and in “urban” areas.

19. Barbados is a founding member of the fifteen-member Caribbean Community (CARICOM). Since its inception, CARICOM has focused on the creation of linkages and the use of synergies to catalyse the regional integration process and to achieve greater levels of prosperity and a higher quality of life for the populations of each member state. A significant initiative in this regard is the creation of the CARICOM Single Market and Economy (CSME) under the Revised Treaty of Chaguaramas, which will transform the region into a single economic space. The decision to establish the CSME was taken by the CARICOM Conference of Heads of Government in 1989 in Grand Anse, Grenada. This decision was reinforced by the Conference of Heads of Government in 1996, where Heads articulated a vision for the deepening of the integration process through a single market and economy.

20. The CSME will allow CARICOM goods, services, people and capital to move freely throughout the Community. It will also provide a single economic space within which Caribbean nationals and businesses can operate. The CSME will facilitate the harmonisation of economic, monetary, fiscal and external trade policies and measures across the entire Community and will play an important role in preparing the Caribbean region to face the challenges associated with increased liberalisation at the hemispheric (Free Trade Area of the Americas) and global levels.

21. The free movement of persons within the CSME is provided for in Chapter Three of the revised Treaty by according the right to skilled Community nationals, service providers, non-wage earners and investors to carry on economic activities in any part of the CSME. It also provides for the movement of Community nationals into and within jurisdictions without restrictions or the imposition of impediments. The CARICOM Agreement on Transference of Social Security Benefits is a supportive mechanism for the free movement of skills and entered into force on April 1, 1997. Barbados has ratified the revised Treaty of Chaguaramas and has enacted implementing legislation. Barbados has also introduced other domestic legislative and administrative arrangements to ensure that the country is ready for the full implementation of the CSME by 2008.

## **II. GENERAL POLITICAL STRUCTURE**

### **A. Political history and framework**

22. The colony of Barbados was founded by a British expedition in 1627. The island never changed hands during the colonial wars of the seventeenth and eighteenth centuries and it remained a British colony until it gained independence in 1966.

23. Barbados achieved independence from Britain on November 30, 1966 and since then it has remained a member of the Commonwealth. Constitutionally, the British Monarch continues to be the Head of State and is represented on the island by a Governor General who is appointed on the advice of the Prime Minister.

24. Though there is undisputed evidence that there was an Amerindian presence on the island as early as the year 2000 B.C., archaeologists posit that by the time of the arrival of the Portuguese in 1536, and certainly by the time of the establishment of the first settlements by the British on 17 February 1627, the island had been deserted for several centuries. It has been suggested that the Amerindians either left the island voluntarily or were transplanted to Cuba to replace the decimated Taino population which worked the mines.

25. Early British settlers first grew tobacco and cotton, but soon found this unprofitable, and switched to sugar cane as early as 1637. The switch from tobacco to sugar is referred to as the “Sugar Revolution” which completely transformed the economic and social landscape of Barbados. Due to its labour - and capital-intensive nature, the cultivation of sugar caused the consolidation of small farms into larger plantations and ultimately, the large scale importation of African slave labour.

26. The sugar-based economy of Barbados prospered during the seventeenth and eighteenth centuries. By this time, the slave population consisted largely of Creole Africans (those born in the Caribbean) and had increased rapidly. Thus, the island was largely unaffected by the abolition of the slave trade in 1807.

27. Barbados recorded its only major slave rebellion in 1816. This proved to be the first in a series of British West Indian slave insurrections which led to a call for freedom of the slaves.

28. The 1838 emancipation of the slaves is considered to be the next major change in Barbados’ history after the Sugar Revolution. The decades following the abolition of slavery and the 1838 emancipation of the slaves were marked by instability and severe difficulty. The situation was further exacerbated by the equalisation of sugar duties for British and foreign sugars imported into Britain in 1852, competition from beet sugar producers and the fall in sugar prices. For the majority Afro-Barbadian population, working conditions, even after emancipation, continued to be harsh. Unlike the larger West Indian colonies where land was available for small farming by individuals and their families, Barbados was small and densely populated thus making available arable land very expensive and scarce. A large proportion of the working population was forced to continue working on the plantations for extremely low wages. By 1896, widespread economic distress and social unrest prompted investigations by a Royal Commission.

29. The seminal riots of 1937 prompted another Commission of Inquiry from Britain which, amongst other things, recommended the legalisation of trade unions. By 1951, with the growing momentum of decolonisation, universal adult suffrage was introduced. Ministerial government followed in 1954. By this time, the political class had become increasingly representative of Barbados’ demographic distribution. Encouraged by Britain, the colonies of the British West Indies formed a federation in 1958. The failure of the Federation in 1962 precipitated the movement towards individual independence for the colonies, which Barbados attained in 1966.

30. The years since independence have been marked by a steady increase in the standard of living; a succession of free and fair elections and changes of government; universal, free and compulsory primary and secondary education and free tertiary education; and a diversification of revenue sources to include tourism, light manufacturing, financial services and informatics.

31. Barbados has a long tradition of parliamentary procedure, dating back to 1639 when the first Parliament was established. Until 1951, when universal adult suffrage was introduced, franchise was based on gender (only men) and wealth (a minimum yearly income level or the ownership of property). The organised political awakening of the majority Afro-Barbadian community can be traced to the inter-war years, when one of the first popular political parties, the Democratic League was established. The social unrest of 1937 precipitated the creation of trade unions and the first modern type political party in 1938, the Barbados Labour Party (BLP). The Democratic Labour Party (DLP) was formed in 1955 when a number of BLP members left to form their own party. A third political party, the National Democratic Party (NDP) was founded in 1989 as an offshoot of the Democratic Labour Party, but is no longer active.

32. Since independence, both major political parties have won the regularly scheduled general elections. Their terms of office have alternated as follows:

1966-1976	Two Democratic Labour Party terms
1976-1986	Two Barbados Labour Party terms
1986-1994	Two Democratic Labour Party terms
1994-present	Three Barbados Labour Party terms

## **B. Principal organs of the Constitution**

### **1. The Executive**

33. The Constitution recognises a form of government based on universal adult suffrage and characterised by regularly held free and fair elections. The electoral system is patterned after the British Westminster system. This system is multi-party and the party that wins the majority forms the government and may serve a term of five years and may be re-elected. The winning party appoints a leader who will serve as Prime Minister and Head of Government.

34. Section 35 of the Constitution states: "There shall be a Parliament of Barbados which shall consist of Her Majesty, a Senate and a House of Assembly." Section 63 (1) of the Constitution states: "The Executive Authority of Barbados is vested in Her Majesty."

35. The Queen is the Head of State of Barbados. The Queen of England is also the Queen of Barbados. The Queen is represented in Barbados by the Governor General whom she names on the advice of the Prime Minister. The Queen does not take part, however, in the Government of the country.

**(a) The Governor General**

36. Section 28 of the Constitution provides that: “There shall be a Governor General of Barbados who shall be appointed by Her Majesty and shall hold office during Her Majesty’s pleasure and who shall be Her Majesty’s representative in Barbados.”

37. The functions of the Governor General are mainly ceremonial, though not exclusively so. The Governor General has important discretionary powers, including, inter alia, the authority to appoint temporary ministers and to dissolve the Parliament. As a rule, the Governor General exercises his functions on the advice of the Prime Minister, the Cabinet and, in some specified cases, the leader of the opposition. The Constitution provides specifically that the Governor General consults persons or authorities before the execution of certain of his functions, however, he is not obliged to act in accordance with the advice rendered. The advice of the Prime Minister is to be sought in, inter alia, the following cases:

- (a) Appointment and removal of Ministers of Government;
- (b) Appointment of 12 members of the Senate;
- (c) Dissolution Parliament;
- (d) Appointment the Chief Justice and High Court judges.

**(b) The Prime Minister**

38. Following the conduct of a general election, the Prime Minister is appointed by the Governor General. The Governor General selects the person whom he considers best able to command a majority of members of the House of Assembly. In practice this is usually the leader of the party which has won the highest number of seats. Section 66 (2) of the Constitution gives great power to the Prime Minister, and protects him from dissatisfied party supporters who may consider revolting and having his appointment revoked. If a majority of Parliament supports a no-confidence motion in the Prime Minister, he may, within three days of the passing of the resolution, either resign or ask the Governor General to dissolve the Parliament, thereby precipitating a general election.

**(c) The Cabinet**

39. The Cabinet is the body having overall responsibility for the management of the Government. Section 64 (2) of the Constitution states: “The Cabinet shall be the principal instrument of policy and shall be charged with the general direction and control of the Government of Barbados and shall be collectively responsible to Parliament.” The Constitution stipulates that the Cabinet comprise a minimum of five ministers, in addition to the Prime Minister, who are selected from either the House of Assembly or the Senate.

40. Section 72 of the Constitution makes provision for the appointment of an Attorney-General, who is the principal legal adviser to the Government.

41. The current composition of the Cabinet is as follows:

Mr. Owen Arthur, M.P.	Prime Minister, Minister of Finance
Ms. Mia Mottley, Q.C., M.P.	Deputy Prime Minister and Minister of Economic Affairs and Development
Dame Billie Miller, D.A., BCH., M.P..	Senior Minister of Foreign Affairs and Foreign Trade
Mr. Rawle Eastmond, J.P., M.P.	Minister of Labour and Civil Service
Mr. Reginald Farley, J.P., M.P.	Minister of Housing and Lands
Mr. Gline Clarke, J.P., M.P.	Minister of Public Works and Transport
Mr. Trevor Prescod, M.P.	Minister of Social Transformation
Mr. Anthony Wood, J.P., M.P.	Minister of Education, Youth Affairs and Sports
Mr. Noel Lynch, M.P.	Minister of Tourism and International Transport
Ms. Elizabeth Thompson, M.P.	Minister of Energy and the Environment
Mr. Jerome Walcott, J.P., M.P.	Minister of Health
Mr. Dale Marshall, M.P.	Attorney-General and Minister of Home Affairs
Mr. Erskine Griffith, GCM, J.P.	Minister of Agriculture and Rural Development
Ms. Lynette Eastmond	Minister of Commerce, Consumer Affairs and Business Development
Ms. Cynthia Forde, J.P., M.P.	Minister of State, Ministry of Education, Youth Affairs and Sports
Ms. Kerrie Symmonds, M.P.	Minister of State, Ministry of Foreign Affairs and Foreign Trade
Mr. Clyde Mascoll, M.P.	Minister of State, Ministry of Finance

## 2. The Legislature

42. Barbados has a bicameral legislature: the House of Assembly is composed of 30 members elected by universal adult suffrage who represent the 30 constituencies into which the island is divided for electoral purposes. The Senate consists of 21 members made up as follows:

- (a) Twelve members appointed by the Governor General on the advice of the Prime Minister;
- (b) Two members appointed by the Governor General on the advice of the Leader of the Opposition;
- (c) Seven members appointed by the Governor General at his discretion to represent religious, social, economic or such other interests as he may deem necessary.

43. The Constitution recognises the office of the leader of the opposition and confers certain power upon him. If the leader of the opposition loses the support of the majority of parliamentarians who oppose the Government, he loses his function as leader.

44. Section 48 (1) of the Constitution states: "Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Barbados." For a bill to become law, it must be passed by the House of Assembly and the Senate and receive the approval of the Governor General. While the Constitution gives the Governor General the power to refuse approval, it is customary that he would not normally refuse to approve a bill which has been passed in accordance with the provisions of the Constitution.

### **3. The Judiciary**

45. The Constitution makes provision for a Supreme Court. Section 80 of the Constitution provides for the establishment of the Supreme Court consisting of a High Court and a Court of Appeal. Judges are appointed by the Governor General on the recommendation of the Prime Minister after consultation with the leader of the opposition. Once a judge has been appointed, he is not under the control of any person. Apart from leaving office as a result of reaching the age of retirement, the Constitution protects against the arbitrary removal of judges from office. A tribunal must be appointed by the Governor General on the advice of the Prime Minister which must reach the conclusion that the judge has committed an offence.

46. The courts have the power to review any law passed by Parliament to ensure that it conforms to the provisions of the Constitution.

47. In 1981, Parliament passed the Supreme Court Judicature Act which makes provision for a separate Court of Appeal comprising the Chief Justice as President and two other judges. Section 86 of the Constitution makes it possible for Barbados to share a Court of Appeal with any Commonwealth country. At present, there exist three avenues of appeal outside of Barbados:

(a) The Inter-American Court on Human Rights (Barbados being party to the American Convention on Human Rights);

(b) The United Nations Human Rights Committee (Barbados being a party to the Optional Protocol of the International Covenant on Civil and Political Rights which allows for the appeal of individuals to the Committee);

(c) The Caribbean Court of Justice (CCJ) which is the regional judicial court having both appellate and original jurisdictions - in the former regard, as the final Court of Appeal for CARICOM Member States and in the latter, in respect of the interpretation of the Revised Treaty of Chaguaramas, adopted in 2001, Barbados has already enacted enabling legislation for the CCJ. The Court was inaugurated in April 2005 and is now the final Court of Appeal of Barbados. Barbados is also a member of the Court in its original jurisdiction. This allows citizens or corporate entities who believe that their rights as defined under the Treaty have been breached to access the Court in its original jurisdiction as a treaty interpretation body.

### **C. Other organs of Government**

48. The Constitution makes provision for the establishment and composition of the Public Service Commission which deals with the appointment, promotion and discipline of public servants. Similar commissions exist which deal with the Royal Barbados Police Force and persons holding offices that require legal qualifications.

49. The Constitution makes provision for a Director of Public Prosecutions (DPP) who is a public officer responsible for controlling criminal prosecutions. Acting on his own discretion, he decides whether or not action should be taken against a person or whether such action, if commenced, should be discontinued. The DPP is appointed by the Governor General acting on the recommendation of the Judicial and Legal Service Commission. Because of the importance of this position, the post is protected in the same manner as that of judges. The DPP can only be removed from office by a tribunal appointed by the Governor General on the advice of the Judicial and Legal Service Commission.

50. The Constitution makes provision for an Auditor general who has responsibility for performing annual audits on the accounts of the Supreme Court, the Senate, the House of Assembly and all other departments and offices of the Government. His findings are compiled into a report which is laid before the House of Assembly. The Auditor general, in exercise of his functions, is not subject to the direction or control of any other person or authority and, like the DPP, he can only be removed by a specially appointed tribunal.

### **III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

51. The Constitution<sup>6</sup> is the Supreme Law of Barbados, if any other law is inconsistent with the Constitution, the Constitution must prevail and the other law will be declared void to the extent of the inconsistency (Chap. 1).

52. Chapter III of the Constitution deals with the protection of the fundamental rights and freedoms of all individuals in Barbados and in this regard, the fundamental human rights and freedoms are guaranteed. Section 11 states as follows:

“Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for all the rights and freedoms of others and for the public interest, to each and all of the following, namely:

- (a) Life, liberty and security of the person;
- (b) Protection for the privacy of his home and other property and from deprivation of property without compensation;
- (c) The protection of the law; and
- (d) Freedom of conscience, of expression and of assembly and association.”

53. Every individual has the constitutional right to seek redress of any violation by the State of human rights before the High Court.<sup>7</sup>
54. International human rights instruments cannot generally be invoked directly before the Court. The constitutional system requires domestic legislation to be enacted by the Parliament of Barbados in order to incorporate international conventions/instruments into the national legal system. The “Bill of Rights” included in Chapter III of the Constitution provides safeguards for the protection of human rights.
55. The legal structure in Barbados provides for three levels of adjudication: the Magistrate’s Court, the Supreme Court and the Court of Appeal. The Court of Appeal hears cases from the Magistrate’s Court and the Supreme Court. There is a Family Division of the Supreme Court which deals with family matters. This Court may seek the assistance of the relevant social services related to family matters.
56. If an individual believes that his rights have been violated there is redress in the legal system. The Constitution confers authority on the Supreme Court to enforce the protection provisions of the Constitution, that is, the fundamental rights and freedoms which are guaranteed. Article 24 (1) states that if any person alleges that a fundamental right or freedom “has been, is being, or is likely to be contravened” by the State, that person may apply to the High Court for redress. There are also social and therapeutic systems in place to facilitate the rehabilitation of the victim. These systems are discussed in further detail in the report.
57. The Constitution also confers wide discretionary power on the High Court to grant remedies to an individual who alleges that any of his rights have been, are being, or are likely to be infringed. This may include compensation. Article 24 (2) states that:

“The High Court shall have original jurisdiction to hear and determine any application made by any person ..., and to determine any question arising in the case of any person...and may make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Articles 12 to 23.”

#### **IV. REMEDIAL AUTHORITY WITH RESPECT TO HUMAN RIGHTS VIOLATIONS**

##### **A. The courts**

58. In Barbados there is no separate constitutional court dealing exclusively with alleged breaches of constitutionally protected human rights. If someone considers his human rights to have been violated by the Government he can seek redress before the courts. Legal aid is provided to persons bringing constitutional motions in the High Court if they are unable to afford the costs of retaining an attorney-at-law.

##### **B. The Constitution**

59. The Constitution of Barbados contains a Bill of Rights generally patterned on the Universal Declaration of Human Rights, in which a number of basic freedoms are guaranteed:

the right to life; the right to personal liberty; protection from slavery and forced labour; protection from inhumane treatment; protection from discrimination on grounds of race, place of origin, political opinions, colour or creed; right to a fair trial and the presumption of innocence.

60. The Constitution states that any person alleging the violation of the above rights may apply to the High Court for redress, thus making the High Court the effective domestic guardian of human rights in Barbados.

### **C. Caribbean Court of Justice**

61. As stated previously, Appellants can appeal to the Caribbean Court of Justice from decisions of the Barbados Court of Appeal. The Caribbean Court effectively replaced the Judicial Committee of the Privy Council in the United Kingdom as Barbados Court of final recourse in April 2005.

### **D. International human rights instruments**

62. Barbados is party to several of the major regional and international human rights instruments, namely:

(a) Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1972);

(b) International Convention on the Elimination of All forms of Racial Discrimination (1972);

(c) Convention relating to the Status of Stateless Persons (1972);

(d) International Covenant on Civil and Political Rights (and its First Optional Protocol) (1973);

(e) International Covenant on Economic, Social and Cultural Rights (1973);

(f) Convention on the Political Rights of Women (1973);

(g) Slavery Convention of 1926 as amended (1976);

(h) International Convention on the Suppression and Punishment of the Crime of Apartheid (1979);

(i) Convention on the Nationality of Married Women (1979);

(j) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1979);

(k) Convention on the Prevention and Punishment of the Crime of Genocide (1980);

- (l) Convention on the Elimination of All Forms of Discrimination against Women (1980);
- (m) American Convention on Human Rights (1982);
- (n) International Convention against Apartheid in Sports (1986);
- (o) Convention on the Rights of the Child (1990).

### **E. The Ombudsman**

63. The Ombudsman Act (1981<sup>8</sup>) establishes the office of Ombudsman, whose function, as defined by the Act, is to “investigate and report upon allegations of improper, unreasonable or inadequate administrative conduct”. Like the Auditor general and the Director of Public Prosecutions, the Ombudsman cannot be easily removed from his post. A tribunal must be called by the Governor General on the advice of the Prime Minister. The Ombudsman cannot be a member of the House of Parliament nor can he engage in any other occupation. Any complaints made to the Ombudsman must be made in writing and cannot be anonymous. Normally, he cannot investigate a case where the complainant has other legal means of redress. With few exceptions, the Ombudsman has the power to request any minister or officer of a government department or any other person to supply information which he considers critical to a case under investigation.

### **F. Non-governmental organizations**

64. There exists in Barbados a thriving non-governmental organization (NGO) fraternity, which plays an important role in both the stimulation of debate on human rights as well as the specialised concerns of the various NGOs. These organizations range from grass-roots community groups to local arms of international organizations and have played an integral role in developing a Barbadian society built on sound democratic principles. The Barbadian NGO community has actively encouraged public participation and interest in the governance process and has fostered human and social development initiatives.

65. The Barbados Association of Non-Governmental Organizations (BANGO), an umbrella organization under which more than 30 NGOs are registered, was established in January 1998. Recognising the inter-relationship between sustainable development and an empowered civil society, the organization seeks to create an environment of partnership and cooperation between individuals and NGOs, to strengthen the capacities of individuals, communities and institutions and to use advocacy to influence policy formulation in the public and private sectors. In May 2004, BANGO was integrated into the process of collective bargaining with the Government, the private sector, the unions and civil society, i.e. the Social Partners or Partnership.

66. The Congress Against Racism-Barbados Inc. (CARB), formerly the Barbados NGO Committee for the World Conference Against Racism (BNC-WCAR), is a coalition of NGOs which coordinated the participation of Barbadian NGOs in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban,

South Africa on 31 August to 7 September 2001. CARB comprises inter alia the following NGOs: the Society for the Resettlement of Caribbean Nationals (SRCN), the Ichirouganaim Council for the Advancement of Rastafari (ICAR), DAWN Caribbean, the Pan-African Movement of Barbados, the Clement Payne Movement and The Universal Day of Hope and Trust.

### **G. The Ministry of Social Transformation**

67. The Ministry of Social Transformation was established in January 1999 with the objective of rationalizing the existing social service and welfare agencies under the jurisdiction of one ministry, which would focus on the needs of the poor, the disadvantaged and the disabled. The Ministry was given the mandate to redefine the social landscape of the country through the formulation and coordination of policies and sustainable programmes for the efficient and effective delivery of social services, providing “equal opportunities for all persons, particularly those vulnerable and disadvantaged groups and individuals”. These services include programmes aimed at poverty eradication, community development, child care and assistance to the elderly.

68. The functions of the Ministry are largely carried out by the following agencies:

- Community Development Department;
- Welfare Department;
- National Assistance Board;
- Child Care Board;
- Bureau of Gender Affairs;
- National Disabilities Unit.

69. These agencies are the vehicles through which the threat of marginalisation of vulnerable groups is removed, safety nets are strengthened, empowerment programmes are pursued and partnerships fostered with civil society as a means of enhancing the Ministry’s capacity to deliver its services to the poor.

### **H. The Fair Trading Commission**

70. In 2000, the Government established the Fair Trading Commission with a mandate to treat to utility regulation, consumer protection and the oversight of fair competition. The Fair Competition Act<sup>9</sup> was passed in 2001 and is designed to provide a legal framework for the challenge of anti-competitive practices which would prevent the emergence or lend to the marginalisation of new business entities. This is all the more important given the country’s historical reality of the consolidation of capital in the hands of the plantocracy and the merchant class who were predominantly of European origin. This legislative framework complements an aggressive programme of assistance for small business as it relates to access to fiscal incentives, subsidised capital and technical assistance.

## V. INFORMATION AND PUBLICITY

71. The values and traditions of Barbados have for many years been steeped in the recognition of fundamental rights such as the right to freedom of expression, association and conscience. Awareness of human rights issues forms part of a strong nationwide ethos of discussion and debate on all matters of concern to citizens. Various government departments whose work is connected with human rights make full use of the various information media, including the Government Information Service, to air issues, stimulate debate and increase awareness.
72. Copies of the Barbados Constitution and the Rules of the Supreme Court are available to any person within the country. Copies may be acquired at a minimum cost and are available in the national libraries, school institutions and other relevant government and non-governmental institutions. In addition, parliamentary proceedings and debates between the ruling Party and the Opposition Party are regularly broadcast.
73. Within the last two decades, the establishment of several commissions and task forces has helped raise public awareness of human rights issues. The most recent of these are: the Constitution Review Commission; the Committee for National Reconciliation; the Pan African Commission; the Commission on Social Justice; the Commission for Gender Affairs and the Commission on Law and Order. Many publications from these commissions have been distributed to the public and, in addition to lectures and seminars, serve to enhance the understanding of the history, human rights and culture of the community.
74. Forums are provided for debating matters of interest and may be organised by the Government or by NGOs. These are usually in the form of town hall meetings and broad-based consultations and have been used as an effective means for ventilating concerns and stimulating discussion within the various communities on a range of pertinent social and human rights issues affecting the Barbadian public. Citizens also utilise the opportunity to voice their opinions and concerns on such issues through the use of radio and television call-in programmes.
75. The local chapter of Amnesty International is the dominant human rights advocacy group in Barbados and serves to focus attention on the question of human rights in general. Human Rights Watch is also active in its monitoring and profiling of human rights issues in Barbados. Other NGOs play key roles in the dissemination of information related to specific human rights.
76. The Government Information Service has, at diverse times, broadcast programmes focusing on civil and political rights, which were provided courtesy of the United Nations Department of Public Information. The Government Information Service also has the responsibility for preparing public service announcements and public education programmes. The state-owned Caribbean Broadcasting Corporation (CBC) is required to reserve time in its programme schedules for broadcasting public interest programmes provided by the Government for all broadcast media. The CBC is not entitled to levy any charge in respect of these broadcasts as long as the aggregate time does not exceed 10 per cent of the total broadcasting time for the day.

77. The Government of Barbados has introduced a number of initiatives designed to increase the public's awareness of the richness of its cultural heritage. These initiatives include, inter alia, the annual observance of Emancipation Day, the recognition of 10 national heroes and a corollary national holiday to commemorate their contributions to the country's development. National Heroes Day and Emancipation Day, which are commemorated on 28 April and 1 August respectively, are reserved for serious reflection on Barbados' historical and cultural legacy. The selection of 10 national heroes and the establishment of Heroes Day were thought to be important steps in the development of post-independence nationhood, as it would bring recognition to the achievements of Barbadians throughout history, rather than continuing to honour only those heroes of foreign extraction. The national heroes, who include former political figures, labour leaders, a slave, a sportsman and an abolitionist widow, militated against the racial, economic and social inequality that existed during their respective eras. The Government has also renamed the Trafalgar Square, designating it as the National Heroes Square, in celebration of the contribution of Barbadian nationals to the development of social, cultural and economic structures upon which modern day Barbados is built.

78. The Ministry of Foreign Affairs and Foreign Trade coordinates the preparation of and submission of Barbados' human rights reports and has the responsibility for ensuring that reporting obligations are fulfilled. There is consistent input into the process from the Attorney General's Office (which has responsibility for law and order including the enactment and implementation of legislation), the Ministry of Home Affairs (which has responsibility for certain areas including the penal system, the correctional services, the probation services, and the immigration department), the Ministry of Social Transformation and the Ministry of Education, Youth Affairs and Sports. There is also significant interaction between the relevant ministries and local and regional human rights advocacy groups.

## **PART II**

### **VI. INFORMATION RELATING TO THE ARTICLES OF THE CONVENTION**

#### **Article 1**

79. The Constitution establishes and implements democratic institutions, namely the Westminster-style Parliamentary system. Representatives in the House of Assembly are elected by the people in free and fair elections. [See Part I, chap. II, sect. B of the present report.]

80. The people of Barbados have free access and rights of disposal of Barbados' natural resources within the parameters of the law. Generally, people (Barbadians and visitors alike) may utilise and access natural resources except where such utilisation and access may pose a threat to the environment or to the wider public enjoyment of those resources. In cases where a species of plant or animal is under threat, hunting or harvesting of the particular species may be limited to a seasonal activity or may be banned for such period as is necessary for the species to rebuild its numbers. In Barbados threatened species include sea eggs (sea urchins) which are eaten as a delicacy, the leatherback turtle which may be caught for its meat and shell, and black coral which is harvested for making jewellery and other craft items.

81. There are currently no private beaches in Barbados. The beaches are regarded as public property to which all Barbadians have a right of access. In the past, a few hoteliers and other individuals have called for the Government to privatize some beaches in Barbados. However, this is a proposition that has been adamantly rejected by the people of Barbados in no uncertain terms and which the various Government administrations in Barbados have in turn rejected. Additionally, it is not permitted for beach-front properties to block access to the beaches.

82. The marine environment and resources are generally regarded as national treasures to be enjoyed by all persons and utilisation of these resources are both encouraged and regulated to this end. The Marine Areas (Preservation and Enhancement) Act Cap. 392, for example, provides that the Minister of Environment may by order, designate any portions of Barbados marine areas as restricted where the Minister considers such designation necessary for:

- The preservation and enhancement of the natural beauty of such areas;
- The protection of flora and fauna and wrecks found in such areas;
- The promotion of the enjoyment by the public of such areas;
- The promotion of scientific study and research in respect of such areas.

83. Persons are also entitled to quiet enjoyment of property in their possession without undue interference of that enjoyment from the Government or other citizens including landlords. This entitlement is protected at common law and by legislation, namely the Property Act. The constitution also protects individuals from being deprived of property without due and proper compensation and people may access and utilise public property such as parks, roads, Government Buildings, shops and stores, and business establishments. People may also travel and move around freely within Barbados, except where the individual is subject to a Court order (such as a protection or restraining order or conditions for bail).

84. There are no laws in Barbados which extend or purport to extend into the internal affairs of other States. Barbados has diplomatic relations with a number of States and as such may have a degree of influence on the governments of some of those States. However, Barbados does not and has never directly intervened in the affairs of other States as between the peoples of those States and their respective Governments.

## Article 2

**Please elaborate on the status of the Covenant in domestic law. Has it been incorporated into domestic legislation? Please provide examples of cases, if any, in which the covenant was directly invoked before or by domestic tribunals, and if so with what results.**

85. The Constitution of Barbados enacted in 1966 has incorporated a Bill of Rights which embodies the principles of the Covenant on Civil and Political Rights. It is within this legal framework that the rights expressed in the Covenant are given effect. Therefore the Covenant has not been incorporated into domestic legislation, nor are there any legislative measures being contemplated in this regard as the Constitution and ordinary laws provide safeguards and

guarantees for the protection of the fundamental rights and freedoms of the individual. In addition, the laws are continuously updated to ensure the perpetual protection of the fundamental rights of its citizens.

**Does Barbados envisage the adoption of legislation which should prohibit discrimination on any ground such as race, colour, sex, including sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status as well as against persons with disabilities in employment, education and other services?**

86. The principles of the Covenant are fully elaborated in domestic law. The Constitution of Barbados has enshrined inalienable rights guaranteed to all. An example of a case which emphasises the right of persons accused of a crime to be represented by an attorney of his choice is *Athelton Chase v. the Queen* while the case of *Hinds v. the Queen* deals with the observance of religious freedoms.

87. Any person who alleges that his fundamental rights and freedoms have been breached or are likely to be breached by the state may challenge such act or omission in the High Court of Barbados in accordance with Section 24 of the Constitution. This right is not prejudiced by the act or omission being done or omitted to be done in an official capacity.

88. This provision in the Constitution is enhanced by the ordinary laws. There is an Administrative Justice Act, Cap. 109B which permits an application to the High Court for relief against an administrative act or omission by way of an application for judicial review.

89. The High Court has power to make such orders, issue such writs and give such directions as it may consider appropriate for enforcing or securing the enforcement of the fundamental rights and freedoms.

90. Section 23 of the Constitution deals with the protection of an individual from various forms of discrimination. Specifically, Section 23(1) provides as follows:

(a) No law shall make any provision that is discriminatory either of itself or in its effect; and

(b) No person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in performance of the functions of any public office or any public authority.

91. Section 23 (1) has three basic effects:

It makes unconstitutional

(i) Any laws which are *ex facie* discriminatory;

(ii) Any laws which are discriminatory in their effect upon persons; and

(iii) Any discriminatory action by the State in the exercise of its administrative, judicial and executive functions.

92. The State therefore, must not enact laws which are discriminatory as defined in Section 23 (2) of the Constitution. According to Margaret Demerieux in her text *Fundamental Rights in Commonwealth Caribbean Constitutions*, Section 23 would apply to the general body of law and not merely those laws which impact on fundamental rights and freedoms.

Ms. Demerieux further observes that:

“... the word ‘law’ must be taken to include both the written law and the common law, in keeping with the general meaning of law found in the Constitution. As for unwritten rules of law, the Section [Section 23] appears to require their formulation in a non-discriminatory manner.”

93. Section 23 of the Constitution guarantees to a substantial degree protection against discrimination. The Constitution does not explicitly protect against discrimination based on the ground of sex. However the general laws do not embody the principle of sex discrimination and have progressively been updated to obviate against any hardship which may previously have existed at common law. In this regard the Succession Act of 1975 makes it impossible for a husband to disinherit his wife. Women in Barbados have the same rights as men in respect of property, contracts and the family and this is supported by legislation, namely the Married Persons (formerly Married Women) Act (1896) succeeded in some respects by the Property Act (1979) and the Family Law Act (1981).

94. In addition to this enhanced legislative framework a Bureau of Women’s Affairs was established to further advance the cause of women. The title of this office has since been changed to the Bureau of Gender Affairs reflect the new mandate to be inclusive of all persons.

95. The Constitution does not provide against non-discrimination on the basis of language. The reason for its omission would seem to be that Barbados is essentially mono-cultural. This was so at the drafting of the Constitution and remains so today.

96. The Constitution does provide for protection from discrimination on grounds of national origin though not social origin. The former would fall under the rubric of “place of origin” as provided in Section 23. As regards social origin the area in which discrimination on this ground would be more operative would be in respect of children born out of wedlock. This issue has now been overcome by the Status of Children Reform Act (1979) Cap. 220 which equalizes the status of children born in Barbados and abolished the former common law distinctions of legitimate and illegitimate children.

97. With the exception of matters of residence in and entry into Barbados, there are no laws which impose restrictions on non-citizens in their enjoyment of the fundamental rights and freedoms guaranteed by the Constitution to citizens of Barbados. Furthermore, the courts of Barbados ordinarily entertain and adjudicate upon civil and criminal matters initiated by non-citizens of Barbados, as well as non-residents, for breaches that occur within the jurisdiction of Barbados. Section 22 of the Constitution protects the right of freedom of movement, that is, “the right to move freely throughout Barbados, the right to reside in any part of Barbados, the right to enter Barbados, to right to leave Barbados and immunity from expulsion from

Barbados”.<sup>10</sup> Nevertheless, section 22 (3) (c) makes an exception to this rule in respect of the regulation of movement or residence of non-citizens within Barbados or their expulsion there from. This exception in section 22 permits the enactment of immigration laws regulating the entry, stay and egress of non-citizens, which are deemed necessary to safeguard the integrity of Barbados’ borders.

98. Barbados has recorded numerous significant legislative achievements and recommendations over the past 15 years in relation to the protection of human rights and has made a concerted effort to improve the civil, political and economic condition of the wider Barbadian public through developments in education, the creation of the Ministry of Social Transformation, the National Commission on HIV/AIDS, the Constitution Review Commission and the Committee for National Reconciliation.

### **Education**

99. Barbados has prized education and cultural awareness as two of the most important planks in its post-independence development architecture - cultural awareness in order to promote a cohesive society and education not only to drive development through increasing the island’s human resource potential, but also as a tool for promoting civil and political rights. The Barbados educational system has been free of racial discrimination since the introduction of the Barbados Secondary School Entrance Examination in 1959. The national examination ensures that persons moving from primary level to secondary level do so on the basis of ability rather than race or social class.

100. The Education Act, Cap. 41, Sect. 41 A (3) states:

“Notwithstanding anything in this Act and for the avoidance of doubt, it is hereby declared that every pupil has the right to receive at least 5 years secondary education.”

101. In addition, in accordance with this Act, education is compulsory for all children between the ages of 5 to 16, though cases may be made for exemption on the basis of religious or other concerns.

102. The Barbados Community College Act, Cap 38, which governs the Barbados Community College, a tertiary education institution, stipulates at Section 5 also stipulates that:

“No religious, political or racial test shall be imposed on or required of any person in order to entitle him to be a student of the college or to occupy any position in or on the staff of the college.”

103. With regard to school curricula, the various syllabi attempt to be very inclusive. The social studies syllabus speaks most pointedly to this, as it focuses on the study of man, his interpersonal relationships and his interactions with the cultural and social environment. It also provides a forum for the infusion of values education, which helps students inculcate such attributes as tolerance, respect, honesty, cooperation and empathy.

104. In order to spread the idea of fellowship and respect among human beings, the social studies curriculum encompasses such topics as nationhood, and the rights and responsibilities of the individual, African studies and Europe in the Caribbean. This approach fosters appreciation of the Caribbean as a region comprised of people of diverse racial origins living together as one. Social studies is a compulsory feature of schools' curriculum.

### **HIV/AIDS Commission**

105. Another step to ensure the rights of all was the establishment of the HIV/AIDS Commission in September 2000 to provide the Government of Barbados with a mechanism to effectively coordinate and manage a multi-sectoral, expanded National Programme (economic, social, health) for the prevention and control of HIV/AIDS. The official launch of the Secretariat occurred in May 2001. Previously, the coordination of the National AIDS Programme (NAP) was managed by the Ministry of Health via the National Advisory Committee on AIDS.

106. The main objective of the National HIV/AIDS Commission is to ensure that all Barbadians are empowered to respond effectively to the threat posed by HIV/AIDS to the sustainable development of Barbados.

107. The mandate of the National HIV/AIDS Commission is to coordinate the National HIV/AIDS Programme and to advise the government on plans and policies to build strategic partnerships to effectively manage, control and reduce the spread of HIV/AIDS in Barbados. The Commission endeavours to mobilise widespread community participation and support their involvement in programmes of this nature.

108. In an effort to provide an enabling and supportive rights-based environment, the Office of the Attorney-General hired an independent consultant to prepare a report which examines the legal, ethical and socio-economic issues relevant to HIV and AIDS. In a part of the process, which has been referred to as the "National Assessment Exercise", the Commission has used the recommendations emanating from this report to form the basis of a consultation with stakeholders and special interest groups to ascertain their views. The final phase of the "Assessment Exercise" was completed in late 2005 and was followed by the submission of a consensus report to the Office of the Attorney-General which will provide a synopsis of the recommendations that received general agreement. This information will also feed into a comprehensive policy document being prepared by the Commission.

109. During the financial year 2006-2007, the Ministry of Labour and Social Security will be embarking on the establishment of a project coordinating unit to oversee the implementation of a register to document and facilitate the investigation of all instances of discrimination against persons living with HIV and AIDS.

110. The activities outlined above are being implemented in an effort to reduce the levels of stigma and discrimination being experienced by persons infected and affected by the disease. The National HIV/AIDS Commission remains committed to do all within its powers to ensure that the human rights of these persons are upheld.

### **Programmes undertaken by the Ministry of Social Transformation**

111. The Ministry of Social Transformation (see paragraph 67 above) has developed several programmes aimed at eradicating poverty and reforming the social sector to give meaning to the right of every citizen to a decent quality of life. Some of its achievements to date include: community level poverty eradication; assessment of communities to determine social and economic development needs; and assisting existing welfare recipients to re-enter the workforce by providing the necessary skills-training and job placement service through the “Welfare to Work” Programme.

### **Constitutional Review Commission**

112. In 1998, Barbados recognised the need to review the Constitution in respect of certain provisions and a Constitutional Review Commission was established. The Commission made several beneficial and important recommendations, which included:

- (a) Ensuring that the Parliament and people of Barbados respect and implement treaties and conventions, which the State had negotiated and ratified;
- (b) Safeguarding the interests of all the people over partisan or sectoral interests;
- (c) “Internationalisation” of the Bill of Rights wherein full consideration is given to international human rights norms;
- (d) Amending the Constitution such that the category of gender would be included in the definition of “discriminatory”;
- (e) Creating an extension of the Legal Aid Scheme;
- (f) Raising the profile of the office of Ombudsman by giving it constitutional status and equating the conditions of service to those of a High Court Judge.

113. A resolution taking note of the Report of the Constitution Review Commission and its recommendations and proposals was passed in the House of Assembly and in the Senate on 8 August 2000 and 11 October 2000 respectively. A Constitution Committee, which is chaired by the Attorney-General, has been convened and has begun the process of redrafting the Constitution. The Commission’s recommendations are an important resource for this process.

### **Rights of the individual**

114. The rights of the individual are enshrined in Chapter III of the Barbados Constitution and are guaranteed to all regardless of “race, place of origin, political opinion, colour, creed or sex.” These rights include:

- The right to life;
- The right to liberty;
- The right to freedom of movement;

- The right to freedom of expression;
- The right to freedom of conscience;
- The right to freedom of assembly and association;
- The right to protection from slavery and forced labour;
- The right to protection from inhuman treatment;
- The right to protection from arbitrary search or entry;
- The right to protection from deprivation of property;
- The right to secure protection of law.

### **Committee for National Reconciliation**

115. The Government of Barbados established the Committee for National Reconciliation (NRC) on 28 July 1999 to facilitate a wide-ranging consultative process on the state of race relations in the country. The Committee comprised 13 individuals of varied ethnic and professional backgrounds, including intellectuals, members of the clergy, trade unionists, and businessmen. The NRC was mandated to “develop, coordinate and implement a programme for the process towards national reconciliation and to distil and develop a shared vision among Barbadians as a people”. To fulfil this mandate, the Committee:

- (a) Invited written and oral submissions by members of the public;
- (b) Conducted research on critical issues related to its objectives;
- (c) Discovered and noted the perceptions of Barbadians on the issue of race;
- (d) Outlined a national vision and purpose;
- (e) Fully explored the philosophy of integration;
- (f) Established mechanisms for keeping the public engaged in and informed of the Committee’s agenda;
- (g) Developed appropriate programmes to deal with the problems identified at all stages of the Committee’s work.

116. Five town-hall meetings were held between 26 October 1999 and 9 November 1999. In addition, several field research projects were undertaken by the Division of Youth Affairs and the Sir Arthur Lewis Institute of Social and Economic Studies (SALISES). The Committee’s findings were published in a report in December 2000 and were approved by the House of Assembly and Senate on 10 December 2002 and 29 January 2003 respectively.

### **Legislative framework for the protection of other rights**

117. There are other rights, which, though not contained in constitutional provisions, are protected, in the broader sense, via domestic legislation or subscription to international instruments.

118. Barbados has ratified a number of ILO Conventions - in particular Convention No. 98, Right to Organise and Collective Bargaining; Convention No. 111, Discrimination (Employment and Occupation); Convention No. 87, Freedom of Association and Protection of the Right to Organise; and Convention No. 118, Equality of Treatment (Social Security) - which recognise the right of persons to form and join trade unions; to access employment without being subject to discrimination; to have access to public health, medical care, social security and social services. Barbados accession and ratification of these and other key human rights conventions is testament to its deep commitment to the promotion and protection of human rights.

119. With respect to the right to access places or services intended for use by the general public, Section 21 (1) of the Shops Act, Cap. 356A, 1985 states the following:

“No person shall on account of his race, colour or creed be refused:

access to any shop; or

opportunity to avail himself of any facility, service or amenity offered to the public.”

### **Please provide information on the mandate of the Office of the Ombudsman established under the Ombudsman Act.**

120. The role and mandate of the Ombudsman of Barbados is different from that of developed countries. The Ombudsman is mandated (under the Ombudsman Act, Cap. 8A, 1981) to investigate and report upon allegations of improper, unreasonable or inadequate administrative conduct. The Ombudsman can only start an investigation on first receiving a written complaint unless he is of the opinion, or either House of Parliament resolves, that there are reasons of special importance which make investigation by the Ombudsman desirable in the public interest.

### **Please explain the extent to which this office is vested with the competence to protect and promote human rights, and in particular to receive complaints relating to human rights violations.**

121. The Ombudsman is competent to investigate human rights issues to the extent that the failings of a public officer infringe the human rights of another person. However, the Ombudsman does not investigate private citizens. In most cases matters before the Ombudsman would not involve allegations of infringement of fundamental rights and freedoms.

122. The Constitution confers original jurisdiction on the High Court to hear and determine any application or any question made in relation to an alleged contravention of any fundamental right or freedom.

123. The Constitution vests jurisdiction in the High Court to redress human rights infringements and not in the office of the Ombudsman. In this regard article 24 of the Constitution states:

“Subject to the provisions of subsection (6), if any person alleges that any of the provisions of Sections 12 to 23, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (2); and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3)

(c) and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Sections 12 to 23:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.”

**Does the State party envisage the establishment of a national human rights commission?**

124. Barbados does not envisage the establishment of a national human rights commission. However, the Legal Affairs Commission of CARICOM took a decision in 2005 to initiate the preparatory work for the adoption of a Caribbean Convention on Human Rights. It is envisaged that any such regional convention, as is the case with the Revised Treaty of Chaguaramas, will fall under the jurisdiction of the CCJ for interpretation.

**What are the latest developments with regard to the establishments of a Caribbean Court of Justice meant to eventually replace the Judicial Committee of the Privy Council (JCPC), currently the final Court of Appeal in the State Party?**

125. The Caribbean Court of Justice has been fully established as the Court of Final Appeal for Barbados. The Constitution has been duly amended and all enabling legislation has been passed giving the CCJ authority and mandate to hear and adjudicate upon all appeals from the Barbados Court of Appeal. The CCJ recently heard its first case which was a Barbadian libel matter.

**Please provide details of the future mandate of the Caribbean Court of Justice, its composition and its organizational structure.**

126. Mandate and jurisdiction of the CCJ. The Court exercises its jurisdiction in the following ways:

(a) As the Court of interpretation of the amended CARICOM Treaty which creates the Caribbean Single Market and Economy (CSME);

(b) In respect of any matter concerning the removal from office of a judge of the Supreme Court, upon a referral of the matter by the Governor General; and

(c) As the final domestic Court of Appeal for the States parties to the CARICOM Treaty and the treaty's amending Protocols.

127. In its capacity as the final domestic Court of Appeal for Barbados, the CCJ's mandate is as set out in the Caribbean Court of Justice Act, 2003<sup>11</sup> (hereafter referred to as the Act) which enacts the provisions of the Agreement Establishing the Caribbean Court of Justice, signed at Bridgetown, Barbados on 14 February 2002.

128. Appeals from the Barbados Court of Appeal may lie to the CCJ (a) as of right; (b) with leave of the Court of Appeal; or (c) with special leave of the CCJ. Appeals that lie to the CCJ as of right include:

(a) Civil proceedings where the matter in dispute is valued at no less than \$18,250.00 (US\$ 9,125.00) or where the appeal involves directly or indirectly a claim or a question regarding property or a right of that value;

(b) Proceedings for the nullification or dissolution of marriage;

(c) Constitutional matters and matters involving constitutional issues;

(d) Any other matters as may be prescribed by law.

129. Appeals that lie with the leave of the Court of Appeal include civil proceedings in which the Court of Appeal that opines the issue is one that ought to be submitted to the CCJ due to its great general or public importance or otherwise. Appeals lie to the CCJ with special leave of the Court itself in respect of any civil or criminal appeal.

**Structure of the CCJ**

130. The Court is composed of the President and nine other judges, of whom at least three must have experience in international law, including international trade law. The CCJ may sit in any number of divisions as may be directed by the President of the Court and every judge may sit in any division.

131. The President is to be appointed or removed by the qualified majority vote of three quarters of the contracting states on the recommendation of the Regional and Legal Service Commission. The other judges shall be appointed or removed by the Commission. The Commission is composed of the President, who is the Chairman and 11 other persons. Persons are also nominated to the Commission by the following organizations: the organization of the Commonwealth Caribbean Bar Association (OCCBA), the Organization of Eastern Caribbean States (OECS) Bar Association, the Judicial and Legal Service Commissions of contracting states, the Public Service Commissions of contracting states and the Bar Associations of contracting states. Two persons are also selected from civil society by the Secretary General of the Caribbean Community and two distinguished jurists are nominated by the legal education institutions in the region.

**Please provide information on training and education on the Covenant and the Optional Protocol procedure provided to all categories of public officials, in particular school teachers, the judiciary, and law enforcement and prison officials. Please also indicate the steps taken to increase the awareness and understanding of the Covenant and the Optional Protocol procedure amongst the general public.**

132. Training and sensitization programmes focused on the fundamental principles and rights embodied in the Covenant have been provided to public sector officials and members of the general public on various occasions. Examples of such training are outline inter alia in paragraphs 142 to 144, 178 and 265.

### **Article 3**

133. The laws of Barbados generally do not distinguish between men and women and certainly no distinctions are made in terms of, inter alia, human rights, access to justice, liberty and participation in public life. In instances where any iniquities have been found to exist, the law has been updated to remove them. For example, since Barbados' second report to the Commission, the Constitution has been amended to permit married Barbadian-born women to automatically confer citizenship to their children born outside of Barbados, and to allow the husbands of Barbadian citizens entitlement to citizenship upon application.

**What specific data are available in respect of and what measures have been taken, or are foreseen, to enhance the participation of women in public life, particularly in the political area and public service (Parliament and Government), as well as in the private sector, especially at senior levels?**

134. Women's right to equal participation and freedom of assembly and association are guaranteed under the Constitution of Barbados. No legal impediments exist regarding their participation in the election process neither are there barriers to their holding office whether in Parliament or elsewhere.

135. The requirements for electing persons to Parliament or appointing them to the Senate are not gender specific, nor are women considered among the groups who do not qualify under the law. This is stated in sections 37 and 38 of the Constitution. These requirements refer to age, nationality and place of residence. Women have equal access to participation in political and public life. Similarly, there is equal opportunity for women to represent the Government at the national and international level.

136. There are no legal barriers to women participating in the Government. However traditional gender socialization patterns have generated a level of reluctance among women to enter elective politics. However, the situation has been evolving and women are becoming more involved. There are now more female Cabinet ministers and parliamentarians.

137. There are two main political parties in Barbados namely, the Barbados Labour Party and the Democratic Labour Party. These two parties have encouraged the participation of women and have both established “Leagues of Women” within their organizations.

138. In the 1994 elections, three women won seats in House of Assembly and were all appointed to serve as Cabinet members. In elections in 1999 and 2003, these three women retained their seats in Parliament and continued as Cabinet ministers.

139. In 2001, the resignation of a sitting member of Parliament, who served as Attorney-General, led to a by-election where one female and one male faced the polls. The female won and was made Minister of State in the Ministry of Education. Following the elections in 2003 the number of women in Cabinet increased to five. These women currently hold the posts of Deputy Prime Minister and Minister of Economic Affairs and Development; Senior Minister of Foreign Affairs and Foreign Trade; Minister of Energy and the Environment; Minister of Commerce, Consumer Affairs and Business Development; and Minister of State in the Ministry of Education Youth Affairs and Sports.

140. The Government recognises that equal participation of both women and men in decision making is key to achieving a balance that reflects the composition of Barbadian society, of which women comprise 51.9 per cent. This balance is needed in order to strengthen democracy and promote its proper functioning. Equality in political decision-making is essential to the achievement of the integration of a gender perspective in government policy-making.

141. A number of initiatives have been put in place to further facilitate women’s participation in public life. Among these was a leadership training programme implemented by the then Bureau of Women’s Affairs (which has since been replaced by the Bureau of Gender Affairs) in collaboration with the School of Continuing Studies focusing on “Education for Women in Politics”.

142. In 1998 a regional NGO, the Caribbean Association for Feminist Research and Action (CAFRA), together with the National Organization of Women (NOW), and the Women’s Forum of Barbados hosted a two day roundtable of women in politics, which had as its theme “Women as Transformation Agents”. The roundtable’s goal was to reflect on how women in politics can

be a catalyst for transforming the politics, economics and sociology of Barbadian and Caribbean societies. This roundtable was critical in terms of the implementation of training programmes to facilitate women's participation in politics and public life.

143. In 2003, the Caribbean Policy Development Centre (CPDC) held a training course aimed at engendering political participation. This programme provided prospective female political candidates with training in political participation, aimed at increasing women's capacity to function in the political structures of their countries and increase their competence to exercise leadership at political decision-making levels.

144. The Barbados Bureau of Gender Affairs assisted in the selection of candidates to participate in this training course and participated in the follow-up training on developing gender sensitive policies for political participation which was held in November 2004.

145. In May 2005 the CPDC held a second training course for one week for women who participated in the first course. The objectives of this Course were to expand the skills of the potential candidates in gender analysis, public policy formulation and running a successful political campaign. Resource persons were women Ministers from the OECS and Barbados.

**Table 8**

**Women in decision-making positions (2005)**

Position	Total	Male	Female
Elected Members of Parliament	30	26	04
Members of Cabinet	20	15	05
Parliamentary Secretaries	3	3	0
Senators	22	16	6
Permanent Secretaries	28	18	10
Deputy Permanent Secretaries	24	16	8
Directors/Heads of Government Agencies	97	67	30
Deputy Directors/Heads of Government Agencies	50	36	14
Judges of High Court	6	5	1
Judges of Appeal	3	3	0
Magistrates	8	2	6
Parliamentary/Crown Counsels	21	5	16
Ambassadors/Head of Diplomatic and Consular Missions	10	9	1

*Sources:* Compiled from the Barbados Public Service Staff List 2003-2005, Registration Department, Ministry of Foreign Affairs, Parliament-Barbados.gov.bb, Public Sector Reform.

146. The Bureau of Gender Affairs is presently collaborating with the United Nations Development Programme (UNDP) and the United Nations Development Fund for Women (UNIFEM) on a Gender Mainstreaming Project aimed at strengthening the participation of women in politics in Barbados and the OECS.

147. The Bureau is also represented on the Advisory Committee of this project, which has been meeting to identify strategies and activities nationally and regionally to facilitate women's participation in political and decision making processes.

148. Among the proposed activities are the following:

(a) The development of a web-based portal to serve as a focal point for discussion and dissemination of information on strengthening the political participation of women;

(b) The conduct of strategy workshops on alliance-building and constituency building;

(c) The production of a video on female Parliamentarians to be used in training, sensitisation and mentoring programme; and

(d) An outreach programme to encourage young women to pursue a career in politics.

149. Within the public service of Barbados at the end of 2001, 17 per cent of permanent secretaries were women, 33 per cent of the deputy permanent secretaries were women, and 33 per cent of persons who served as directors or heads of departments are women.

150. In the Judiciary, there are now 6 female magistrates out of a total of 10. There are three female High Court judges out of a total of six High Court judges. No women serve as Judge of Appeal. However, in the Office of the Attorney-General, the Solicitor General, the Chief Parliamentary Counsel, and their respective deputies are all women. Women also serve in the positions of Registrar of the Supreme Court and Registrar of Corporate Affairs. There has also been a growing increase of female attorneys-at-law.

151. In the Foreign Service, women account for 63 per cent of the senior management positions, 55 per cent of those at middle management and 73 per cent at the junior level.

**Please provide information and any statistics about the trafficking of women and children for the purpose of prostitution. What measures has the State party taken to combat these practices?**

152. There are currently no reliable statistics concerning the trafficking of children for the purposes of prostitution which can be used as a basis for the scientific determination of the extent to which this is a problem.

153. The Bureau of Gender Affairs collaborated with the OAS-Inter-American Commission on Women (CIM) and the International Organization for Migration (IOM) in hosting two national level workshops on trafficking in persons in the Caribbean.

154. This collaborative effort is a direct outcome of the 2002 Assembly of Delegates of the CIM, where a resolution was adopted entitled “Fighting the Crime of Trafficking in Persons, Especially Women, Adolescents and Children”. This resolution urged the Permanent Secretariat of the CIM to continue its research into the possibility of including countries in the English speaking region in order to obtain complete information on the Caribbean and facilitate the effective implementation of measures to combat trafficking in women, adolescents and children for purposes of exploitation.

155. The Bureau therefore facilitated the hosting of two workshops, namely a one day workshop in June 2004 and a two day workshop in November 2004, which sought to provide specific information on the differences between trafficking in persons and migrant smuggling, how human trafficking works, the causes and consequences for communities and individuals, and the identification of vulnerable populations and victims.

156. The participants of the workshops included stakeholders who have a role to play in combating the problem of trafficking, for example, United Nations agencies, Government agencies such as the police, immigration, those with responsibility for children, the justice system, women’s groups and NGOs.

157. The International Organization for Migration also undertook a three day training workshop with researchers who subsequently conducted an exploratory assessment in seven Caribbean countries, including Barbados, which was published in June 2005, on the situation of trafficking in recognising the need for a better understanding of the current situation of trafficking in persons. The exploratory assessment, while it did not allow for overall estimates on the magnitude of the problem, the information obtained during this research referred to cases of trafficking and exploitation of persons in participating countries.

158. The Bureau of Gender Affairs also participated in the Caribbean Regional Meeting on Counter-Trafficking Strategies, which was held in Washington, DC during the period 14-16 March 2005.

159. This meeting reviewed the findings of the national level reports on trafficking in persons in the Caribbean region. Findings from the Barbados study indicate that the issue of trafficking in persons is relatively new. The research suggest that there are elements of labour exploitation of migrants, especially in the construction and garment industries, as well as of commercial sex workers involved in prostitution, exotic dancing, massages and other related activities.

160. It is extremely difficult to draw conclusive evidence from the research findings because there is no available statistical data on trafficking, therefore the scale and context of trafficking remains largely unknown. However, in dealing with this emerging threat, Barbados maintains strict police enforcement measures and in addition also places emphasis on research, sensitization and education regarding trafficking in persons with a view to containing and eradicating any activities that may occur, including through eventual legislation as necessary. To this end, on 21 October, 4 November and 18 November 2005 the Bureau of Gender Affairs hosted information campaigns entitled, Spotlight on Barbados Counter-Trafficking Initiative across Barbados.

**Is domestic violence prosecuted under domestic law? Please provide detailed information as to the number of complaints received, investigations carried out, persons prosecuted and victims compensated. In the negative, do other laws and programmes exist, or are envisaged, to address the problem of violence against women, including domestic violence and rape? What type of protection is offered to women victims of violence both in terms of restraining orders as well as shelters and support programs? Please report on any measures taken to increase public awareness of these issues.**

161. Domestic violence is fully prosecuted under the laws of Barbados. A 1986 study on Physical Violence Against Women in Barbados for the period 1977-1986 revealed the scope of this problem and was the basis of the Community Action Seminar held in May 1987. One of the outcomes of the Seminar was a recommendation for legislation to address the problem of domestic violence. As a result the Domestic Violence (Protection Orders) Act<sup>12</sup> and the Sexual Offences Act,<sup>13</sup> both of 1992, were passed.

162. The Domestic Violence (Protection Orders) Act and the Sexual Offences Act address the issue of domestic violence with the objective of:

- Bringing domestic violence to an end;
- Protecting the victims of domestic violence; and
- Changing the public and private attitudes which have failed to discourage domestic violence.

163. Under the Domestic Violence Protection Orders Act, victims of domestic violence can make application for a Protection Order through the Magistrates Court. A protection order may, inter alia, prohibit a spouse, partner, former spouse or former partner from assaulting or harassing the complainant, from going within a specified distance of the complainant and may even in some circumstances exclude the respondent from the residence where both parties ordinarily cohabit. By law the application should be heard within forty-eight hours of notification to the respondent. The Court makes every effort to ensure that applications for protection orders are dealt with as a matter of urgency, given the proximity of the parties and the peculiar circumstances of domestic situations that may potentially lead to greater violence in the interim period.

164. Consequently, a complainant may be granted an interim protection order upon application to the Court. This offers protection for the period of the hearing until a final order may be made and provides for immediate assistance in desperate situations to ensure the safety of the complainant and her/his children. Breach of the interim order results in the taking of immediate action before the conclusion of the matter.

165. The penalty for breach of the Protection Order, whether final or interim, is a fine of BDS\$ 5,000.00 (US\$ 2,500.00) or imprisonment for a period of one year or both. The perpetrator can also be arrested and taken back to Court. The identity of persons involved in cases relative to Protection Orders is protected under the legislation and cannot be published in the media.

166. Protection orders can be obtained not only against spouses and partners but also for the protection of children and other members of the household. The Commissioner of Police is also authorized to apply for such orders on behalf of persons. In the case of a child, the application may be made by a Child Care Officer or a Welfare Officer.

167. Under the Sexual Offences Act, a husband commits the offence of rape where he has sexual intercourse with his wife without her consent, by force or fear, where there is in existence in relation to them:

- (a) A decree nisi of divorce;
- (b) A Separation Order within the meaning of section (2) of the Family Law Act;
- (c) A separation agreement;
- (d) An order for the husband not to molest his wife or have sexual intercourse with her.

168. A husband who commits the offence of rape is liable on conviction or indictment to imprisonment for life.

169. There is no available data on reported cases and convictions under this Act since such offences would be included under the general heading of rape.

170. The Barbados Government also signed the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, in June 1994. The Convention was ratified in May 1995. This Convention defines violence and abuse against women as an infringement of the fundamental rights of women.

171. In its fight to reduce and eventually eradicate the plague of violence against women from the society, the Government of Barbados, through the Bureau of Gender Affairs, has implemented a number of programmes, which aim to combat and eliminate violence against women.

172. This campaign is being conducted at three levels:

- (a) The elimination of inequalities between men and women;
- (b) The provision of services for victims and offenders;
- (c) The provision of funding to women's groups to engage in education and support services.

173. Prior to the 1995 Fourth World Conference on Women and in keeping with article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), legislation against domestic violence was enacted in Barbados based on the CARICOM model.

174. In 1997, the Government of Barbados together with eleven Latin America governments and seven other Caribbean countries pledged their support to the work of the United Nations in the context of its Inter-Agency Campaign on Violence against Women in Latin America and the Caribbean. The Campaign was developed to raise awareness on the social and economic costs of violence against women and girls in the region in acknowledgement of the fact that gender violence was a serious violation of women's rights. The campaign concluded with events to commemorate the fiftieth anniversary of the Universal Declaration on Human Rights.

175. In 1999, the Barbados Government established a shelter for abused women in fulfilment of its commitment to provide services to improve the welfare of abused women. The shelter is funded by Government and managed by an NGO, the Business and Professional Women's Club of Barbados.

176. A Victim Support Group was established by the Royal Barbados Police Force. It is a non-profitable voluntary organization. It was established in December 1998 to offer emotional and practical support to nationals, non-nationals and their families and friends, who have suffered traumatic experiences as a result of various crimes such as robbery, sexual offences, burglary and domestic violence.

177. The services offered by the Victim Support Programme are free and informative. Any information exchanged between the Victim Support Officer and the victim, is treated with strict confidence. The Victim Support Programme also offers professional counselling and support services.

178. Training for the members of the Royal Barbados Police Force in domestic intervention is seen as a crucial aspect in the Government's strategy to reduce the incidence of domestic violence. As a result, all new police recruits are now trained in domestic violence intervention. Modules on domestic violence, based on the Commonwealth Secretariat's Manual "Guidelines for Police Training on Violence Against Women and Child Sex Abuse", are included in the training programme of members of the Royal Barbados Police Force.

179. Barbados is one of the Caribbean countries which participated in the Regional Training of Trainers Programme on Domestic Intervention. Nine persons including six Police Officers were trained through the programme. Since 2001, these nine persons have started the process of training other persons.

180. The NGO community has been involved in activities to raise awareness and to combat violence against all women. During the period from September 2001 to July 2002, the Caribbean Association for Feminist Research (CAFRA) implemented a training programme for police officers and other front line social workers in domestic violence intervention, in collaboration with the Association of Caribbean Commissioners of Police. Those trained to date include police officers, social welfare officers, staff from the Government Industrial School, a few guidance counsellors, staff from the Queen Elizabeth Hospital (mainly nurses) and members of the Barbados Christian Council and Child Care Board.

181. The Bureau of Gender Affairs, in collaboration with the NGO Community, has been using 25 November (celebrated as the Day against Violence against Women) to focus attention on the issues relating to violence against women. This day has also been used to encourage the community and its organizations to be conscious of this scourge and its prevalence in Barbados society.

182. From 25 November to 10 December 2004, the Bureau of Gender Affairs celebrated the Day Against Violence Against Women and also the sixteen Days of Activism under the theme "For the Health of Women, For the Health of the World: no more violence".

183. The Bureau of Gender Affairs in collaboration with a number of stakeholders planned a number of activities to celebrate this day. This included the distribution of anti-domestic violence and sexual harassment literature at various business places, including the Grantley Adams International Airport, and a Walk and Rally Against Violence on 11 December.

184. As part of its public education strategy, the Bureau of Gender Affairs has also collaborated with rehabilitation officers of the Prison and the Attorney General's Chambers to assist in the education of sexual offenders and adolescent males to prepare them for life after prison.

**Table 9**

**Number of crimes reported, investigated and determined to be cases of domestic violence for the period 2002-2004**

Type of crime categorized as domestic violence	Jan.-Dec. 2002	Jan.-Dec. 2003	Jan.-Sept. 2004
Murder	1	2	1
Assault major	13	1	0
Assault minor	281	81	33
Kidnapping	0	0	0
Threat to kill	191	59	88
Other threats	199	29	78
Harassment	26	2	4
Trespass	9	0	1
Disputes	683	321	284
Sex crime	1	0	0
Criminal damage	2	3	0
Total	1 406	498	489

*Source:* Police Research and Development Department.

**Table 10**  
**Report of rape and murder, 1980-2005**

Year	Reported rape	Reported homicide
1980	55	16
1981	62	21
1982	55	19
1983	41	14
1984	62	15
1985	43	17
1986	65	10
1987	38	24
1988	62	20
1989	64	18
1990	71	30
1991	83	19
1992	90	20
1993	99	17
1994	63	18
1995	74	14
1996	76	15
1997	71	12
1998	94	20
1999	68	23
2000	68	20
2001	71	25
2002	96	25
2003	79	33
2004	84	22
2005	77	29

*Source:* Royal Barbados Police Force Statistics.

185. The following NGOs have made direct interventions to combat the issue of domestic violence.

**The National Forum Against Domestic Violence (NFADV)**

186. The National Forum Against Domestic Violence (NFADV) was established in 2002 with the objective of making every Barbadian aware of the effects of domestic violence on individuals and groups, and in so doing reduce the incidence of domestic violence and facilitate the restoration of the family unit. It is comprised of individuals with a common interest in working towards the reduction and eventual elimination of domestic violence in Barbados. The aims of this forum are:

(a) To reduce the incidence of domestic violence in Barbados by educating and offering support mechanisms and services to victims, perpetrators, children and families affected by domestic violence, while at the same time sensitizing the public to the effects of domestic violence on families;

(b) To work in collaboration with other groups and organizations to supplement and complement the services already offered.

187. The NFADV has hosted a number of public forums in furtherance of its aims.

### **The Business and Professional Women's Club of Barbados**

188. In 1986, the Business and Professional Women's Club of Barbados established a "Crisis Centre" offering counselling and support services to victims of abuse who contact them through the Centre's confidential hotline. The Crisis Centre has been able to place some of the women who call the hotline in "safe houses" for short periods.

189. In 1996, the Crisis Centre of the Business and Professional Women's Club in collaboration with the then Bureau of Women's Affairs (now Bureau of Gender Affairs), the Committee of the National Union of Public Workers, the National Organization of Women and PAREDOS (Parent Education for Development in Barbados) co-sponsored a Public Forum on Violence Against Women.

190. A Coordinating Committee to eliminate violence against women emerged out of this public forum. It was given a mandate to plan and implement the strategies for action that resulted from small group discussions.

191. The Coordinating Committee organized a motorcade and rally in 1997 to draw attention to the negative and devastating effects of violence. It facilitated attempts to increase public awareness about the incidence of violence against women and the serious negative effects and implications that it was having on society.

192. In 2003, the Club started the Clothesline Project. This project is a visual display that bears witness to violence against someone. During the display, a clothesline is hung with tee-shirts. Each tee-shirt is decorated to represent a particular women's experience, by the survivor herself or by someone who cares about her. Each shirt tells each woman's story in her own unique way and hangs it out for all to see. When the tee-shirts are displayed together, they are a powerful testimony about the war being waged against women.

193. The goals of the Clothesline Project are to:

(a) Educate the public about the extent, prevalence and impact of violence against women;

(b) Provide a safe forum for women to speak out about the abuse;

(c) Bear witness to victims' experiences.

194. The White Ribbon Campaign began as an initiative of men who recognize that they had a responsibility to urge men to comment and speak out about gender violence. The wearing of a white ribbon by men and boys is a pledge never to commit, condone or remain silent about gender violence. This campaign was launched in Barbados in November 2004 to coincide with the Sixteen Days of Activism Against Violence Against Women.

195. The Business and Professional Women's Club of Barbados in collaboration with Quinnipac University and the Albert Schweitzer Institute in Hamden, Connecticut, U.S.A., hosted a series of training programmes which focused on strategies for the management of Domestic Violence. The Programmes were held from 12 to 18 March 2005. The Club also held a public lecture on the "Impact and Aftermath of Domestic Violence on Adults and Children" on 16 March 2005.

### **PAREDOS (Parent Education for Development in Barbados)**

196. This organization offers services from which abused females benefit, including individual telephone and face to face counselling, education and training programmes on building self-esteem, problem-solving and conflict resolution. PAREDOS has also organized workshops on peer counselling, values and parenting.

### **Network Services Centre**

197. The Network Services Centre works with individuals, companies and schools. It provides counselling to assist persons to cope with and to solve their problems. Several women who have been abused go to the Centre for help.

### **The National Organization of Women**

198. Cognisant of the fact that any attempt to eliminate violence against women must take the views of young people into account, the Bureau of Gender Affairs in collaboration with the National Organization of Women (NOW) implemented a programme entitled "Gender Awareness; Gender based violence and Conflict Resolution" in two secondary schools in November 2002, to mark International Day Against Violence Against Women. This Programme continued in November 2003 and in March 2005.

199. The programme was designed to:

- (a) Raise awareness of the students of the importance and implications of gender and hence start the process of creating a society that accepts gender equality as a national goal;
- (b) Expose students to the issue of gender based violence;
- (c) Introduce the topic of conflict management to reduce the incidences of violence among the school population.

### **The Caribbean Association for Feminist Research and Action**

200. The Caribbean Association for Feminist Research (CAFRA) in fulfilling its commitment to a vision of a world free of violence, pioneered several important projects and research that have provided valuable data, and brought the issue to the forefront.

201. CAFRA also saw the need for a critical mass of actors to enforce the provisions of these instruments, for the benefit of the victim and changed behaviour of the perpetrators of violence. The critical mass of actors identified to assist with curbing the problems are the police and social workers.

202. In 1997/98, UNIFEM and CAFRA collaborated on a one-year campaign to raise public awareness of violence against women. It included the presentation of a draft domestic training manual to the Association of Caribbean Commissioners of Police (ACCP), who reviewed and endorsed it.

### **Article 4**

203. The rules governing States of Emergency in Barbados are mainly found in the Constitution and in the Emergency Powers Act,<sup>14</sup> Cap. 161. Section 25 of the Constitution defines a “period of public emergency” as any period during which:

“(a) Barbados is engaged in any war; or

(b) There is in force a proclamation of the Governor General declaring that a state of public emergency exists; or

(c) There is in force a resolution of each House [of Parliament] supported by the votes of not less than two-thirds of all the members of that House declaring that democratic institutions in Barbados are threatened by subversion.”

204. Section 25 of the Constitution further provides that a proclamation of emergency made by the Governor General is not valid unless it contains declarations that the Governor General is satisfied:

“(a) That a state of emergency has occurred as the result of specified events namely, the imminence of a state of war with another State, earthquake, flood, outbreak of pestilence or infectious disease, or other calamity; or

(b) That action has been taken or is immediately threatened by any person in such a manner and to such extent as to likely endanger the public safety or deprive the community, or any substantial portion of it, of supplies or services essential to life.”

205. Emergency proclamations made by the Governor General may stay in force for up to one month and be extended from time to time for longer periods not exceeding six months by resolution supported by majority vote of the House of Assembly.

206. The Emergency Powers Act, Cap. 161 mainly deals with states of public emergency proclaimed by the Governor General. The Act echoes the Governor General's power to call a state of public emergency as stated in section 25 of the Constitution. It also requires the Governor General to immediately notify Parliament after making the proclamation and enables Cabinet, so long as the proclamation is in force, to make any orders whatsoever which it considers desirable in the public interest. Such orders may provide for:

- (a) The supply and distribution of food, water and other necessities;
- (b) The maintenance of means of transportation by land, air and so forth;
- (c) The taking of possession or control of any property or undertaking as well as the acquisition of any property other than land;
- (d) Entering and searching any premises;
- (e) The payment of a fee to obtain the grant or issue of a licence, permit or other document for the purposes of any order made;
- (f) The payment of remuneration or compensation to persons affected by any order;
- (g) Empowering a specified authority or person to make rules for any of the purposes of the order, containing such incidental provisions as the Cabinet deems necessary for the purposes of the order.

207. Despite Cabinet's broad power to make orders, there is expressly no authorisation to make orders imposing compulsory military service. Additionally, nothing in the Act or in any order may make it an offence for persons to take part in a strike or peacefully persuade others to participate in a strike. Any order that is made must be laid before Parliament as soon as possible after its making. An order will expire after seven days of it being laid before Parliament unless a resolution extending it is passed by both Houses. Expiration of an order will not affect or prejudice the taking of any action or the imposition of any punishment or penalty while the order was in force.

208. The Constitution also deals with states of public emergency under the "fundamental rights" segment where derogation from certain rights and freedoms may be permitted in cases of public emergency or, as stated in some provisions, "in the interests of defence, public safety, public order, public morality, public health ...". These sections of the Constitution are sections 13, 17, 19-23.

### **Section 13 of the Constitution**

209. Section 13 guarantees the right to personal liberty. Subsection (5) provides as follows:

“Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the foregoing provisions of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.”

210. Where subsection (5) is applied, the provisions of subsections (6), (7) and (8) are invoked, limiting and regulating the extent to which any derogation takes place. Where an individual is deprived of liberty pursuant to subsection (5) he must be given a written statement of the grounds for his detention in a language that he understands as soon as is reasonably practicable and, in any case, in no more than five (5) days after the start of his detention. Notification must be published in the Gazette not more than fourteen days after the start of detention, stating that the individual has been detained and giving the particulars of the legal provision authorising the detention.

211. A detainee may request a review of his case at least every three months. Where a request is made the case must be reviewed within a month of the request, by an independent and impartial tribunal established by law and presided over by an attorney-at-law appointed by the Chief Justice. The detained person must be afforded reasonable facilities to consult and instruct an attorney-at-law of his choice, though at his own expense, and he and his attorney may make written and/or oral representations to the tribunal. The tribunal may make recommendations regarding the necessity or expediency of continuing the detention although, unless otherwise provided by law, such recommendations are not binding upon the authority responsible for the detention.

### **Sections 17, 19-23 of the Constitution**

212. Sections 17 and 19-23 guarantee, respectively, the right to (a) protection from arbitrary search or entry, (b) freedom of conscience, (c) freedom of expression, (d) freedom of assembly, (e) freedom of movement and (f) freedom from discrimination. Sections 17 and 19-22 do not specifically permit derogation during a declared state of public emergency but allows it to such extent as is “reasonably required in the interests of defence, public safety, public order, public morality, public health”. Notably, the provisions of section 13 (6), (7) and (8) are repeated *mutatis mutandis* under section 22 in respect of the right to freedom of movement within Barbados and the right to leave Barbados. Hence, the procedures outlined above (para. 206-208) also apply to individuals on whom restrictions are imposed in the interest of public defence, public safety or public order in terms of their movement or residence within Barbados or their right to leave Barbados.

213. Section 23, on the other hand, permits derogation in the state of public emergency from the rules governing protection from discrimination in so far as to authorise the taking of measures “that are reasonably justifiable for the purpose of dealing with the situation that

exists during that period of public emergency". As regards all of these sections (13, 17 and 19-23), the terms, "reasonably required" and "reasonably justifiable" are very significant. Their usage indicates that laws permitting unreasonable or unwarranted derogation from these provisions may be declared unconstitutional and as such are open to scrutiny by the Courts which are separate and impartial. Hence, any derogation from these provisions in the public interest or in public emergency must not be arbitrary.

214. The provisions of the Constitution applying to those Articles of the Covenant from which no derogation is allowed are as follows:

***Article 6 - "right to life"***

Section 12 of the Constitution protects the right to life. No special provisions relate to this section in respect of an emergency. There is therefore no provision for derogation in times of emergency.

***Article 7 - "protection from torture or cruel, inhuman or degrading treatment or punishment"***

Section 15 of the Constitution protects the individual from torture or inhuman or degrading punishment or treatment. There are no special emergency provisions relating to this section and thus no derogation.

***Article 8 - "protection from slavery and servitude"***

Section 14 of the Constitution protects from slavery and servitude. There is no derogation from this provision during periods of emergency.

***Article 11 - "protection from imprisonment on ground of inability to fulfil a contractual obligation"***

The Debtors Act, which abolishes imprisonment for inability to repay a debt (including a penalty in respect of a contract), does not provide for derogation in times of emergency.

***Article 15 - "protection against being held guilty of any criminal offence on account of any act or omission not constituting a criminal offence at time it was committed"***

Section 18 (4) of the Constitution protects this right. There are no special emergency provisions relating to this Article and thus no derogation.

***Article 16 - "protection of the right of recognition as a person before the law"***

There are no special provisions relating to the derogation of this right in respect of an emergency.

**Article 18 - “protection of the right to freedom of thought, conscience and religion”**

Section 19 of the Constitution guarantees this right. However, there is provision for reasonable derogation in the interest of defence, public safety, order, morality or health. Nevertheless, as discussed above, any derogation that may take place would be open to scrutiny by the Courts and must not be arbitrary.

215. It should further be noted that Barbados has not had a period of public emergency since independence and the adoption of the Constitution. There has therefore been no reason to invoke the measures discussed above. The general political and social climate of Barbados is such that the application of these measures has not become necessary and situations warranting use of these measures are not foreseeable. As herein before discussed, Barbados system of governance is marked by free and fair elections. The constitutional right of free speech is commonly exercised by Barbadian citizens including in relation to government and criticism of government activity. Suppression of political dissent, violent political opposition, social unrest and fluctuating economic patterns are not features of the Barbadian social fabric. Barbados varying ethnic and religious groups coexist peacefully and religion is practiced freely without interference from the government. Disputes between individuals may be taken to the Courts which is constitutionally separate from the State and the Executive. Therefore, in Barbados stable climate, provisions enabling derogation from certain constitutional freedoms are available as a precautionary measure in instances of public emergency.

**Article 5**

216. Under the system of common law, where a provision of law is significantly ambiguous or unclear, the Court will construe that provision in accordance with the State’s international obligation under the Covenant. Furthermore, in respect of the rights and freedoms guaranteed under the constitution, the authorities at common law indicate that a “broad and purposive” interpretation will be placed on those provisions.<sup>15</sup> Additionally, an alteration of the provisions of the Constitution relating to fundamental rights and freedoms require a two-thirds majority vote of Parliament.

**Article 6****Inherent right to life**

217. Barbados recognises the individual’s inherent right to life and this right is protected in the Constitution. However, provision is made for circumstances where the life is lost as a result of lawful sentence of death for a criminal offence, a lawful act of war, force reasonably justifiable for (a) self-defence or defence of another person, (b) effecting a lawful arrest or preventing the escape of a person lawfully detained, (c) suppressing a riot or insurrection, (d) preventing the commission of a criminal offence. The reasonableness of any force used would be outlined and delimited by the common law. The judiciary which is separate and impartial would decide given consideration to the circumstances of the particular case as well as to governing laws and principles whether any use of force resulting in death is reasonable, justifiable and within the

limits of the law. Arbitrary deprivation of life is prohibited and punishable by law regardless of whether the perpetrator is a civilian or government official. Where a person goes missing or disappears, the police force investigates to the best of its capabilities and resources in order to recover the missing person unharmed and, in the case of abduction, to bring the abductor or abductors to justice. Offences against liberty, such as kidnapping, are indictable under the Offences Against the Person Act.<sup>16</sup>

*Health care and quality of life*

218. The incidence of infant mortality in Barbados is low. Also individuals generally have long life spans and there are a high proportion of centenarians in the society.

219. There is a consistent and comprehensive inoculation system where children are immunized against polio, small pox, measles and other diseases. Children are first immunised at three months of age, again at four and a half months, then again at six months (basic immunisation) and approximately five times more up till 5 years of age. At age 11 a diphtheria vaccine is administered and should be thereafter boosted every 10 years. It should be noted however that the vaccination requirements or guidelines may change or vary with time.

220. Before entering school, children must be immunised against diphtheria, measles, poliomyelitis and tetanus. The Health Services (Communicable and Notifiable Diseases) Regulations<sup>17</sup> prohibits a head teacher from admitting a student to his or her school without an immunisation certificate to this effect, giving exception to those presenting with:

- (a) A valid medical certificate stating that the child has suffered from any such disease;
- (b) A valid medical certificate stating that immunisation is not advisable on medical grounds; or
- (c) An affidavit stating the parent or guardian's religious persuasion and swearing that he or she objects on religious grounds to the child's immunisation.

221. There is a system of free health care provided via a number of polyclinics and the government-owned hospital. Free medication is also provided for children under 16 years of age, senior citizens (60 + years) and persons suffering from certain chronic illnesses. Medication for HIV/AIDS related illnesses are, for example, available to sufferers free of cost. There is also in place a welfare system and a social security system. Efforts are continuously made to improve the state and quality of social services as far as resources and capabilities permit.

222. The following table reflects certain health statistics pertaining to Barbados as of 2003, and in some cases, 2002.

**Table 11**  
**Health indicators**

Indicator	Value
Life expectancy at birth (years) 2003	
Total population	75.0
Males	71.0
Females	78.0
Child mortality (probability of dying under age 5 years) (per 1 000) 2003	
Males	14
Females	12
Adult mortality (probability of dying between 15 and 59) (per 1 000) 2003	
Males	189
Females	106
Healthy life expectancy at birth (years) 2002	
Total population	65.6
Males	62.9
Females	68.2
Healthy life expectancy at age 60 (years) 2002	
Males at age 60	13.1
Females at age 60	16.6
Expectation of lost healthy years at birth due to poor health (years) 2002	
Males	7.6
Females	9.8
Percentage of total life expectancy lost due to poor health (per cent) 2002	
Males	10.7
Females	12.5
<b>Selected national health accounts indicators</b>	
Per capita GDP in international dollars, 2002 graph	14 661
Total health expenditure	
Total expenditure on health as per cent of GDP, 2002 graph	6.9
Per capita total expenditure on health at average exchange rate (US\$), 2002 graph <sup>7</sup>	669
Per capita total expenditure on health in international dollars, 2002 graph	1 018
Public health expenditure	
General Government expenditure on health as per cent of total expenditure on health, 2002 graph	68.4
General Government expenditure on health as per cent of total general government expenditure, 2002 graph	12.3
Per capita government expenditure on health at average exchange rate (US\$), 2002 graph	458
Per capita government expenditure on health in international dollars, 2002 graph	696

**Table 11 (continued)**

Indicator	Value
Sources of public health expenditure	
Social security expenditure on health as per cent of general government expenditure on health, 2002 graph	.0
External resources for health as per cent of total expenditure on health, 2002 graph	4.2
Private health expenditure	
Private expenditure on health as per cent of total expenditure on health, 2002 graph	31.6
Sources of private health expenditure	
Prepaid plans as per cent of private expenditure on health, 2002 graph	22.8
Out-of-pocket expenditure on health as per cent of private expenditure on health, 2002 graph	77.20

*Source:* These figures are taken from the WHO website in respect of Health indicators from the latest World Health Report for each of the 192 WHO Member States. Please refer to this link: <http://www3.who.int/whosis/country/indicators.cfm?country=brb&language=en#economic>.

#### *Respect for right to life of all peoples*

223. Barbados also recognises the right to life of all peoples. Barbados is party to a number of human rights conventions that recognise, promote and protect this right, namely, the Convention on the Prevention and Punishment of Crimes of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and its First Optional Protocol, the American Convention on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

224. Barbados has never committed acts of aggression against other States, initiated or threatened to initiate warfare, nor has Barbados ever sought to settle its disputes with other states by any means other than negotiation, arbitration and other peaceful methods of dispute settlement available at the international level. Moreover, Barbados does not possess, proliferate or intend to possess or proliferate nuclear, chemical or biological weapons or nuclear, chemical or biological weapon technology. Barbados enjoys a reputation in the international community for being peaceful, respectful of human rights and reliable with regard to honouring commitments.

#### **The death penalty**

225. The sentence of death is imposed for murder, high treason and certain military offences such as aiding the enemy and mutiny. Under section 2 of the Offences Against the Person Act, Cap. 141,<sup>18</sup> death is the mandatory sentence for murder and under section 3 of the Anti-terrorism Act, Cap. 158,<sup>19</sup> where acts amount to murder, the mandatory sentence is also death. Under section 7 of the Treason Act, Cap. 155A death is mandatory for high treason.

226. Consequent to amendments made to the Constitution in 2002, the following are not in contravention to section 15 of the Constitution:

- (a) The imposition and execution of a mandatory sentence of death;
- (b) Any delay in executing a lawfully imposed sentence of death; and
- (c) The holding of any person, lawfully detained pending execution, in conditions and under arrangements prescribed by the Prisons Act or regularly practised in Barbados immediately prior to the coming into operation of the 2002 constitutional amendments.

227. The Government of Barbados considers its system of meting out capital punishment to be fair and consistent with its obligations under the Covenant, as accused persons are accorded due process. According to section 18 of the Constitution any person charged with a criminal offence is presumed innocent until he or she is proved or has pleaded guilty. In the case of murder and other indictable offences a preliminary enquiry is carried out in the Magistrates Court to determine whether there is a case to be answered and whether the accused should stand trial in the High Court. If bound over for trial the accused is tried before a jury of his/her peers with a Judge presiding over proceedings. Throughout the process, including the arrest and proceedings in the lower Court, the accused is permitted access to, consultation with and representation by an attorney-at-law of his/her choice at his/her own expense or through the system of legal aid. The accused is also permitted to represent himself if he so chooses but in such an instance the judge must lend him assistance.<sup>20</sup>

228. Furthermore, Barbados disputes that the mandatory nature of the administration of capital punishment is arbitrary or contrary to the provisions of the Covenant. It is Barbados position that a textual interpretation of the Covenant could not lead to the conclusion that the mandatory death penalty is arbitrary. The prestigious *Oxford English Dictionary* and case-law from a number of other common law jurisdictions namely England,<sup>21</sup> South Africa and New Zealand<sup>22</sup> indicate that in its ordinary sense the word “arbitrary” means: unreasonable, capricious, not based upon reason or principle, dependent on will or pleasure, unrestrained exercise of will, uncontrolled power “not in accordance with the law or... not in accordance with the principles which the law regards as appropriate for a discretion to be operated within”.<sup>23</sup>

229. Therefore, Barbados maintains that any form of capital punishment, including mandatory capital punishment, which is imposed in accordance with pre-existing law after a full and fair legal hearing cannot be deemed arbitrary. Barbados form of capital punishment is entirely in accordance with the law. It does not fall under the categories of unrestrained exercise of will or uncontrolled power. It is not capricious, nor is it unreasonable or without reasonable cause. Thus, under a textual interpretation of the term, Barbados form of capital punishment cannot be considered arbitrary.

230. In any event, article 6 of the Covenant was clearly framed so as to permit states which already imposed the death penalty to continue to do so. Furthermore, since many of the states parties provided for mandatory forms of capital punishment in their domestic laws at the time of the drafting of the Covenant and no express provision prohibiting mandatory capital punishment was included, the intention of the Covenant cannot have been to exclude the mandatory death sentence. In any event, the meaning of the word “arbitrary” in relation to criminal hearings and

punishments should be interpreted in light of other provisions of the Covenant, that is to say, in the context of the considerations of fairness and due process which the Covenant mandates and protects. These principles of fairness and due process<sup>24</sup> are embodied in the provisions of the Barbados Constitution.<sup>25</sup>

231. Additionally, the reality is that a murder accused is afforded a number of defenses under the common law and by the Offences Against the Person Act 1994. These defenses, once accepted by the jury, would permit a finding of innocence or guilt for the lesser offence of manslaughter. A verdict of guilt by reason of manslaughter eliminates the death penalty as a sentencing option. Such defenses include provocation, self-defense, insanity, diminished responsibility and accident to name a few. Furthermore, the Offences Against the Person Act provides that if certain elements of an offence that would otherwise constitute murder are proved, the crime would amount to a lesser offence punishable by a prescribed maximum prison sentence or life imprisonment. These lesser offences include:

- (a) Killing in the course or furtherance of some other offence;
- (b) Attempted murder;
- (c) Conspiracy to murder;
- (d) Aiding suicide;
- (e) Infanticide.<sup>26</sup>

232. Also, there is legislation that prohibits the execution of pregnant women and minors.

233. As regards recourse after trial, the verdict may be appealed and the convicted person has a right to apply for pardon, amnesty or commutation of the sentence of death. Such pardon, amnesty or commutation is granted by the Governor General on the advice of the Privy Council.<sup>27</sup> This body along with the Governor General exercises the Executive's prerogative of mercy and is also known as the "Mercy Committee".

#### *Mercy proceedings*

234. The powers and duties of the local Privy Council are set out in section 76 of the Constitution and its proceedings are set out in section 77. As regards the nature of the Privy Council, it is constituted by eminent members of the Executive (previous and present, without reference to partisan political consideration). In recent times the Privy Council's established practice has been that:

- (a) Under section 78 (3) of the Constitution the trial judge must send the report of the trial to the Governor General whenever there has been a conviction for murder returned;
- (b) If the convicted person appeals and the Court of Appeal dismisses the appeal, then the Court of Appeal forwards the complete record within twenty-one days of its dismissing the appeal to the clerk of the Privy Council;

(c) Thereafter the clerk alerts the prisoner that the matter will be considered by the Governor General and the Privy Council and that written representations may be made pursuant to section 78 (5) of the Constitution, as amended by the Constitution (Amendment) Act 2002-14;

(d) Further the clerk, upon the instruction of the Governor General, requests reports from the superintendent of prisons, commissioner of police, chaplain of the prison, as well as a psychiatric evaluation and any other material or reports as deemed necessary to be considered;

(e) The clerk of the Privy Council forwards all of the material to the convicted person to allow him or her to make written representations either directly or through an attorney-at-law, if he or she so desires.

235. If the Privy Council advises the Governor General to commute the sentence of death then capital punishment will not be applied. If the Privy Council advises the Governor General not to commute the sentence of death, then he will sign the death warrant, which is then served on the superintendent of prisons and the convicted person by the Chief Marshal. The practice has always been and continues to be that the warrant is served five days before the date of execution so as to allow the convicted person the opportunity to both meet with family and his or her attorney-at-law and to apply for a stay of execution of the death warrant.

#### *Recourse to the courts*

236. It is customary for the condemned person to make an application to the High Court for a stay of execution of the warrant so as to allow that person to exercise the right to apply for leave to appeal to the Judicial Committee of the Privy Council or the Caribbean Court of Justice, as the case may be,<sup>28</sup> if he or she so desires. Such stays are granted as a matter of course.

237. If the Caribbean Court of Justice refuses leave to appeal or dismisses the appeal having heard it, the condemned person may file a constitutional motion seeking to prevent the administration of the death penalty on constitutional grounds and this is typically the course that is taken. A constitutional motion, being a freshly initiated proceeding, entitles the applicant to be heard by both the High Court and Court of Appeal of Barbados. It may also be appealed to the Caribbean Court of Justice. It is only if this process is unsuccessful that resort is then made to the Inter-American human rights system or to the United Nations Human Rights Committee.

**What is the status of the Constitutional (Amendment) Act 2002, which seeks to limit the length of time granted to condemned prisoners (including prisoners under sentence of death) to appeal to intergovernmental human rights bodies, such as the Human Rights Committee? How is this provision compatible with the obligations of Barbados as State party to the Covenant and its First Optional Protocol?**

238. The Constitution (Amendment) Act 2002 has the force of law in Barbados. The provision to which the Committee refers allows the Governor General to set time parameters for matters pending before the Committee so as to avoid unnecessary or undue delays in the appeals process.

**Given that the death penalty may only be imposed for “the most serious crimes” (article 6, paragraph 2 of the Covenant), please provide detailed information on the crimes that carry the death penalty, and for which of them the death sentence is mandatory. Please provide statistics for the past five years on the number of death sentences and the number of executions carried out, as well as the number of condemned prisoners currently awaiting execution.**

239. In Barbados the sentence of death may be imposed only for murder, high treason and certain military offences such as aiding the enemy and mutiny. In addition, under section 2 of the Offences Against the Person Act, Cap. 141, the mandatory sentence for murder is death. By virtue of section 3 of the Anti-terrorism Act, Cap. 158, the mandatory sentence for murder is also death where acts prohibited under that section result in death and where such acts would have constituted murder or treason prior to the enactment of the said Act.

240. High treason is stated in the Treason Act 1979 to be committed by anyone who:

- (a) Kills or attempts to kill Her Majesty, the Governor General or any person performing the functions of Governor General under the Constitution;
- (b) Does any bodily harm to any person referred to in paragraph (a) leading to death or destruction;
- (c) Levies war against Barbados or does any act preparatory thereto; or
- (d) Assists an enemy at war with Barbados, or any armed forces against whom Her Majesty’s Forces raised in Barbados are engaged in hostilities whether or not a state of war exists between Barbados and the country whose forces they are.

241. As at the end of 2005:

Condemned prisoners awaiting execution	6
Executions carried out over the past five years	0
Death sentences issued over the past five years	15

**Does the State party envisage the ratification of the Second Optional Protocol to the Covenant?**

242. Capital punishment is a part of Barbados domestic law, which negates ratifying the second optional protocol at this time. Barbados recognises and values the binding international legal obligations it has accepted under international and regional treaties. It affirms its obligations to its representative democratic system as well as to respect the fundamental rights of the individual. In this regard the application of capital punishment, once such a punishment has been democratically chosen by the people, upholds the democratic process. It upholds the right for the people to decide, through their elected representatives, on the most fundamental aspects of their legal and moral order. This respect for the democratic will of the people affirms the right to self-determination and Barbados, in exercising this right, has chosen capital punishment as a

form of punishment. This is further strengthened by the fact that the Government has chosen to uphold the position to respect the right and responsibility of all citizens to participate in decisions on their own development.

## **Article 7**

### **Laws penalizing torture, inhuman and degrading treatment**

243. Section 15 (1) of the Constitution protects against torture or inhuman or degrading punishment or other treatment and provides that constitutional redress may be sought in the High Court. Civil redress is also available under the law of tort where damages commensurate with consequent injury, damage and loss may be awarded and where, in cases against government officials, such damages may include punitive damages. In criminal law, a case of this nature would most likely be brought under the Offences Against the Person Act which protects against, inter alia, assault, “offences against liberty” such as kidnapping and wrongful confinement, inflicting bodily harm, endangering life or safety and acts intended to cause serious bodily harm. Penalties for convictions on indictment, apart from murder, range from 10 years imprisonment or a fine or both to life imprisonment.

244. Corporal punishment is not outlawed as a mode of discipline in schools and “reformatory and industrial schools” (where juvenile offenders are committed) and is subject to guidelines to ensure it is not applied excessively or inhumanely. The Government and the people of Barbados do not view corporal punishment as torture, inhuman or degrading in and of itself but recognise that its improper use can amount to such and therefore it is permitted under strict regulation only.

245. The Constitution at section 15 (2) and (3) expresses that the following do not constitute torture, inhuman or degrading punishment or treatment:

- Punishments and treatment lawfully authorised prior to Barbados independence (30 November 1966);
- The imposition and execution of the mandatory death sentence;
- Any delay in executing a lawfully imposed death sentence;
- Prison conditions prescribed by the Prison Act or otherwise practised in respect of condemned prisoners prior to the enactment of the Constitution Amendment Act 2002.

246. Additionally, section 26, also known as the “savings clause”, saves all existing laws made prior to the independence from being construed as inconsistent with sections 12-23 of the Constitution. This is a common feature in Commonwealth Caribbean Constitutions.

### **Application of the death penalty**

247. As previously stated the death penalty is mandatory for murder and high treason. It is administered by hanging and carried out on the prison grounds. The Prisons Act, Cap. 168 provides that the officer-in-charge must satisfy himself that every precaution is taken to ensure

efficiency and dispatch and that all appliances to be used at executions are maintained in good condition. Unless otherwise authorized in writing by the Minister of Home Affairs, the execution may only be attended by the Chief Marshal, the officer-in-charge, the public executioner, the medical officer, the chaplain or minister of the prisoner's religious denomination and any other prison officers as the officer-in-charge may direct. Therefore, provision is made for the execution to be as quick and as private as possible.

## **General prison conditions and treatment**

### *Prison officers*

248. The Prisons Act, Cap. 168 establishes the Barbados Prison Service, which comprises a superintendent and duly authorised or appointed prison officers. The administration of the Prison Service and the control and supervision of all prisoners is vested in the superintendent, subject to the Minister of Home Affairs. An "officer-in-charge" may be the superintendent or the prison officer appointed by the superintendent to be officer in charge of any prison. The officer-in-charge must supervise and control all matters in connection with the prison, keep or cause to be kept such records as the superintendent may from time to time direct, and be responsible to the superintendent for the treatment of prison officers and prisoners under his control and for the due observance by prison officers and prisoners of all rules, directions and orders made under the Prisons Act. As applies specifically to women, there must be in every woman's prison, a female prison officer charged with the care and the superintendence of the women prisoners, and with responsibility for their discipline.

### *Prison's advisory board*

249. The Prisons Act additionally provides for the Minister of Home Affairs to appoint an advisory board, one member of which must be a magistrate. This magistrate is, *ex officio*, the Visiting Justice of Prisons. The Board must advise the Minister on matters relating to, *inter alia*, prisoner welfare, including conduct, standards of discipline and safety and any other matter on which the Minister seeks its advice. The Board is also required to advise the superintendent on:

- (a) Management and supervision of prisons;
- (b) Welfare, discipline and conduct of prison officers;
- (c) Prisoner education, recreation, employment, discipline and welfare;
- (d) Any other matter referred to the advisory board by the superintendent.

250. Under the Prisons Rules, Cap 168A, members of the advisory board must make frequent visits to the prison. Except at the request of the board neither the superintendent nor the officer-in-charge nor the next senior officer is permitted to accompany the members of the board during a visit of inspection. Only a prison officer or a prison employee may accompany members of the board on such visits. The board and all its members have free access to all parts of the prison and all prisoners either in their cells or in a room out of sight and hearing of prison

officers if so desired by the board or any of its members. The board is mandated to hear and investigate any complaint or application which a prisoner makes to it and if necessary to report the same with its opinion to the Minister of Home Affairs. The board is required to immediately notify the Minister of all abuses regarding the prisons that come to its knowledge.

#### *Use of force*

251. As regards the use of force against prisoners, a prison officer may use such force as is reasonably necessary in order to make a prisoner obey lawful orders which he refuses to obey or in order to maintain discipline in the prison. Prison officers may not use force unnecessarily and where the use of force is warranted it may not be used excessively. An officer must not deliberately act in a manner calculated to provoke a prisoner. An officer that uses force against a prisoner must have the prisoner examined by the medical officer as soon as possible and must immediately report the incident to the officer-in-charge. Additionally, although selected prisoners may be given positions of leadership and responsibility, they may not be employed in any disciplinary capacity with the result that no prisoner ever has authority over another.

252. A prison officer may use firearms against a prisoner but only under the following conditions:

- (a) If the prisoner is escaping or attempting to escape and refuses when called upon to return;
- (b) If the prisoner is engaged in with other persons in breaking out or attempting to break out of any part of the prison and when called upon to disengage is continues the break or attempted break out;
- (c) If he is engaged with others in riotous behaviour and refuses to desist when called upon; or
- (d) If the prisoner is endangering the life or is likely to inflict grave injury to the prison officer or another person and the use of firearms is the only practicable way of controlling the prisoner.

253. Strict rules also govern the use of mechanical restraints. These are not to be used as a punishment or for any purpose other than (a) for safe custody during removal, (b) out of necessity to prevent the prisoner injuring himself or others, (c) out of necessity to prevent the prisoner damaging property or creating a disturbance, or (d) on medical grounds by direction of the medical officer. Where a prisoner is placed under mechanical restraint by the officer-in-charge to prevent injury or damage to property, the officer-in-charge is required to immediately notify the Visiting Justice and the medical officer. The medical officer is required to immediately upon receipt of notice to inform the officer-in-charge whether or not he concurs with the use of restraint and the officer-in-charge must follow the recommendations of the medical officer. A prisoner may not be kept in mechanical restraints for longer than is necessary and in any event for no more than a 24-hour period unless a written order from the Visiting Justice or the Minister of Home Affairs is given, specifying the cause for prolonging restraint

and the time during which the prisoner is to be restrained. Notably, any official act or act of Government may be reviewed under the Administrative Justice Act, Cap. 109 B. Prisoners can make an application for judicial review of such orders.

254. Prisoners are granted visitation with relatives and with attorneys-at-law. Under section 84 of the Prison Rules, reasonable facilities must be allowed for the legal advisor of a prisoner party to legal proceedings, whether civil or criminal, to interview his client with reference to those proceedings and, with permission of the officer-in-charge, on any other legal business, in the sight of though not in the hearing of a prison officer.

*Religious, educational and other facilities*

255. Provision is also made for religious instruction, education, physical exercise and, subject to recommendations of the medical officer, medical care. The religious denomination of each prisoner is ascertained and recorded and the prisoner is to be treated as part of that denomination. Adequate arrangements are to be made for the provision of religious ministrations to prisoners. Additionally, section 73 of the Prison Rules provides that programmes and evening classes shall be arranged and reasonable facilities allowed to prisoners who in their leisure time wish to improve their education by private study or who wish to practise handicrafts. Provision is also made for special attention to be paid to the education of illiterate inmates.

**Please comment on alleged instances of ill-treatment of persons by the police, the number of investigations conducted by the Office of Professional Responsibility and the outcome of such investigations in recent years. According to information before the Committee, a law was adopted in 2001 creating an independent board to review complaints against the police. What is the status of the entity?**

256. Section 15 (1) of the Constitution provides that no person be subjected to torture or to inhuman or degrading punishment or other treatment. This fundamental principle has always informed the official police policy and practice in this country. Further the Royal Barbados Police Force has in place a policy governing the use of force which provides specific guidelines regarding the issue and use of firearms and the use of life threatening and non-deadly force by members of the Force. It is instructive to note that a copy of this policy must be issued to all members of the Force and appropriate training provided with regard to the directions in this policy prior to an officer being authorized to carry a weapon.

257. In this regard, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, are implemented by the Police Force.

258. In addition to this, the Police Force has recently developed a training manual on a graduated use of force. The purpose is to ensure that officers use a graduated approach to the application of force thus making the use of deadly force a last resort. The experience of the Police Force has been that despite the best efforts of its administration, occasional reports of

improper police conduct have been made. Such reports are always thoroughly investigated and dealt with as provided by the laws of the country and the Discipline Code of the Royal Police Force.

259. Allegations of ill-treatment by the Royal Barbados Police Force may be lodged at the Force's Office of Professional Responsibility, which investigates such complaints and refers cases to the Director of Public Prosecution for his determination. In response to a desire to have an independent system of investigation of complaints against policemen and thereby strengthening the transparency and accountability of the Force, Barbados enacted the Police Complaints Authority Act on 1 May 2004. This body established the Police Complaints Authority which provides equal opportunity for complainant and defendant alike to participate in a tribunal process.

260. As an indication of its commitment to transparency within its ranks, the Royal Barbados Police Force is an accredited force and received initial accreditation on 26 July 1997 by the Commission on Accreditation for Law Enforcement Agencies Inc. This United States-based agency maintains some 445 standards, 25 per cent of which involve human rights and the treatment of prisoners in police custody. It is further noted that the Standard Operation Procedures of the Royal Police Force fully reflect the standards that are set by the Commission on Accreditations.

261. At the end of 2005 there were 1528 members of the Police Force. During the years 2004 and 2005, 172 complaints were made against police officers by members of the public.

**Table 12**

**Complaint against police officers**

Type of complaint	2004	2005
Unprofessional conduct	98	52
Assault	46	44
Non-action	21	44
Threats	5	32
Harassment	2	0
Total	172	172

**What type of human rights training, if any, is provided for members of the armed forces and the police, in particular concerning respect for the right to life and physical integrity?**

262. Human rights training is a critical component of the Force's training agenda. This training starts at the recruitment level and is reinforced and upgraded at all levels. At recruitment level, the recruits are exposed to the rudiments of human rights including:

- The Constitution;
- The rights of persons in custody;
- The Judges' Rules;

- How to conduct interviews;
- The use of force policies;
- Laws of evidence.

263. These areas are viewed as essential elements for on the job skills. Furthermore, members of the Police Force are trained in other areas of human rights, particularly those that are relate to:

- Gender;
- Child rights;
- Rules of Law;
- Sexual exploitation;
- Trafficking of people;
- Peacekeeping;
- Modern conflict.

264. Some of this training is conducted overseas. The right to life and physical integrity is emphasized throughout the training. In addition, a great deal of emphasis is placed on restrictions concerning the use of force.

265. Special training to improve interviewing techniques has also been introduced and some 959 police officers have been trained over the last two years. These sessions are conducted over a two week period by police officers who have been specifically trained in this area.

**Have steps been taken to define torture in domestic legislation? Does the State party envisage accession to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment?**

266. The Evidence Act makes references to avoiding excessive force which has a similar connotation to torture. Similarly in the Prisons Act, medical records take note of any bruises so as to ensure excessive force has not been used with prisoners. The Constitution of Barbados adequately protects against torture in various forms. Section 15 of the Constitution provides that no person be subjected to torture or to inhumane or degrading punishment or other treatment.

**Article 8**

267. Section 14 of the Constitution reads as follows:

- “(1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression “forced labour” does not include:

(a) Any labour required in consequence of the sentence or order of a Court;

(b) Any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a Court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such, or, in the case of a person who has conscientious objections to service as a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(d) Any labour required during any period when Barbados is at war or in the event of any hurricane, earthquake, flood, fire or other like calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that calamity, for the purpose of dealing with that situation.”

268. As regards trafficking in persons please see paragraphs 152-159 of this report.

### **Article 9**

269. The circumstances under which a person may be deprived of his or her liberty are provided under section 13 of the Constitution. The constitutional provisions protecting the human rights of arrested or detained individuals are embodied in subsections (2) and (3) of section 13. Subsection (2) sets out the individual’s rights upon arrest or detention in general, namely:

- The right to be informed in a language he or she understands, of the reason for his or her detention;
- To have private consultation with an attorney-at-law and;
- In the case of a minor, to have opportunity to communicate with a parent or guardian.

270. Subsection (3) sets out additional rights that apply to persons detained on suspicion of having committed or being about to commit a criminal offence or to persons being brought before a Court in execution of a Court order.

### **Criminally arrested or detained persons**

271. Section 13 (3) of the Constitution provides that, where an individual referred to thereunder is not released, he or she shall be brought before a Court as soon as is reasonably practicable. This subsection also provides in the case of a person detained on suspicion of committing an offence, that such a person, if not tried within a reasonable time, shall without prejudice to further proceedings that may be brought against him or her, be released either

unconditionally or subject to reasonable conditions. Such conditions may include those reasonably necessary to ensure a person's appearance to trial or proceedings preliminary thereto.

272. In practice and in accordance with the parameters set out by case-law, an arrested or detained person may not, in ordinary circumstances, be detained without charge for more than 48 hours. After having been charged, such an individual must be brought before a Court as soon as reasonably practicable, usually the next sitting of the Magistrates Court which sits all day<sup>29</sup> during the week and half-day<sup>30</sup> on Saturdays. Therefore, a suspect will in most cases come before a Court the same or following day that he is charged. In other instances, he may appear before a magistrate a little over a day after being charged but he is not likely to be held for as much as 48 hours after having been charged.

273. Alternatively, where it is not practicable to bring a person in custody before a magistrate within 24 hours, a police officer not below the rank of inspector or a police officer in charge of the police station must grant that person police or "station" bail<sup>31</sup> if the offence is not one punishable with imprisonment.<sup>32</sup> If the offence is so punishable but does not appear to be a serious offence, such officer may grant bail. In either case, bail may be granted with or without sureties<sup>33</sup> subject to a duty to appear before a magistrate at a time appointed by the officer.

274. However, in the cases of charges of murder, treason and firearm offences, bail may not be granted by a magistrate. Persons charged with these offences are remanded to prison until applications may be made to and heard by a High Court Judge.<sup>34</sup>

275. Where bail is denied in the Magistrates Court, application may be made to the High Court thereafter for bail. If bail is there denied, the applicant may continue to apply to the High Court from time to time for the matter to be reconsidered.

#### *Habeas corpus*

276. Where a person has been detained for an inordinate period without having been brought before a court, a writ of habeas corpus may be filed on his behalf. This is an old common law remedy which results in the detainee being brought before the court and an application being heard for his release. Upon hearing the arguments of the parties involved, the court may make such orders as it sees fit such as an order for the immediate and unconditional release of the detainee or an order that he be promptly charged and brought before a court of law for due process to take its course. Additionally, civil redress may be obtained through the courts for unlawful arrest or detention by any other person.<sup>35</sup>

#### **Section 13, subsection (1) (g) of the Constitution**

277. This section provides for the deprivation of liberty for the purpose of preventing the spread of an infectious or contagious disease.

#### *Deprivation of liberty due to infectious disease*

278. The Health Services (Communicable and Notifiable Diseases) Regulations, 1969 Cap. 44<sup>36</sup> gives the Medical Officer of Health, subject to directions or approval, of the Chief Medical Officer, power to, inter alia:

- (a) Have any premises examined and inspected, and have done therein or thereto such things as may be necessary for preventing the spread of any communicable or notifiable disease;<sup>37</sup>
- (b) Isolate or place under surveillance, any case or suspected case of a communicable disease or any carrier or suspected carrier or any contact<sup>38</sup> or any child or any teacher who refuses to be examined, treated or immunised in relation to a suspected case of a communicable disease;
- (c) Isolate any person suffering from a communicable disease either in his or her residence or elsewhere until such time as the person is no longer infectious;
- (d) Isolate contacts or persons attending on a case of a communicable disease or of a carrier or to place them under surveillance, subject to conditions as deemed necessary, and isolation may be substituted at any time instead of surveillance if the chief medical officer is satisfied that the surveillance conditions are not being adhered to;
- (e) Order the evacuation of any premises in which there is a case or suspected case of a communicable disease;
- (f) Order removal of any person suffering from a communicable disease from a ship to an isolation station or hospital;
- (g) Order the removal to hospital and detention in hospital of any person suffering from a communicable disease until that person is deemed no longer infectious;
- (h) Isolate or detain in hospital or elsewhere, any person suffering from a communicable disease or any carrier who is incapable of taking proper precautions to prevent the spread of disease or to provide himself with proper accommodation or care.

279. Deprivation of liberty pursuant to these provisions would be temporary and effected for the benefit of the health of the detained or isolated individual as well as the public health and safety. The individual in isolation would be treated for his or her illness as any other ill person would be but in conditions that prevent the spread of the “communicable” disease. Such an isolated individual would be informed of the reasons for detention as section 13 (2) of the Constitution provides however the opportunity for communications with third parties would likely be subject to the interest of public health and safety.

280. By the same token, section 12 prohibits persons from committing certain acts that would spread or encourage the spread of a communicable disease such as, inter alia:

- Suffering from a communicable disease and nevertheless exposing oneself in a public place or public resort or entering a public building or public conveyance;
- Knowing or suspecting oneself to be suffering from a communicable disease or to be a contact or a carrier and nevertheless entering, taking or using a book or other reading article from or returning the same to a public library;

- Entering or leaving an isolation station where a sufferer of a communicable disease or a contact is isolated without the appropriate organization to do so;
- Being a sufferer of a communicable disease or a contact placed in isolation and nevertheless leaving the isolation station without appropriate authorisation.

281. Contravention of any of the provisions of the Regulations amounts to a criminal offence punishable by fine or no more than twelve months incarceration. In this instance, that is, the arrest or detention of a person suspected of being in contravention of the Health Services (Communicable and Notifiable Diseases) Regulations, the safeguards provided by subsections (2) and (3) of section 13 of the Constitution would apply.

### **Section 13, subsection (1) (h) of the Constitution**

282. This section provides for the deprivation of liberty for the purpose of the care and treatment of a person who is of unsound mind, addicted to drugs or a vagrant.

#### *Mental illness*

283. The Mental Health Act, Cap. 46, which was referred to in Barbados' previous report, no longer bears application as it has been repealed. Under the Mental Health Act, Cap. 45<sup>39</sup> a person may be admitted to a mental hospital as a "voluntary patient", a "medically recommended patient", or a "hospital order patient". A voluntary patient is one who is admitted under the following conditions:

- Where that person requests admission or admission is requested on said person's behalf;
- Where, in the consultant psychiatrist's opinion, said person is or appears to be suffering from mental disorder.

284. In the case of a minor, admission based on the request of a parent or guardian on the minor's behalf qualifies as a voluntary admission.

285. However, a voluntary patient is entitled to be discharged from the hospital 24 hours after submission of a written application for admission. Nonetheless, if the senior consultant psychiatrist or medical practitioner employed at the hospital, authorized by the senior consultant psychiatrist for this purpose, certifies that a voluntarily admitted patient requires further medical treatment, the senior consultant psychiatrist or authorized medical practitioner may re-admit the patient as a medically recommended patient upon receipt of another medical certificate of the same effect and signed by an independent medical practitioner.

286. The conditions under which a patient is deemed to be medically recommended are circumstances where:

- An application signed by a parent or guardian is made to the mental hospital on behalf of the patient;

- A medical certificate in duly approved form is completed within 24 hours of examination of the patient and signed by two other medical practitioners, one of whom may be employed at the hospital and both of whom must bear no affinity to the patient or to each other.

287. It is also possible to submit two separate medical certificates both of which must contain the prescribed information<sup>40</sup> and must be completed within seven days of each other.

288. Where, in the opinion of a court, an accused person charged before it is or appears to be suffering from mental disorder, the court may order that person to be admitted to a mental hospital for a period not exceeding eight weeks. An individual admitted in this way may only be discharged with the approval of the court that ordered his admission, subject to whatever conditions the court may specify.

289. Additionally, the High Court must order a person on trial before it to be detained in a mental hospital “until Her Majesty’s pleasure is known” where that person on trial is found:

- (a) Unfit to plead;
- (b) Not guilty by reason of insanity;
- (c) Guilty but suffering from diminished responsibility.

290. The Governor General may then order the safe custody of that person during such detention. The Governor General may also by warrant discharge absolutely or conditionally any such detained person.<sup>41</sup>

291. A police officer of a rank no lower than sergeant, or a lower ranked officer acting under the authority of such highly ranked officer, may take into custody without a warrant and convey directly to a mental hospital a person whom, whether by virtue of that person’s general appearance or conduct in conversation, the officer reasonably believes to be suffering from mental disorder and in respect of whom the officer has been so notified by a mental health officer. Where any police officer is informed by a mental health officer that a person suspected of being of unsound mind is on any premises, that officer may obtain a warrant, enter the premises and take that person into custody.

292. A police officer that takes any person into custody in either of these circumstances may elect not to charge the individual but instead convey him to the mental hospital which the officer is in any case required to do within 24 hours of taking the person into custody. Thereafter, the officer must as soon as possible inform the person’s relatives and next-of-kin of his having been taken into custody and the reasons therefor. The officer is also required to make arrangements for the relatives of the next-of-kin to communicate with the person in custody. A person who is conveyed to a mental hospital may be examined and admitted for no more that 72 hours unless upon examination said person is found to require further treatment. In this case the senior consultant psychiatrist may authorize the change of the person’s status to that of medically recommended patient.

293. Notably, patients of a mental hospital may be granted special leave subject to prescribed conditions.<sup>42</sup> Admitted persons who leave a mental facility without permission may be apprehended by a police officer without warrant and returned to the facility.<sup>43</sup>

294. The special constitution of a board known as the Mental Health Review Board is authorized by the Mental Health Act for the purpose of hearing applications by and in respect of patients, namely applications contending that the patient's detention at a mental institution is unreasonable.

295. The board consists of a number of persons from the legal and medical professions as well as persons appointed by the Minister of Health having such knowledge of social services or such qualifications as the Minister deems appropriate. The power of the Board to deal with patient applications may be properly exercised by any three of its members provided that one is selected from the pool of medical members, another from the legal membership and the other from the members that are neither medically or legally inclined.<sup>44</sup>

296. The Act prescribes that, in the exercise of its powers the Board shall, within 28 days of the receipt of the application:

- (a) Have the patient brought before it to be questioned;
- (b) Ascertain the reasons for the detention and examine the grounds in support of the application;
- (c) Where it deems necessary, cause the patient to be medically examined further;
- (d) Hear such further evidence as may be relevant to the application.

297. The Board may dismiss the application or order the discharge of a patient and it may make such order for the payment of costs as it sees fit. Additionally, a right of appeal, which must be exercised within fourteen days of the Board's decision, lies to the High Court of Justice.

298. This Act further provides for the protection of patients from sexual and physical abuse and the management of a patient's property and affairs by the High Court in the event that he or she is incapable of doing so himself.<sup>45</sup> This is to ensure the protection of the patient's finances and property rights. There also lies a right of appeal to the higher courts of any decision made by the High Court in this respect.

#### *Vagrancy*

299. Since the submission of Barbados' second report, the Vagrancy Act, Cap. 156 has been repealed by the Minor Offences Act, 1998.<sup>46</sup> The legal safeguards in place in respect of persons who may be deprived of liberty as a result of vagrancy or "disorderly" or "offensive" conduct are (a) the constitutional provisions in relation to the arrest and detention of suspects, and (b) the right to appeal any decision made by the Court of first instance.

## Article 10

**Please clarify to what extent the State party meets the standards of the United Nations Standard Minimum Rules for the Treatment of Prisoners. How have these Rules, as well as domestic legislation, been disseminated and made accessible to the police and prison administrators?**

300. Barbados has met the majority of the Minimum Rules for the Treatment of Prisoners. However, some difficulties have been experienced in terms of meeting the guideline relating to one cell per prisoner. The situation existed where three prisoners were accommodated per cell, except in the case of those in the maximum security area, where the 1:1 ratio was observed.

301. The United Nations Minimum Rules and relevant domestic legislation are disseminated to the prison administration by the Ministry of Home Affairs. Members of staff are provided with copies of the rules, which are used as resource material in training programmes. In addition internet access is available for information gathering and research.

**Please provide information on measures taken to address the problem of prison overcrowding as well as recent statistics on the prison population and the proportion of those detained awaiting trial compared to convicted prisoners.**

### **The Prison**

302. Her Majesty's Prison Glendairy was destroyed by fire on Tuesday, 29 March 2005. The fire caused considerable damage, and in some cases, the complete destruction of several buildings on the compound. The structural integrity of the main building was severely compromised, rendering it unfit for further use. Other buildings completely destroyed included the bakery; the reception room; the tailor shop; the HIV/AIDS counselling section; the offices used by the National Council on Substance Abuse; and the officers' quarters. This emergency necessitated the total evacuation of Her Majesty's Prison Glendairy, the housing of the prisoners in temporary facilities and the expediting of plans for the construction of a new prison.

303. In responding to disturbances at Her Majesty's Prison, Glendairy, the Government moved swiftly and took action in various areas such as legislation and administration.

### *Legislation*

304. The Prisons Act, Cap 168 was amended (Prisons (Amendment) Act, 2005) to:

(a) Expand the duties carried out by the Barbados Defence Force, the Royal Barbados Police Force and the Regional Security System to legitimately include duties of prison officers, under the operational control of the superintendent of prisons;

(b) Allow for the introduction of non-intrusive scanning of all persons visiting the prisons to reduce the potential for the introduction of contraband and prohibited items into the compound;

(c) Allow for the declaration of boundaries around the temporary prisons by order of the Minister responsible for Home Affairs to enhance security and contribute to the maintenance of law and order in the areas concerned.

305. In addition, an amendment was made to Rule 87 of The Prison Rules 1974. Directions were issued to the Chief of staff, superintendent of Prisons and the Commissioner of Police pursuant to the Defence Act, Cap 159 and the Regional Security System Act 174B. The Regional Security System (Operational Control) Order, 2005 was also issued.

#### *Administration*

306. Administrative actions included:

(a) Identifying appropriate sites for holding areas and temporary prisons and establishing temporary prisons for the shelter and safe custody of the inmates, in accordance with the Prisons Act, Cap 168, Part VI: Establishment and Control of Prisons, section 31 (b).

(b) Seeking the approval of the Cabinet to apply Rule 137 A of the Financial Administration and Audit (Financial Rules) 1971 in providing temporary prison facilities. This enabled the Ministry of Home Affairs to secure certain goods and services as a matter of extreme urgency in order to provide temporary prisons and ensure the safety of the Barbadian public.

(c) Requesting assistance from the Regional Security System (RSS);

(d) Creating 40 new prison officer posts at top, mid and junior levels as well as four new civilian posts to enhance the administrative efficiency of the organization.

(e) Seeking the approval of Cabinet for an increase in the funding available to the Ministries and Departments which contributed to the establishment of the temporary prison and continue to provide essential services.

(f) Initial visit by a United Kingdom consultant to assess the training needs of the canine unit. Discussions have been held with the British High Commission regarding the sourcing of a long-term consultant to assist with strengthening the in-country training provided to the members of the Barbados Prison Service.

#### *Temporary prison*

##### *Harrison's Point - St. Lucy*

#### *Internal works*

307. All buildings at this site were extensively renovated or refurbished to provide inmate accommodation, staff quarters, administrative offices, a medical unit, a canine unit and storage facilities. The 10 buildings used for inmate accommodation have been retrofitted providing in-cell sanitary facilities, internal showers and external exercise cages. The infrastructure to support family visits by teleconferencing was also implemented.

*External works*

308. These works consisted of the erection of 10 feet of external and internal perimeter fences along with a special wire entanglement around the maximum security area, and the installation of security lighting, both high powered lighting and basic security lighting, the latter of which was attached to buildings. A 150 KVA generator has been installed.

309. The water supply was upgraded with the installation of 3,000 feet of a three inch diameter main, which was necessary as the existing main did not have the capacity to service the temporary prison. Additionally, the existing fire fighting system was repaired and upgraded. A security system was installed which provides coverage of the entire compound electronically.

*Female prison*

310. Work on a new female prison was also completed. As with Glendairy, this prison has in-cell sanitary and central bathing facilities, a washing machine and dryer, computer room, two consulting rooms, dining room and library.

*New prison at Dodds, St. Philip*

311. In April 2005, nine companies were invited to submit proposals for the finance, design, construction, furnishing, equipping and maintenance of the new prison at Dodds, St. Philip.

312. The Cabinet at its meeting held on 26 May 2005 agreed that the Government should enter negotiations with VECO USA Inc. for the financing and construction of the new prison at Dodds, St. Philip under a public-private partnership agreement. Cabinet also approved the text of a Memorandum of Understanding (MOU) to be signed by Government and Commonwealth Construction-Canada Ltd, a wholly-owned subsidiary of VECO USA Inc., to allow the contractor to immediately commence work on the project. The MOU will govern the arrangements between the two parties until the formal Implementation Agreement is negotiated to the satisfaction of the two parties. The MOU was signed on 24 June, 2005. Construction of this new prison began in November 2005.

*Description of the new prison*

313. The new complex will be constructed to house a population of 1200 inmates and will include:

(a) Self contained female prison with remand facilities for up to 25 persons and accommodation for up to 75 inmates;

(b) Self contained male prison with remand facilities for up to 450 persons and accommodation for up to 700 inmates.

The above will address the overcrowding issue.

*Policy initiatives to address the problem of overcrowding*

314. A number of policy initiatives have been already approved and are in the process of implementation which will also contribute to addressing overcrowding in a fundamental way. The most important of these was the passage of the Penal System Reform Act, Cap 139 in 2000, which provided the courts with a broader range of sentencing options, which is one way to avoid overcrowding. This Act introduced community orders which comprise attendance centre, combination, community service, curfew and probation orders. Approval has been granted by the Cabinet of Barbados for the establishment of the Correctional Service of Barbados, which will comprise the prison, the Government industrial schools and the probation department in a single unit. This will lead to a more integrated and holistic system for managing offenders. As part of the new corrections system, a parole system will be introduced which will be managed by the probation department. The implementation of a holistic and integrated programme which incorporates prison and the probation service and reflects the “what works” principle will undoubtedly reduce offending.

315. These initiatives represent a philosophical shift to a policy based on the principles of restorative justice, with incarceration being reserved for the most serious offenders and those who pose a genuine threat to public safety.

**Security classification**

316. Security classification is at the core of the prison system. Psychological tests will be used, as well as research-based risk assessment tools. The result will be that top security will only be used for the most risky prisoners and that other prisoners will be classified in a fashion that is suited to the crimes committed.

**Rehabilitation**

317. The corrections service will also introduce more rehabilitation programmes in its institutions. These programmes are necessary for there to be a reduction in the likelihood of offenders returning to prison. It is known that simply sending people to prison for a long time will not reduce their chances of re-offending (nor will it deter others). Therefore positive programmes must be provided that will enable and help offenders to rehabilitate, to constructively reintegrate into society on release and not to re-offend. More specifically, the following community and institutional programmes will be developed and introduced:

- Literacy training - This training will help the non-literate population who find it difficult to get the jobs when reintegrated into society;
- Cognitive-behavioural programmes - These programmes will help those many offenders who have failed to acquire certain cognitive skills (i.e. those skills which allow them to reason ahead or think through the impact of their behaviour on others) or have learned inappropriate ways of behaving. These can be tackled through intensive programmes;

- Drug treatment programmes - These will be developed further and carried out in association with thorough drug-testing programmes;
- Skills marketing - An ex-offenders' skills marketing centre will provide housing shops for training in carpentry, joinery, tailoring and special craft to allow offenders to make a positive contribution when reintegrated into society.

318. Rehabilitative programmes will be designed to create a strong link to the business sector, with the view of using rehabilitated and skilled ex-offenders as a pool of labour. Psychological testing and counselling will be introduced on a much greater scale than at present.

#### *Recruitment and training*

319. Great emphasis has been placed on improving the quality of staff in the Prison Service. Equally, the Government understands that the demand for excellence should not be limited to lower level prison staff. Therefore, between 2001 and 2004 prison officers at all levels attended training programmes ranging from top management training to basic training. In 2003, 360 officers and staff attended 39 courses during the year. The following are examples of some of the courses which were undertaken between 2001 and 2004:

- Prison Superintendent Mutual Support Conference (2001);
- Senior Managers Seminar- Business Process Re-engineering (2001);
- Language Training- Spanish (2002);
- Strategic Planning (2002 & 2003);
- Recruit Basic Training Course (2002 & 2005);
- Records Management (2004);
- Law Enforcement Development (2003);
- Performance Management for the Public Service (2003);
- Annual proficiency training and testing programme for junior officers (2004);
- Canine drug detection and general purpose training (2004);
- Basic accelerated course for Prison Officers (2004);
- Superintendents' Conference (2005).

320. In 2004, 13 additional posts were approved, bringing the number of employees to 245. This number has now increased to 303 as 40 new temporary posts were established in early 2005.

### Population statistics

Period	Population	Unconvicted	Convicted	Civil
2000	722	133	578	11
2001	775	176	590	9
2002	838	186	637	15
2003	902	243	643	16
2004	944	243	690	11

**Does Barbados envisage the establishment of an independent body for the inspection of detention centres and the investigation of complaints from prisoners? Does the Office of the Ombudsman have jurisdiction over prisoners?**

321. Barbados does not envisage the establishment of an independent body for the inspection of detention centres since the Constitution provides redress if rights are infringed. Many autonomous structures exist at the prison including counsellors and ministers of religion and many non-governmental organizations provide “watch dog services”. Barbados is a small society with one prison, which lends to transparency.

**Please comment on allegations that juveniles are often held in adult detention facilities and subjected to lengthy pre-trial detention. Please also indicate measures envisaged or taken to improve their conditions of detention in the light of provisions of article 10, paragraph 2 (b), of the Covenant and the progress achieved in the system of administration of juvenile justice, in particular with regard to the establishment of juvenile Courts.**

322. Juveniles (up to age 16) are housed at the Government Industrial Schools – Dodds (male) and Summervale (female). In cases where young offenders (those over 16) were incarcerated either in prison, every effort is made to ensure that they are not placed with adult inmates. This might mean that they are in the same building, but on a different floor. A similar situation exists for juveniles on remand. Also there is work being done on a new Juvenile/Young Offenders Policy which will cater to youth between the ages of 11 to 18.

323. The institutions governing juvenile detention will be upgraded in the new prison complex.

324. Changes are to be made from a punitive regime which has some vocational training, to a therapeutic regime with the emphasis on rehabilitation and education for life after juvenile detention. Education will be fitted to the needs of the individual.

325. There is in existence the Justice Improvement Programme where a loan was received from the Inter-American Development Bank to improve the justice system including its physical attributes. The overall objective of the programme is to support the Government of Barbados in its efforts to modernize the justice sector through improving Court administration and processes; enhance access to justice; and reduce economic and social costs associated with criminal behaviour.

326. The programme seeks to:

- (a) Strengthen the overall management capacity of the Courts through technological enhancement and training;
- (b) Enhance access to justice through the promotion of Alternative Dispute Resolution (ADR) mechanisms and improvement to the legal aid structure;
- (c) Implement recently passed legislation in the area of alternative sentencing and promote greater use of rehabilitative strategies aimed at youth; and
- (d) Improve sector coordination and crime prevention.

327. Components of the programme, which will include youth and rehabilitation, and will focus on the institutional strengthening of juvenile justice agencies in the following ways:

- (a) For the Probation Department, consultancy services in management reorganization, and training;
- (b) For the reform schools, staff training and vocational programmes and new curriculum development to enhance the overall sector capacity to deliver skills and lifestyle training will be developed;
- (c) Rehabilitation capacity: Staff training, including design of manuals for inmate rehabilitation; cognitive behaviour training for inmates; and design of a post-release programme;
- (d) In the area of infrastructure improvement:
  - (i) Renovation of existing reform school;
  - (ii) Construction of a new at-risk facility; and
  - (iii) Upgrading of existing agriculture and training facilities serving the penal sub-sector.

328. Execution of the programme will result in a more efficient and accessible justice system, with greater crime prevention and rehabilitation capacity and an improved ability to coordinate activities.

### **Article 11**

329. As stated previously inability to fulfil a contractual obligation is not a ground for imprisonment in Barbados. However, non-fulfilment of a court order in consequence of a civil suit in such a case may make one liable to imprisonment. None the less, such orders are not made lightly. They are aimed at persons in contempt of court and not people who are impecunious, that is to say they apply to persons apparently with means but who are avoiding or refusing to pay off the debt.

330. The relevant law (namely, the Debtor's Act Cap. 198<sup>47</sup>) provides that the court has the power to commit any person who makes default in payment of any debt due from him or her in pursuance of a judgment or order of any court. However, such power must not be exercised where the court is satisfied that the defaulter has not or has not had since the date of the judgment or order the means to pay the defaulted sum and that the defaulter has not simply refused or neglected to pay the said sum. The court may, nevertheless, exercise this jurisdiction if satisfied that the defaulter contracted the debt in respect of which the order or judgment is made without, at the time of the debt's contraction, having had any reasonable prospect of being able to settle it.

331. The onus of proving inability to satisfy a judgment or order to pay rests upon the defaulter and the court may in lieu of making an order for committal, order that the sum due under the judgment or order be paid in instalments. The law also provides that the court may from time to time rescind or vary such orders. In the event that a committal order is made, the debtor may pay the amount required for his or her discharge at any time before delivery to the superintendent of prisons, in which case committal will be avoided, or after delivery in which case he or she will be released forthwith.

332. In practice, the procedure is such that an order to pay a debt is done with the consultation and in many cases the consent of the defaulter. Where a debtor is adjudged by the High Court to owe the debt claimed, the judgment creditor may apply to the Court for the issue of a judgment summons. Pursuant to the application, the Court issues a judgment summons summoning the judgment debtor to the Court where he or she may bring evidence of finances and income. In any event, the judgment debtor is questioned as to his or her income and expenses. He or she is permitted to explain why the debt has not been satisfied and how he or she proposes to satisfy the debt. Based on the submissions of both parties (judgment debtor and creditor in person or represented by their attorneys-at-law) the Court ordinarily makes an order that the judgment debtor make incremental payments, usually per month, to the judgment creditor in an amount that the debtor can afford based on his or her submissions and/or in an amount directly agreed by the judgment debtor and, preferably, accepted by the judgment creditor. Ultimately, the judge makes the order in terms that are in his or her opinion, reasonable in all the circumstances. If the judgment debtor then defaults on this order the judgment creditor, giving notice to the debtor/defaulters, may apply to the Court for an order for committal to prison.

333. Nonetheless, even upon an application for committal, the order for committal is often made in the form of an "Unless Order". That is to say that the order will provide that unless the judgment debtor pays the whole of the remaining debt or the sum on which he or she defaulted, by a particular date or within a given period, he or she will be in contempt of court and liable to imprisonment. Therefore, the order does not take effect right away and gives the debtor an opportunity to redeem him or herself. All the same, an application for a committal order will not necessarily result in that order being granted if the judgment debtor can satisfy the Court that there was good reason for his or her breach of the order to pay the judgment creditor. In that case, the application for an order for committal may be refused and the order to pay may be varied to accommodate the judgment debtor's new circumstances. Moreover, a judgment debtor may apply to the Court for an extension of time or for variation of the order to pay the creditor any time that he or she finds difficulty in fulfilling said order.

334. Although procedure in the Magistrates Court is somewhat different, the system of debt recovery follows a like path. Once the Court has duly adjudged a party as owing a debt to another party to the proceedings, and the judgment debtor fails to satisfy the judgment in accordance with the terms set out in the judgment (for example, payment to be made in instalments payable each month), the judgment creditor may cause a judgment summons to be issued, whereby the judgment debtor is summoned before the Court. In this instance, the Court may refuse to make an order where it appears that a committal order is not appropriate, or the Court may make a fresh order for payment of the remaining instalments in such a manner or with such other provisions as the Court may see fit. As in the High Court the terms of this sort of order are based on the submissions of both parties regarding the debtor's means and the creditor's requirements. Where such further order is made the judgment creditor may subsequently apply to the Court for an order for committal upon the judgment debtor's default of said further order. Nevertheless, an order can only be made if it is proven that after the making of the order the debtor had the means to pay and did not do so. Hence, committal would be for contempt of Court and not for the debtor's inability to pay. In the event that a committal order is made the Court may suspend it to allow the debtor to make payments into Court towards the debt.

## Article 12

335. All persons lawfully within Barbados may move around freely and without restriction. Section 22 (1) of the Constitution provides:

“No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Barbados, the right to reside in any part of Barbados, the right to enter Barbados, the right to leave Barbados and immunity from expulsion from Barbados.”

336. Notwithstanding, there are exceptions to the general rule which are also provided for in section 22 of the Constitution. These exceptions include legislative provision for:

(a) The imposition of restrictions on movement or residence in Barbados or on the right to leave Barbados as reasonably necessary in the interests of defence, public safety or public order;

(b) The imposition of restrictions on movement or residence within Barbados on any person who is not a citizen of Barbados or the exclusion or expulsion of any such person from Barbados;

(c) The imposition of restrictions, by order of a court, on the movement or residence within Barbados of any person's right to leave Barbados either in consequence of his having been found guilty of a criminal offence under or for the purpose of ensuring that he appears before a court at a later date for trial or for proceedings preliminary thereto or for proceedings relating to his extradition or lawful removal from Barbados;

(d) The imposition of restrictions on the right of any person to leave Barbados that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law.

337. The Constitution further makes provision for the observation of certain remedial procedures in the event that the right of freedom of movement is restricted in the interests of public defence, public safety or public order (see paras. 203-215 above).<sup>48</sup> In the instance that freedom of movement is restricted in relation to the commission of a criminal offence the safeguards and remedial procedures provided under section 13 of the Constitution apply (see paras. 269-299 above). Furthermore, since freedom of movement is a fundamental right under the Constitution a person so restricted has available to him also the enforcement provision of the Constitution, that is, section 24 which guarantees a right of appeal to the High Court.

### Article 13

338. The information pertinent to this article is contained in paragraph 97 of the present report.

### Article 14

**Please explain in detail the operation of the legal aid system in Barbados and provide statistics about the number of cases in which legal aid has been granted in the past five years.**

339. The Community Legal Services Commission was created as a body corporate by the Community Legal Services Act, Cap 112A, which came into force on 1 November 1981. The Office of the Community Legal Services Commission, which was established to carry out the day-to-day administration of the Commission and to fulfil the mandate of providing free legal services to persons of insufficient means, commenced operations in the financial year 1984/85.

340. The objectives of the Commission are to: (a) provide high quality service to persons of insufficient means who require legal aid; (b) have the standard of providing legal representation for persons of insufficient means maintained and enhanced; and (c) strengthen and improve the administration of justice by the timely delivery of a full range of legal services to persons who otherwise would be deprived of legal representation.

341. Prior to 1981, the only organized system for the provision of legal assistance to persons of insufficient means was that provided for by the Legal Aid in Criminal Cases Act, Cap 139A. As the name suggests, the Act provided for free legal representation in criminal cases only and was further limited to serious criminal matters, namely:

- (a) Capital offences;
- (b) Manslaughter;
- (c) Infanticide;
- (d) Concealment of birth;

- (e) Rape;
- (f) All indictable offences where the person charged is a child or young person;
- (g) Any indictable offence the trial of which is certified by the trial judge to be, or as likely to be, of difficulty and to require the assistance of an attorney-at-law on behalf of the person charged therewith for its proper determination;
- (h) Any indictable offence the trial of which or an appeal from the conviction of which is certified by the trial judge or the Court of Appeal, as the case may be, or as likely to involve, a point of law of public importance and to require the assistance of an attorney-at-law on behalf of the person charged or convicted, as the case may be, for its proper determination.

342. When the Community Legal Services Act, Cap112A, came into force, it expanded the list of matters for which legal aid may be granted by the addition of the following:

- (a) All family law matters;
- (b) Other matters involving:
  - (i) Minors;
  - (ii) Tenants and tenancies within the meaning of the Security of Tenure of Small Holdings Act and the Tenancies Freehold Purchase Act;
  - (iii) An application under section 24 of the Constitution;
  - (iv) An application for a writ of *habeas corpus ad subjiciendum*.

343. The Legal Services Order, 1990 which took effect on 31 December 1990 removed divorce from those family law matters for which legal aid may be granted.

344. All applications for legal aid are made through and reviewed by the Office of Community Legal Services. Thereafter, applicants are interviewed and must provide national identification cards and evidence of earnings and expenditure so as to determine insufficiency of means.

345. Means officers from the Office of Community Legal Services visit the prisons regularly in order to interview inmates seeking legal aid. In addition, the Office of Community Legal Services makes arrangements for cases of ill or house-bound applicants to be interviewed at their residences.

346. Where the Director of Community Legal Services is satisfied that an applicant is eligible for legal aid he shall issue a legal aid certificate to the applicant. A legal aid certificate entitles the person to whom it is issued to such free services as the Director specifies in the certificate.

347. Although sub-section (2) of section 21 of the Community Legal Services Act states that a legal aid certificate may be issued only where the person is a citizen, permanent resident or immigrant of Barbados, section 21 (3) of the said Act enacts the following provision:

“Where the Director is of the opinion that the interests of justice demand that legal services be provided in respect of any scheduled offence or scheduled matter, he may notwithstanding that the person is not within the category of persons specified in Sub-section (2), issue a legal certificate to that person.”

348. The Community Legal Services Commission maintains a panel of attorneys-at-law who are prepared to provide legal services in accordance with a prescribed tariff of fees. Successful applicants for legal aid issued with legal aid certificates are given a choice of three or four attorneys-at-law in order of preference. After the attorney-at-law to whom the case is to be assigned has been chosen, the Director of the Office of Community Legal Services sets a date on or before which, the attorney-at-law to whom the case is assigned must signify his or her acceptance of the assignment.

349. Applicants who have been denied legal assistance may appeal to a Committee comprised of Commission members to have their applications reviewed.

**Table 13**

**Number of legal aid certificates granted for the years 2000-2005**

Year	Criminal cases	Family law cases	Civil cases	Total
2000 - 2001	150	725	07	882
2001 - 2002	135	646	10	791
2002 - 2003	153	767	04	924
2003 - 2004	158	791	06	955
2004 - 2005	155	727	12	894

*Source:* Community Legal Services Commission.

350. The Government of Barbados currently provides all the funds that are required to keep the programme functioning. To date, the Commission has not received any funds from approved organizations as permitted under the Community Legal Services Act. Since the Commission pays all legal fees and disbursements once legal aid is granted, beneficiaries are therefore not required to contribute towards legal fees and expenses.

351. In order to provide timely and efficient service, the Commission proposes both to widen its area of operations and to upgrade its methodology to keep up with the sociological changes in Barbados. Accordingly, the Commission is in the process of fully computerizing its operations and the Policy Committee is to consider additions to those areas for which legal aid is presently granted.

**Please clarify how legal aid is made available to death row prisoners when appealing to the Judicial Committee of the Privy Council in London, and in particular what financial limits apply.**

352. The granting of legal aid to death row prisoners is governed by rules made by the Governor General on the advice of the Privy Council. A petitioner who cannot pay legal fees is permitted to apply in *forma pauperis*.

353. Since November 16, 1995, the policy of the Government of Barbados in respect of any person who applies to the Privy Council in *forma pauperis* is to grant:

(a) Payment of all disbursements in connection with the prosecution of appeals including the cost of preparing the record;

(b) The sum of £1,000 towards legal fees.

354. The High Court of Barbados (Civil Jurisdiction) No. 1126 of 1996, No. 27 of 1996 and No. 971 of 1997 between Carlos Arthur Licorish et al. and the Attorney-General in a decision given on 1998-12-17 by Justice Frederick L.A. Waterman, Judge of the High Court, after interpreting the relevant provisions of the Constitution of Barbados Chapter 1 and the Community Legal Services Act, Chapter 112A, has held inter alia:

(a) That there is in Barbados a well established practice of long standing for the Government in criminal cases to provide legal assistance for persons without means so as to enable them to appeal to Her Majesty's Judicial Committee of the Privy Council;

(b) The question of whether a petitioner's representation by English Solicitors and Barristers in prosecuting their appeals to the Judicial Committee of the Privy Council should be fully funded by the Government of Barbados is an economic and political problem the solution of which rests with the Government;

(c) The Court has no power to direct the Government as to how much it should pay to provide solicitors and barristers for indigent persons;

(d) Section 18 (1) of the Constitution of Barbados invites that every accused person should be afforded a fair hearing. Under section 18 (2) (d) every accused person is permitted to defend himself in person or by a legal representative of his own choice. The right to legal representation of choice is not an absolute right and section 18 (2) does not entitle a person to legal representation at the public expense.

355. In Privy Council Appeal No. 28 of 2000, *Richard Hinds (Appellant) v. the Attorney-General and the Superintendent of Glendairy Prison (Barbados)*, the Judicial Committee of the Privy Council held, inter alia, that while the Constitution does not entitle every indigent criminal defendant to free legal aid in every case, it does guarantee a fair hearing to every such defendant and there is nothing in section 18(2)(d) or section 18(12) which qualifies or undermines that right. It is indeed one of the fundamental human rights and freedoms to which the people of Barbados have pledged allegiance in the preamble of the Constitution.

**Does the State party envisage the withdrawal of its reservation to Article 14, paragraph 3 (d), of the Covenant, under which it reserves the right not to apply fully the guarantee of free legal assistance?**

356. The reservation reads as follows:

“The Government of Barbados states that it reserves the right not to apply in full, the guarantee of free legal assistance in accordance with paragraph 3(d) of Article 14 of the Covenant, since, while accepting the principles contained in the same paragraph, the problems of implementation are such that full application cannot be guaranteed at present.”

357. As stated previously, the Government of Barbados only grants legal aid for certain types of crime. Barbados’ ability to fully embrace this provision is restricted because of limited financial capacity. The Government of Barbados will continue to strengthen its legal aid, but it is not yet in a position to apply fully the guarantee of free legal assistance.

**Article 15**

358. Reference may be made to Barbados’ first periodic report and the provisions contained in section 18(4), (5) and (6) of the Constitution.

**Article 16**

359. The recognition of this right is inherent in the Constitution and general laws.

**Article 17**

360. The Constitutional provisions at section 17, protecting against arbitrary search and entry were provided in Barbados’ previous report.

361. The law relating to trespass<sup>49</sup> affords protection for the privacy of the individual. Similarly, the law relating to defamation<sup>50</sup> affords protection for reputation and honour.

362. The Post Office Act regulates the delivery of mail and creates certain offences in respect of the unlawful interference with mail. It is also an offence under the Act for an officer of the Post Office or other person authorized to receive messages sent by telegram to delay, detain or disclose such messages.

363. Barbados currently has no legislation dealing with wire-tapping or electronic surveillance.

**Article 18**

364. The provisions of section 19 of the Constitution which guarantee the rights recognized by article 18 of the Covenant have been submitted in Barbados’ previous report.

365. A person attains the age of majority in Barbados when he reaches 18. It is therefore possible at that age to choose one's religion. In the matter of freedom of conscience the Constitution guarantees protection for a person under the age of 21 attending a place of education from being required to receive religious instruction or to take part in or attend any religious ceremony or observance without his guardian's consent if that instruction, ceremony or observance relates to a religion which is not his own. The rights of the parent or guardian are thus protected in this regard.

### **Article 19**

366. The provisions of section 20 of the Constitution respecting this right have been previously submitted in Barbados' first periodic report.

367. This right is subject to the law of defamation and those laws protecting public order, safety and security. The Official Secrets Act 1911 and 1920, two pieces of United Kingdom legislation, still apply to Barbados. These impose penalties for spying and wrongful communication of information. The relevant provisions of the 1911 Act are as follows:

- “1. (1) If any person for any purpose prejudicial to the safety or interests of the State:
- (a) approaches, inspects, passes over or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act; or
  - (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
  - (c) obtains, collects, records or publishes or communicates to any other person any secret official code word, or pass word or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; he shall be guilty of an offence.
- (2) On a prosecution under this Section, it shall be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act, or anything in such a place or any secret official code word or password, is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded or published or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved.

2. (1) If any person having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under the Crown in right of its Government of Barbados or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under the Crown in right of its Government of Barbados, or as a person who holds or has held a contract made on behalf of the Crown in right of its Government of Barbados, or as a person who is or has been employed under a person who holds or has held such an office or contract:

communicates the code word, pass word, sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it; or

- (aa) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State; or
- (b) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it or fails to comply with any directions issued by lawful authority with regard to their turn or disposal thereof; or
- (c) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret-official code or pass word or information;

that person shall be guilty of a misdemeanour.

(1A) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of a misdemeanour.

(2) If any person receives any secret official code word, or pass word, or sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act he shall be guilty of a misdemeanour, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document or information was contrary to his desire.

**Section 8 of the 1911 Act further states:**

“8. A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions: Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.”

**Article 20**

368. Sections 33 of the Public Order Act, Cap. 168A<sup>51</sup>, penalises the incitement of hatred against “any section of the public distinguished by colour, race or creed”. However, Barbados has no express legislative provisions prohibiting war propaganda. Nevertheless, the Public Order Act imposes a penalty for incitement to violence at section 34.

369. Section 34 (1) reads as follows:

- “(1) A person is guilty of an offence if, without lawful authority, the proof whereof shall lie on him, in any public place or at any public meeting he:
- makes any statement; or
  - plays or causes to be played any phonograph record or other sound recording, or publishes or distributes any written matter; or
  - behaves, or incites any other person to behave, in a manner, which is intended or is likely to incite or induce or is capable of inciting or inducing any person:
    - (i) to kill or do physical injury to any person or to any class or community of persons; or
    - (ii) to destroy or do any damage to any property; or
    - (iii) to deprive any person by force or fear of the possession or use of any property either permanently or temporarily.”<sup>52</sup>

**Article 21**

370. The right of peaceful assembly is guaranteed by section 21 of the Constitution which states as follows:

- “(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and to associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interests.

- (2) Nothing contained in or done under the authority of any law shall be held in contravention of this section to the extent that the law in question makes provision:
- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
  - (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
  - (c) that imposes restrictions upon public officers or members of a disciplined force.”

371. The Public Order Act, Cap. 168 A, provides for the maintenance of public order in relation to public meetings marches and processions. At section 30, this Act prohibits disorderly conduct or incitement to engage in disorderly conduct likely or calculated to obstruct or prevent the conduct of a lawful public meeting. The Act also prohibits offensive conduct conducive to breaches of the peace. Section 31 provides:

- “31. Any person who in any public place or at any public meeting:
- (a) uses threatening, abusive or insulting words or behaviour; or
  - (b) distributes or displays any writing, sign or visible representation which is threatening, abusive or insulting, with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, is guilty of an offence under this Section.”<sup>53</sup>

#### **Article 22**

372. The rights recognized in this article are similarly protected by section 21 of the Constitution.

#### **Article 23**

#### **The concept of family in Barbadian society**

373. There is no set definition of what constitutes a family in Barbados. Broadly speaking, the general concept of a family would be a household composed mostly of persons closely related by blood. Apart from the traditional nuclear family with a husband, wife and their children many Barbadian households are headed by unmarried couples. Such couples are known as common law spouses and for the purposes of the Family Law Act, Cap. 214 these couples, after having co-habited consistently for five years or more, are recognized as being party to a “union other than marriage” to which extent they are afforded the same rights enjoyed by married couples regarding property distribution and custody of children under the said Act.

374. Additionally, many households are headed by single women and very often extended family members are part of Barbadian households. For example, a house may be owned or possessed by a single mother who lives with her children and looks after her mother or father. In

other situations the grandmother or grandfather may possess the property but his/her child also lives there with his/her children and both or all the adults support the household. It may also be that a brother and his family move in with his sister, or an elderly parent lives with his or her child and that child's spouse and children. Any number of familial arrangements is possible. Many children are raised or have been raised by their grandparents or a grandparent even while the parent is alive and healthy. In the past the extended family was instrumental in the rearing of children in a way that is not so prevalent today. Even when they did not share the same household, grandparents, uncles and aunts contributed to the care and discipline of children and it was not uncommon for children to spend parts of their childhoods with extended family. This still occurs, albeit perhaps to a lesser extent, in modern Barbadian society.

375. Also, due to socio-economic conditions it is not uncommon for the children of a family to remain at their parents' home well into adulthood or at least until they marry. Socio-economic circumstances do play a very significant role in the composition of Barbadian households. That having been said, whatever the composition of the family or household, the rights of parents as regards custody, care and control of their children are the same as if they were part of a traditional nuclear family. *De facto* caretakers such as grandparents, aunts or any person other than the parent do not alter the parent's custodial rights. Any alteration of these rights would be duly imposed by the Court.

### **Solemnisation of marriage**

376. In Barbados a marriage may be solemnized in a religious ceremony or a civil one.

377. Persons who are duly ordained and recognized by their respective religions as being entitled to solemnise marriages in accordance with the Marriage Act Cap. 218A<sup>54</sup>, may be appointed as marriage officers upon application to the appropriate Minister of Government. Marriage officers may, save in relation to marriages in extremis, solemnise religious marriages only upon the production by the parties to be married of:

- (a) A certificate of the due publication of valid banns of marriage; or
- (b) A valid marriage certificate.

Civil marriages are performed by magistrates upon the production by the parties to be married of:

- (a) A valid marriage licence; or
- (b) A valid magistrate's certificate.

378. Under the Marriage Act, provision is also made for marriages in extremis. Marriages in extremis are marriages which may be solemnized by a marriage officer or magistrate at any time and at any place, without the due publication of banns or the production of a marriage licence or magistrate's certificate where the marriage officer or magistrate believes, on the bases provided in the Marriage Act, that one of the parties to the marriage is very ill and likely to die and where that party declares before the solemnization of the marriage that he or she believes that he or she is at "the point of death".

379. In all cases, the marriage must be solemnized in the presence of at least two witnesses other than the marriage officer or magistrate and, in the presence of both witnesses and the marriage officer or magistrate, each party to the marriage must clearly express his or her consent to take the other as his or her wife or husband. After the solemnisation of the marriage, an entry thereof must be made in the respective prescribed forms in a properly bound register and on a separate piece of paper referred to as a “duplicate original register”, and each entry must be signed by the married persons and attested by the witnesses.

380. In addition, a couple which solemnizes a marriage by a civil ceremony may thereafter add the religious ceremony of their faith or creed by presenting to a marriage officer of their denomination a copy of the entry of their civil marriage. The marriage officer may then perform a religious ceremony without prejudice to the civil marriage and shall not enter the religious ceremony in the register as he ordinarily would in the case of a religiously solemnised marriage.

### **Restrictions and impediments on the right to marry**

381. Marriage between men and women of any of the blood relationships specified in the Marriage Act, are prohibited and void. Those relationships are:

- (a) Parent/child;
- (b) Grandparent/grandchild;
- (c) Brother/sister;
- (d) Aunt/nephew;
- (e) Uncle/niece.

382. Notably, relations due to or traced through half-blood are included in this respect and adopted children are deemed to be children and grandchildren for these purposes, even after the nullification of any adoption order. Accordingly, any relationship of the kind listed above that is traced through or to a child who is or was adopted is a prohibited relationship for the purpose of marriage.

383. Persons under the age of 16 years are also prohibited from marrying. However, minors who are 16 years or over may marry with the consent of a parent or guardian as prescribed by the Marriage Act.

384. A marriage will be rendered void if at the time of solemnization any of the parties was lawfully married to another person. A marriage is also void if it is not a valid marriage under the law of the place where it took place, due to a failure to comply with the requirements of the law of that place in respect of the form of solemnization.

385. Consent is an essential component of a valid marriage. Section 5 (2) of the Marriage Act provides that a marriage is void when, inter alia, consent to it is not “a real consent” because:

- (a) It was obtained by duress or fraud;
- (b) One person is mistaken as to the identity of the other person or as to the nature of the ceremony performed; or
- (c) One of the persons was mentally incapable of understanding the nature and effect of the ceremony performed.

386. A marriage may also be rendered void by the following formal irregularities, that is, where the marriage is solemnized:

- (a) Without due publication of banns of marriage, or a marriage licence or magistrate's certificate as the case may be;
- (b) On the purported authority of void banns of marriage, a void marriage licence or magistrate's certificate;
- (c) By a person who is not a marriage officer or magistrate.

387. Nevertheless, marriages of this category, once solemnized in good faith and intended to be in compliance with the Marriage Act, will be deemed as valid if the parties to the marriage were not under legal disqualification to contract the marriage and said parties have cohabited since its solemnization as man and wife.

### **The right to found a family**

388. There are no legal impediments on an individual's right to procreate, to co-habit or to form a family. The government of Barbados recognises the importance of the family unit and as discussed above, family has traditionally been a significant part of the social fabric of Barbados. This recognition is also reflected in Barbados' family planning programmes, social and welfare policies and approach to family law. The Family Law Act, Cap. 214 which governs the law of divorce, custody and maintenance of children, and property division in relation to marriage and unions other than marriage, expresses that, "in the exercise of its jurisdiction under this Act or any other enactment, the Court shall have regard to the following principles:

- (a) The need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
- (b) The need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
- (c) The need to protect the rights of the children and to promote their welfare; and
- (d) The means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to the children of the marriage."

389. The importance of family is also reflected at the international level, for example, members of the Barbados Foreign Service when posted overseas are entitled to take their families with them for the duration of their posting and are provided with proportionate family allowances.

## **The treatment of divorce**

### *Grounds for divorce*

390. The divorce laws of Barbados are based on a “no-fault” system of divorce. That is to say that fault is not assigned to any of the parties. Either party may institute proceedings for divorce, and the only ground to be established is that the marriage has “broken down irretrievably”. To this end the court must be satisfied that the parties have been separated for no less than 12 continuous months prior to the date of the application for the divorce. However, the court is mandated to refuse an application for divorce where there is a reasonable likelihood of cohabitation being resumed. “Separation” for these purposes can occur even if the parties continue to share the matrimonial home and some household amenities such as housecleaning, cooking and laundry. The circumstances which amount to a separation are not exhaustively defined but parameters have been set by case-law which guides the court in its decision-making. In any event, challenges contesting a party’s qualification for divorce are extremely rare.

### *Maintenance and division of property*

391. According to the Family Law Act a party to a marriage or a union other than marriage (whether undergoing a separation/dissolution of marriage or not) may be liable to provide maintenance for a spouse to the extent that that party is reasonably able to do so. This liability only arises where the said spouse is unable to support him or herself properly for whatever adequate reason. In determining the extent of liability, the court must take account of a number of considerations listed, though not exhaustively, in the Act. These considerations include:

- (a) The age and state of health of both the parties;
- (b) The income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) The financial needs and obligations of each party;
- (d) Where the parties have separated or are in the process of divorce, affording a standard of living that is reasonable in all of the circumstances;
- (e) The duration of the marriage or union and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
- (f) The extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;

(g) The terms of any order made or proposed to be made in relation to the alteration of property interests under the Act;

(h) Any fact or circumstance that the court opines the justice of the case requires to be taken into account.

392. Any obligation to provide maintenance would exist regardless of the conduct of either of the parties but the court has discretion in determining the quantity of maintenance, to give consideration to a “course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship”. As the provision suggests, it is intended to be invoked in exceptional circumstances.

393. As regards the distribution of property, the court may declare the title or rights, if any, that the parties have in the property. The Court also has the power to make orders altering the interests of the parties in the property such as a) orders for settlement of the property in substitution for any interest therein, or b) orders requiring either or both parties to make such settlement or transfer of property as the court may determine appropriate for the benefit of either spouse or a child of the marriage or union. In determining what orders should be made in any given case the court must give consideration to:

(a) The financial contribution made directly or indirectly to the conservation or improvement of the property, or otherwise in relation to the property;

(b) The contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;

(c) The effect of any proposed order on the earning capacity of either party;

(d) Any other order made under the Family Law Act in respect of a party.

394. Notably, the legal approach to property distribution and maintenance awards is not based on gender. The Family Law Act deliberately couches its language in terms that apply to both men and women.

### *Children*

395. In the Barbadian system, both parents have custody (that is to say, joint custody) of minor children of a marriage at all times unless there are special, extenuating circumstances such as a parent being deemed unfit or a danger to the child. Custody refers to the right of the parent to make decisions where the child’s care, education and discipline are concerned. What ordinarily has to be determined in divorce proceedings is which party will have “care and control” of the child or children subject to the other parent having access to said children. “Care and control” refers to the ordinary day-to-day care and control of the child. In making orders for access and care and control, the court’s paramount consideration must be the welfare of the child or children involved. In fact, this rule regarding the paramouncy of the child’s welfare applies in all matters

concerning the welfare of children, not just in instances of divorce. As such, the right of one spouse is not pitted against the right of the other per se. However, the Judge has discretion in these matters and admittedly some judges may deem it in a child's best interest to be placed in the care and control of its mother barring special or unusual circumstances and where both parties appear to be equally responsible and loving parents. In any event, as custody is always joint, the parent with access to the child still participates in the general upbringing of the child.

396. As regards child maintenance, the court must take into consideration in deciding whether to make an order and in deciding the amount in which to make an order, the same considerations to be regarded in the case of spousal maintenance as well as:

- (a) The income, earning capacity, property and other financial resources of the child;
- (b) The financial needs of the child;
- (c) The manner in which the child is being or expected by the parents to be educated or trained.

397. Generally, orders for maintenance must not be made for children who have reached the age of majority (18 years) nor should these orders endure past minority. However, an exception is made where the court is satisfied that maintenance is necessary to enable the child to complete his or her education, including apprenticeship and vocational training, or where the child is mentally or physically handicapped. Such an order may express an expiration date at which time it will cease to be in force.

#### *Children born out of wedlock*

398. All laws that once existed limiting the rights of children born out of wedlock have long been abolished. All children born within and out of wedlock have the same rights, for example in terms of social status, succession and inheritance, maintenance and education. No distinctions are made between children born out of wedlock and those born within.

399. As previously mentioned, the Family Law Act applies (except as regards provisions for the dissolution of marriage) to unions other than marriage. A union other than marriage is defined in the Act as "the relationship that is established when a man and a woman who, not being married to each other, have co-habited continuously for a period of 5 years or more." Therefore children of such unions are covered by the Act in the same way that children of marriage are covered.

400. For children that do not fall under the authority of the Family Law Act, the Minors Act and Maintenance Act, Caps. 215 and 216 respectively, apply. The Minors Act relates to the guardianship, custody and property of minors in general. As regards the paramount interest of the child, this Act clearly states:

"Where, in any proceeding before the court, the custody or upbringing of a minor or the administration of any property belonging to or held on trust for a minor, or

the application of the income thereof, is in question, the court, in deciding that question shall regard the welfare of the minor as the first and paramount consideration and shall not take into consideration whether from any other point of view the claim of the father or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application, is superior to that of the mother or the claim of the mother is superior to that of the father.”<sup>55</sup>

401. The Minors Act further states that, “the mother of a minor shall have the like powers to apply to the court in respect of any matter affecting the minor as are possessed by the father.”<sup>56</sup>

402. Therefore the Minors Act emphasises that the child’s welfare is paramount in these matters and that parents have equal rights where applications for relief in relation to and on behalf of their children are concerned.

403. The Maintenance Act provides for the maintenance of children born out of wedlock and related matters. It details the court procedures for child maintenance applications and proceedings as well as the powers of magistrates in making, inter alia, maintenance orders.

#### Article 24

404. Respect for the rights of children is of primary importance for the government of Barbados. Children’s rights are enshrined in the Constitution and other laws and Barbados is party to various international conventions including the Convention on the Rights of the Child. The Child Care Board is the primer government institution mandated to promote and protect the rights of children in Barbados.

**According to information before the Committee the number of rapes of boys and girls under 16 years old is on the increase. Please provide information on the incidence of violence against children, as well as on legislation protecting children against sexual exploitation.**

405. The Sexual Offences Act Cap. 154 provides for the punishment of a number of sexual offences against children and other individuals whether male or female. As it relates to minors, in addition to the offence of rape, the Act creates an offence of having sexual relations with persons under 14 which is punishable with imprisonment for life. It also creates an offence of having sexual relations with a person who is 14 or 15 years of age which is punishable with imprisonment for 10 years. Moreover, the Act creates an offence in relation to the defilement of a minor if a householder permits a person less than 16 years of age to have sexual intercourse in his or her house. Incest is also punishable under the Act as well as having sexual intercourse with a step-child, a foster child or a ward of any kind.

406. Under section 25 of the Act the spouse of a person is a compellable witness as is a parent or guardian of a minor.

407. Referrals to the Child Care Board with regard to the alleged sexual abuse of children for the period 2000-2004:

Gender	2000-2001	2001-2002	2002-2003	2003-2004
Male	11	10	19	14
Female	186	176	218	217
Total	197	186	242	231

408. The statistics above refer to children less than 16 years as sexual consent can be given at the age of 16.

409. Referrals to the Child Care Board for allegations of physical abuse of children for the period 2000-2004:

Gender	2000-2001	2001-2002	2002-2003	2003- 2004
Male	104	146	129	149
Female	92	124	174	152
Total	196	270	303	301

410. The statistics above refer to children 18 years and under. In the 2000 census 66,314 persons were under the age of 18, comprising 33,616 boys and 32,698 girls.

411. There are no statistics concerning the trafficking of children for the purposes of prostitution. Consideration however is being given to this area as it is intended that a system will be set up to capture and collate that information on trafficking (see paras. 152-159).

### **Article 25**

412. All adult citizens of Barbados are entitled to the rights expressed in article 25 of the Covenant except in the existence of circumstances which would render that person ineligible. Examples of such circumstances are convictions for felony or other criminal offence involving dishonesty, mental instability, bankruptcy, or conviction for corrupt or illegal practice at elections.

413. There is no residential requirement for citizens of Barbados seeking to be elected to the House of Assembly.

414. The electoral laws contain safeguards to ensure that the principle of “one man, one vote” is effectively applied. For example, the Chief Registering Officer is required to publish a register of electors for each constituency. These lists are subject to claims and objections by any person. Therefore, objection may be taken to a name appearing or not appearing as the case may. These lists are required to be published each year.

415. Before sitting or voting in the House of Assembly elected members are required to make a declaration of qualification to be so elected and where a person wilfully and knowingly makes a false declaration that person is liable to disqualification from sitting as a member of the House. Also where a member persistently refuses to conform to the Standing Orders of the House, that

is, the rules of parliamentary procedure, he may be expelled from the House and his seat declared vacant. If a member becomes subject to any circumstance which would have disqualified him from standing as a candidate for election then he may also be required to vacate his seat. A member may also lose his/her seat for non-attendance in the House without an excuse.

#### **Article 26**

416. Reference may be made to Barbados' present report under article 2 of the Covenant.

#### **Article 27**

**Please provide current disaggregated data on the representation of minorities in parliament and their participation in public affairs and in economic life.**

417. Reference may be made to tables 4 to 7 of the present report for current disaggregated data on the representation of minorities in Barbados. Regarding the composition of Parliament, see paragraph 42 of the present document.

418. The Government of Barbados has and will continue to provide the enabling environment in which a new legacy of racial equality and reconciliation can occur through, inter alia, its policies on culture, education, social security, poverty alleviation; its commitment to democratic principles of governance and the rule of law; and the establishment of programmes to promote human and social development, entrepreneurship and economic prosperity.

#### **Notes**

<sup>1</sup> Central Bank of Barbados 2004 Economic Review and Statistics from the Barbados Tourism Investment Incorporated.

<sup>2</sup> 2000 Population Census.

<sup>3</sup> \$2BDS=\$1USD.

<sup>4</sup> Barbados Economic and Social Report 2002 and the Central Bank of Barbados Report 2004.

<sup>5</sup> 2000 Population Census.

<sup>6</sup> A copy of Barbados' Constitution is attached.

<sup>7</sup> Constitution Sect. 24.

<sup>8</sup> A copy of this legislation is attached.

<sup>9</sup> A copy of the legislation is attached.

<sup>10</sup> See sect. 22 (1) of the Constitution.

- <sup>11</sup> The Caribbean Court of Justice Act is attached.
- <sup>12</sup> Legislation attached.
- <sup>13</sup> Legislation attached.
- <sup>14</sup> Legislation attached.
- <sup>15</sup> See *Commonwealth Caribbean Law and Legal Systems* by Rosemarie Belle Antoine at pp. 77-81, Cavendish Publishing Limited, 1999.
- <sup>16</sup> See Part IV of the Offences Against the Person Act, Cap. 141.
- <sup>17</sup> Regulations enacted pursuant to section 10 of the Health Services Act, Cap. 44.
- <sup>18</sup> Legislation attached.
- <sup>19</sup> Legislation attached.
- <sup>20</sup> See section 18 of the Constitution for more information on the rights of persons charged with a criminal offence.
- <sup>21</sup> The common law of England is binding on Barbados.
- <sup>22</sup> Case-law from these jurisdictions though not binding is generally persuasive given the similarities in the legal systems.
- <sup>23</sup> See the New Zealand case of *Re M* [1992] 1 NZLR 29 at 41, per Gallen J at 225.
- <sup>24</sup> These principles are mostly expressed in articles 9 and 14 of the International Covenant for Civil and Political Rights.
- <sup>25</sup> See sections 13 and 18 of the Barbados Constitution. Also see the paragraphs in this report on articles 9 and 14 of the Covenant.
- <sup>26</sup> See sections 3, 9, 11, 12 and 14 of the Offences Against the Person Act.
- <sup>27</sup> This body known as the Privy Council is to be distinguished from the Judicial Committee of the Privy Council (JCPC) in the United Kingdom which performs a judicial function and was, prior to the establishment of the Caribbean Court of Justice (CCJ), the final Court of Appeal for Barbados. The Privy Council discussed in this section of the report is locally comprised and acts in concert with the Governor General in performing an executive function.
- <sup>28</sup> Such has been the custom but with the institution of the Caribbean Court of Justice this custom will apply to the CCJ *mutatis mutandis*.
- <sup>29</sup> 9.00 a.m.-5.00 p.m. or until the matters for the day have been cleared.

- <sup>30</sup> 10.00 a.m.–1.00 p.m. or until the matters for the day have been cleared.
- <sup>31</sup> Police bail is bail duly granted at the police station. It is often referred to in regular parlance as “station bail”.
- <sup>32</sup> See section 6 of the Bail Act, Cap. 122A for police bail provisions.
- <sup>33</sup> “Surety” refers to a person who stands as a guarantor that the accused will appear to stand trial. In the event that the accused absconds from the jurisdiction or cannot be reasonably located to stand trial the surety will be liable to the Court for the amount in which the accused is granted bail. This money is only required to be paid in the event of the accused taking flights and hence the surety must own property of at least the same value as the bail amount.
- <sup>34</sup> See section 2 (b) of the Bail (Amendment) Act No. 26 of 2000, amending section 5 of the Bail Act, Cap. 122A entitled “Circumstances in which bail may be denied”.
- <sup>35</sup> Section 13 (4) of the Constitution. Also see section 24 of the Constitution.
- <sup>36</sup> Regulations enacted pursuant to section 10 of the Health Services Act, Cap. 44.
- <sup>37</sup> The Health Services (Communicable and Notifiable Diseases) Regulations defines “communicable disease” as any disease specified in the First Schedule thereof and “notifiable disease” as any disease specified in the Second Schedule thereof. For the lists of communicable and notifiable diseases please refer to the Health Services (Communicable and Notifiable Diseases) Regulations.
- <sup>38</sup> The Regulations define “contact” as a person who has presumably been exposed to the risk of infection from a communicable disease and is within the incubation period of that disease.
- <sup>39</sup> Legislation attached.
- <sup>40</sup> See section 6 (3) and (4) of the Mental Health Act.
- <sup>41</sup> See section 11 of the Mental Health Act.
- <sup>42</sup> See section 9 of the Mental Health Act.
- <sup>43</sup> See section 10 of the Mental Health Act.
- <sup>44</sup> See section 11 in conjunction with the schedule of the Mental Health Act.
- <sup>45</sup> See sections 30 and 31 and Part IV of the Act respectively.
- <sup>46</sup> See attached copy of the Minor Offences Act, 1998.
- <sup>47</sup> Legislation attached.
- <sup>48</sup> See section 22 (4) and (5) of the Constitution.

<sup>49</sup> See the Trespass to Property (Reform) Act, Cap. 155B.

<sup>50</sup> See the Defamation Act, Cap. 199.

<sup>51</sup> Legislation is attached.

<sup>52</sup> For the remainder of section 34, see attached copy of the Public Order Act, Cap. 168A.

<sup>53</sup> Also see sections 32-34 of the Public Order Act for other regulations relating to the conduct of public meetings.

<sup>54</sup> Legislation attached.

<sup>55</sup> See section 8 of the Minors Act, Cap. 215.

<sup>56</sup> See section 9 of the Minors Act, Cap. 215.

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