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Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21

Barbados*

The present report is a summary of four stakeholders' submissions¹ to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

* The present document was not edited before being sent to United Nations translation services.

I. Information provided by other stakeholders

A. Background and framework

1. Scope of international obligations

1. Amnesty International (AI) noted that during the first Universal Periodic Review of Barbados in December 2008, it rejected nearly half the recommendations made by reviewing States, including a number of important ones relating to ratification of international human rights treaties, children, and the rights of lesbian, gay, bisexual and transgender people.²

2. AI noted that Barbados has still to ratify key international human rights treaties such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of all Persons Against Enforced Disappearance; and to ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.³

3. AI also regretted that Barbados rejected recommendations intended to ensure that Barbados adheres to its international human rights obligations towards children. In particular Barbados rejected the recommendations to eliminate all forms of corporal punishment from its legislation and discourage its use in schools.⁴

2. Constitutional and legislative framework

4. The Global Initiative to End All Corporal Punishment of Children (GIECPC) considered that the Government confirmed that it was “actively looking at further revising the Constitution and updating its legislation to conform to its treaty obligations” by accepting recommendations such as: to give consideration to all international obligations in the field of human rights provisions in revision of the Constitution; take and strengthen necessary legislative measures required to incorporate in its domestic law the provisions contained in international human rights instruments to which it is a party; adopt further measures to ensure the incorporation of its international human right obligations into national legislation and to consolidate the process of updating its national legislation in accordance with its international commitments.⁵ Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights treaties, though it is an obligation frequently ignored or evaded by governments. In Barbados, there has been considerable public debate on the issue, but there has been no change in the legality of corporal punishment since the initial review: now, as in 2008, it is lawful for children to be physically punished in the home, schools, penal institutions, some care settings and as a sentence for crime. GIECPC recommend that Barbados enact legislation to prohibit corporal punishment of children in the home explicitly as a matter of priority.⁶

3. Institutional and human rights infrastructure and policy measures

5. JC noted that, at a two day regional meeting of the Commonwealth, the Barbados delegation agreed that the number one priority was the establishment of a national human rights institution (NHRI), which would include civil society. It was unanimously recommended that a Barbados Human Rights Advisory Committee (HRAC), comprising the members of the delegation be established to oversee the establishment of the NHRI. To

date, this has not occurred no meeting has been convened to discuss human rights. Furthermore, the Government is already in the process of expanding the role of the Ombudsman to incorporate the NHRC.⁷

6. AI recommended establishing and implementing policies and initiatives to address discrimination, prejudice and violence based on sexual orientation or gender identity.⁸

7. Justice Committee (JC) noted that the legislation establishing the Police Complaints Authority (PCA) was passed in 2004 but this body has not yet convened and up to recent reports the Chairman and members of the Authority had not yet received their instructions.⁹

8. JC suggested that part of the curriculum for trainee Police Officers should focus on human rights. Members of the Royal Barbados Police Force should receive at least one module of human rights training that is directly applicable to the Caribbean context.¹⁰

B. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

9. JC called on the State to acknowledge and recognize that there are particularly severe problems of religious prejudice and intolerance experienced by many Rastafarians. As a party to the Durban Declaration and Programme of Action, Universal Declaration of Human Rights, and bound by the Constitution of Barbados, the Government should actively seek to implement policies and measures that are designed to prevent and eliminate such discrimination on the basis of religious and spiritual belief.¹¹

2 Right to life, liberty and security of the person

10. AI noted that during the first Universal Periodic Review it rejected a number of important recommendations on the death penalty, but Barbados did undertake to abolish the mandatory death penalty. Although there have been no executions in Barbados since 1984, death sentences continue to be handed down by the courts, the most recent being, as far as AI is aware, in 2010. The relevant legislation has not yet been amended in order to make the death penalty a discretionary penalty. At the end of 2011, there were four prisoners on death row. Barbados voted against the UN General Assembly resolutions on a moratorium on executions with a view to abolishing the death penalty in 2007, 2008 and 2010. Although international human rights law prohibits mandatory death sentences, Barbados retains the mandatory death penalty for murder, treason and some military offences which means that where an individual is convicted of these crimes, the only penalty the law allows judges to impose is death and there is no possibility of taking the defendant's personal circumstances or the circumstances of the particular offence into account.¹²

11. AI noted that on 2 October 2011, the Attorney General and Minister of Home Affairs, was reported by a local newspaper, *The Barbados Advocate*, as having said that he expected that changes to national legislation to remove the mandatory imposition of the death penalty would be finalized by the end of 2011. However the proposed legislation is still pending before Parliament. AI recommended an immediate moratorium on executions with a view to abolishing the death penalty; to commute without delay all death sentences to terms of imprisonment; to immediately remove all provisions in national laws, in particular by abolishing all provisions which provide for mandatory death sentences; to ensure rigorous compliance in all death penalty cases with international standards for fair trial.¹³

12. AI highlighted the ruling in the case of *DaCosta Cadogan v Barbados* in September 2009 in which the Inter-American Court of Human Rights held that the mandatory death sentences imposed in murder cases in Barbados violates the right to life. According to the Court, the mandatory imposition of the death penalty is arbitrary and fails to limit the application of the death penalty to the most serious crimes, in violation of articles 4(1) and 4(2) of the American Convention on Human Rights. The judgement echoed a previous decision by the Court in the case *Boyce et al v. Barbados*, which also held that the mandatory imposition of the death penalty violates the right not to be deprived of life arbitrarily. The Court also found that the State had violated Mr Cadogan's right to a fair trial as his mental health state at the time of the offence was never fully evaluated and stated that “the State shall ensure that all persons accused of a crime whose sanction is the mandatory death penalty will be duly informed, at the initiation of the criminal proceedings against him, of their right to obtain the psychiatric evaluation carried out by a state-employed psychiatrist”.¹⁴

13. JC noted that due to discriminatory practices of Government, the State contributes to feelings of tension and insecurity amongst its citizens, particularly those from marginalized groups. In addition to living with normal day-to-day concerns, individuals needed to be mindful of possible police harassment while en route to a destination. There has been an alarming number of incidents where people who have been going about their business have been interrogated and have had their civil liberties violated because they were deemed by the police to have been behaving in a ‘suspicious manner’.¹⁵

14. GIECPC noted that corporal punishment of children is lawful in Barbados, despite recommendations to prohibit it by treaty bodies and the initial UPR in 2008, the latter explicitly rejected by the Government. GIECPC hoped that the Working Group will note with concern that corporal punishment remains legal in Barbados and that the Government’s continues to defend it. GIECPC hoped that States will raise this issue during the review in 2013.¹⁶

15. GIECPC noted although the Government accepted the recommendation regarding public-awareness initiatives to change people’s attitudes to corporal punishment it rejected the recommendations to prohibit corporal punishment, stating that the laws of Barbados protect children from abuse and that corporal punishment in schools and prisons must be administered in compliance with the Code of Discipline promulgated under the Education Act and the Prison Rules Act. It noted that the Government stated during the review that the Minister for Education’s public advocacy of a prohibition of corporal punishment in schools was not its official position, although “it may move in that direction in future”.¹⁷ GIECPC was concerned that corporal punishment is lawful in the home in accordance with Article 4 of the Prevention of Cruelty to Children Act (1904) and in schools under the Education Regulations pursuant to article 59 of the Education Act (1983) and is regulated by Ministerial Guidelines indicating that corporal punishment should be a “last resort.” These Guidelines also authorize principals to inflict corporal punishment and to delegate the authority to do so to the deputy principal and senior teachers.¹⁸

3. Administration of justice, including impunity, and the rule of law

16. JC noted that most complaints against the Police Force alleged unprofessional conduct, beatings and assaults. Police occasionally were accused of beating suspects to obtain confessions, and suspects often recanted their confessions during their trial. In many cases the only evidence against the accused was a confession. The State of Barbados has not honoured the recommendations that were made since 1994 for video tapping of interrogations.¹⁹

17. JC acknowledged that there have been many attempts to uncover the misconduct of certain officers in the police force. This has been unsuccessful to date. The PCA, a body developed to resolve such issues of police misconduct, has failed to implement and/or aggressively adopt any of the punitive polices which it is empowered to impose. JC stated that over the past four years, public confidence in the police has severely waned. This may be due to several reasons; however one major cause, as it relates to the Rastafarian community, is the continued ill-treatment of its members. Furthermore, a lack of accountability within the Police Force, coupled with a lack of transparency inhibits adequate investigation and legal recourse.²⁰

18. JC observed a rapid decline in human rights and social equality for all in Barbados. There has been little or no advancement in the process of conducting independent or unbiased investigations in matters concerning citizens wronged by officers acting on behalf of the state. JC recommended that police officers who are under investigation in respect of cases of alleged brutality should not be responsible for conducting those investigations and in cases where persons have died whilst in police custody, an independent autopsy should be mandatory. Police officers who are found guilty of criminal charges should also face appropriate punitive sanctions.²¹

19. GIEPC noted that in the penal system, corporal punishment is also lawful as a sentence for crime for males as according to article 71 of the Magistrate's Courts Act provides for boys aged 8-15 to be "privately whipped" at a police station, up to 12 strokes in place of or in addition to any other punishment). Article 16(f) of the Juvenile Offenders Act also includes "ordering the offender to be whipped" among the list of available sanctions for children and young people. The Act also provides under article 9 for a court to order a boy aged 12-15 to be "privately whipped" in lieu of or in addition to any other punishment. GIEPC also noted that corporal punishment is lawful as a disciplinary measure in penal institutions. The Reformatory and Industrial Schools Act (1926) authorizes corporal punishment as a disciplinary measure on boys, and allows a magistrate to order whipping as a punishment for attempted escape. The Prisons Act (1964) allows the use of force for purposes of maintaining discipline and provides for corporal punishment for specific disciplinary offences, up to 12 strokes for persons under 21 years of age.²²

20. GIEPC reported regarding alternative care settings, that corporal punishment is lawful in private foster care and article 4 of the Prevention of Cruelty to Children Act applies.²³

21. JC suggested that an outcome of human rights training should guarantee that the rights of Rastafarians are protected in practice. This action would mitigate the fear and mistrust between Police officers and Rastafarians and vice versa. Rastafarians would be able to enjoy their own culture, profess and practice their own religion, in private and in public, freely and without interference, and participate effectively in the cultural, social, economic and political life of the country in which we call home. A properly trained Police Force would also protect Rastafarians from any form of crime - racism, religious discrimination, xenophobia and related acts of religious intolerance to which they may be subjected.²⁴

4. Right to privacy, marriage and family life

22. AI noted that consensual same-sex conduct is criminalized in Barbados. Section 9 of the Sexual Offences Act criminalizes "buggery" making it punishable with life imprisonment. AI noted that a person committing an act of serious indecency towards a person of 16 years of age or more is liable on conviction to imprisonment for a term of 10 years according to section 12 of the same law. The vague definition of this crime and the use of the word "unnatural" in the definition, allows this provision to be used to target and

prosecute LGBT people and people engaging in consensual same-sex conduct. These provisions entrench discrimination in the law and foster stigmatization of, and prejudice against, LGBT people throughout society. The existence of laws criminalizing consensual same-sex leads to a reluctance amongst lesbian, gay, bisexual and transgender people to undergo HIV testing and to access other HIV/AIDS services.²⁵

23. AI recommended the repeal of all provisions that criminalize consensual same-sex conduct, including in the Sexual Offences Act and the acknowledgment that LGBT persons are at risk of greater discrimination, prejudice and violence because of the existence of laws criminalizing consensual same-sex activity.²⁶

24. AI regretted that Barbados rejected recommendations made by reviewing States during the UPR, intended to ensure that Barbados adheres to its international human rights obligations to lesbian, gay, bisexual and transgender people, decriminalize consensual sexual acts between adults of the same sex, and take all necessary action to protect LGBT people from harassment, discrimination and violence. AI reminded that by continuing to criminalize consensual same-sex conduct the Barbadian government is violating its international obligations under human rights treaties to which it is a party and recommended that the Government ensure that the broader public understands that human rights must be guaranteed regardless of sexual orientation or gender identity and exert its leadership by decriminalizing consensual same-sex conduct and abiding by its international human rights obligations.²⁷

25. AI noted the Government response to the UPR recommendation indicating that it was unable to accept such a recommendation due to public opinion, arguing that there was no political mandate to do so and in fact significant sections of the community are opposed to such decriminalization. The Government further argued that “This is a topic which has been widely considered in society not only on the basis of its legality but from the socio-cultural and historical perspectives”. AI noted that Barbados is a strongly religious society and there is a significant lobby by the church on such issues. AI added that religious, cultural and moral beliefs, however, cannot be used as a justification for differential treatment, intolerance, violence or the criminalization of intimacy between adults.²⁸

5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

26. The JC noted that the constitution of Barbados recognizes freedom of religion for all citizens, yet the Government still interferes with the Rastafarian community’s ability to fully exercise this right.²⁹

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a national human rights institution with “A” status):

Civil society

AI	Amnesty International (NGOs in Consultative Status with ECOSOC) (London, United Kingdom);
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, United Kingdom;
JC	The Justice Committee, Barbados.

Regional intergovernmental organization

IACHR	Inter-American Commission on Human Rights (Washington DC).
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² Amnesty International (AI), p. 1.

- ³ Amnesty International (AI), p. 1,3.
 - ⁴ Amnesty International (AI), p. 1.
 - ⁵ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.
 - ⁶ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.
 - ⁷ Justice Committee (JC), p. 6, 7.
 - ⁸ Amnesty International (AI), p. 1-3.
 - ⁹ Justice Committee (JC), p. 5.
 - ¹⁰ Justice Committee (JC), p. 6.
 - ¹¹ Justice Committee (JC), p. 5, 6.
 - ¹² Amnesty International (AI), p. 1.
 - ¹³ Amnesty International (AI), p. 1-3. See also Inter-American Commission on Human Rights p.3.
 - ¹⁴ Amnesty International (AI), p. 1-3. See also Inter-American Commission on Human Rights p.3.
 - ¹⁵ Justice Committee (JC), p. 4.
 - ¹⁶ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.
 - ¹⁷ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.
 - ¹⁸ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.
 - ¹⁹ Justice Committee (JC), p. 6.
 - ²⁰ Justice Committee (JC), p. 5.
 - ²¹ Justice Committee (JC), p. 5.
 - ²² Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.
 - ²³ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.
 - ²⁴ Justice Committee (JC), p. 6.
 - ²⁵ Amnesty International (AI), p. 1-3.
 - ²⁶ Amnesty International (AI), p. 1-3.
 - ²⁷ Amnesty International (AI), p. 1.
 - ²⁸ Amnesty International (AI), p. 1-3.
 - ²⁹ Justice Committee (JC), p. 2.
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