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Summary record of the 3424th meeting

Held at the Palais Wilson, Geneva, on Monday, 23 October 2017, at 3 p.m.

Chair: Mr. Iwasawa

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fifth periodic report of Mauritius (CCPR/C/MUS/5; CCPR/C/MUS/Q/5; and Add.1)

1. *At the invitation of the Chair, the delegation of Mauritius took places at the Committee table.*

2. **Mr. Dhalladoo** (Mauritius) said that his Government was striving to take a human rights-based approach to economic, social and cultural development. Mauritius had not only become a party to the core human rights conventions, but had also ensured that they were, to a large extent, incorporated into domestic legislation.

3. Since the submission of the fourth periodic report, several measures had been taken to implement the provisions of the International Covenant on Civil and Political Rights. As a result of the amendment of the Protection of Human Rights Act in 2012, the National Human Rights Commission had undergone profound structural changes involving the creation of the Human Rights Division, the Police Complaints Division and the National Preventive Mechanism Division, which was in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Also in 2012, the landmark Equal Opportunities Act had been passed. That law had provided for the establishment of the Equal Opportunities Commission, which was mandated to address complaints of discrimination on any of the 12 grounds prohibited by law. More recently, the Government had established the Independent Police Complaints Commission, which was to be chaired by a former judge of the Supreme Court.

4. His Government wished to reaffirm the fact that the Chagos Archipelago formed an integral part of Mauritius under both international and national law. His delegation would like to reiterate its gratitude to member States of the African Union and the Non-Aligned Movement and to all the countries that had supported his Government's condemnation of the dismemberment of the territory of Mauritius prior to its independence and that continued to support his country's struggle to complete the decolonization process so that it could effectively exercise its sovereignty over the Chagos Archipelago. His Government also wished to express its gratitude to all States Members that had voted in favour of General Assembly resolution 71/292, by which it had requested an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

5. In accordance with the Committee's recommendations, the Government was pursuing consultations with stakeholders with a view to working towards a reform of the electoral system which would meet the criteria of stability, fairness, inclusiveness, gender representation, transparency and accountability. In that connection, in 2016, the Government had established a ministerial committee which had made considerable progress towards achieving proportional representation in the National Assembly. In addition, the delegation was pleased to report that women's participation as candidates in national elections had increased from 11 per cent in 2010 to 17.5 per cent in 2014.

6. In 2013, the Employment Rights Act had been amended to reflect the provisions of the International Labour Organization (ILO) Equal Remuneration Convention, 1951 (No. 100) and article 11 of the Convention on the Elimination of All Forms of Discrimination against Women. Women's representation in decision-making bodies had increased substantially over the previous decade; on average, women were currently at the helm of nearly 50 per cent of all public bodies, for example.

7. The Protection from Domestic Violence Act had been amended on several occasions in order to strengthen its provisions. Moreover, the Government had established the National Coalition against Domestic Violence Committee, which had published its first report in 2015. Steps had already been taken to implement some of the report's main recommendations at the ministerial level.

8. The introduction of a bill on child protection and care in the National Assembly was expected to take place in 2018. In addition, the Child Protection Act was being reviewed, and proposed amendments would most likely address the issue of corporal punishment.
9. The periodic reports of Mauritius were prepared in consultation with the relevant stakeholders, including representatives of civil society and non-governmental organizations (NGOs). Yearly meetings were held with representatives of civil society, human rights institutions and the private sector to discuss the 2012-2020 National Human Rights Action Plan. The 2014 progress report on the subject indicated that at least 80 per cent of the recommendations contained in the action plan were being implemented.
10. **Mr. Politi** said that, although the Committee applauded the positive developments which had taken place in the country since the submission of the country's previous report, it also noted that Mauritius was not a party to the Convention relating to the Status of Refugees or its Protocol or the Convention on the Reduction of Statelessness. More importantly, however, the State party had no law governing procedures applicable to asylum seekers and refugees.
11. The Committee would be interested to hear details on the measures taken in respect of the Chagossian Welfare Fund.
12. He would welcome clarification on the status of the Covenant within the domestic legal system. It was not clear whether there were specific principles and judicial mechanisms for adjudicating possible conflicts between Covenant provisions, the Constitution and ordinary legislation. He wondered whether any court could issue decisions regarding the consistency between domestic law and the Covenant or if that sort of decision could only be rendered by higher courts.
13. He would be interested to hear the delegation's views regarding the extent to which the conditions set out in the 2013 Criminal Appeal (Amendment) Act for the referral of convictions to a criminal court of appeal might limit the exercise of the right to appeal under article 14 (5) of the Covenant. Regarding the issue as to whether sentencing judges should, as a rule, consider time spent in prison on remand as counting as time served, it would be useful to know whether the matter had been settled.
14. He would appreciate a more detailed account of the case law relating to possible limitations on the right to vote, specifically with regard to article 25 of the Covenant, and wished to learn more about the appointment process for members of the National Human Rights Commission and about the arrangements in place regarding their tenure.
15. On the issue of the State party's compliance with the Committee's Views under the Optional Protocol, he would appreciate updated information on the outcome of the electoral reform that had been initiated in response to the Committee's Views on *Devianand Narraïn et al. v. Mauritius* (CCPR/C/105/D/1744/2007). The Committee would appreciate details on any legal procedures or mechanisms that were in place to ensure compliance with the Committee's Views in general. It would also be interesting to hear of any examples from the State party's case law in which decisions had been based on Views adopted by the Committee in respect of the State party.
16. **Mr. de Frouville** asked whether the labour inspectors mentioned in paragraph 25 of the written replies (CCPR/C/MUS/Q/5/Add.1) were tasked specifically with ensuring implementation of the Employment Rights (Amendment) Act (2013). It would be useful to hear about the outcome of the inspections, particularly in terms of the sanctions imposed and reparations afforded when inspectors found violations of the provisions of the Act concerning gender discrimination or other matters. How often did the inspections take place? He noted that paragraph 26 of the written replies appeared to indicate that 55 of the 57 complaints that had been brought before the Equal Opportunities Commission between January 2014 and April 2017 had been resolved through conciliation procedures. If that was the case, it would be interesting to learn what recommendations the Commission had made and what measures had been taken to restore the rights of the victims of gender discrimination in the workplace. He would welcome information on the current status of the two cases that the Commission had referred to the Equal Opportunities Tribunal and wished to know whether the Tribunal had handed down any decisions in those cases and, if so,

whether it had awarded any compensation. He wished to know what measures had been taken to enhance the participation of women in the private sector and to ensure that complaints of sexual harassment in the workplace were adequately addressed in the private sector.

17. The Committee would appreciate clarification as to whether the State party planned to amend section 250 of the Criminal Code, which in its current form was discriminatory and thus in violation of articles 2 and 26 of the Covenant. If there were no immediate plans to repeal that section, it would be useful to learn to what degree it was currently enforced. Additional details would be welcome on the complaints brought under the Equal Opportunities Act that were mentioned in paragraph 52 of the written replies. Had any of them concerned discrimination in contexts other than the workplace? If so, before which bodies had those cases been brought and what had the outcome been? In the light of reports that the State party was not doing enough to combat homophobia, notably in the case of an incident in September 2016 in which a transgender person had allegedly been insulted, humiliated and brutalized by the police, he wished to know what measures the State party had taken to protect lesbian, gay, bisexual and transgender persons against homophobic assaults. Were homophobic acts and hate speech prohibited under criminal law? He also wished to know whether the State party planned to amend article 282 of the Criminal Code, which defined the criminal offence of incitement to racial hatred, but did not include sexual orientation or gender identity as prohibited grounds for discrimination.

18. Regarding paragraphs 63 and 64 of the written replies, he failed to understand why the State party did not have estimates of the number of clandestine abortions, given that it did have data on the number of cases treated for complications resulting from abortion and on the number of authorized abortions between 2013 and 2016. He wondered whether women who had been raped and girls under the age of 16 who wished to terminate a pregnancy had to file a report with the police in order to obtain authorization for an abortion and, if so, would like to know what steps were taken to protect those women and girls from being stigmatized. If such reports had to be filed, it would be useful to know how many had been filed since 2013. He wished to know whether data were available on the number of requested abortions and the number of such requests that granted or rejected. It would be useful to know whether there had been any cases in which doctors had refused to perform an abortion on the grounds of conscientious objection and, if so, whether steps had been taken to find a doctor willing to do so. The Committee would appreciate information on the measures being taken by the State party to raise awareness among both men and women, and especially young people, of their sexual and reproductive rights and about family planning, particularly contraception.

19. In the light of the response in paragraph 65 of the written replies on the issue of acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, he would like to know whether there were any specific, possibly political, reasons why it might be difficult for the State party to ratify that Optional Protocol.

20. **Mr. Shany** asked whether the provision was still in place under which bail had to be denied to persons suspected of having committed certain terrorism-related offences and, if so, why judges were not given the power of discretion in those cases. While some measures had been taken to address the concerns expressed by the Committee in its previous concluding observations in relation to the denial of access to counsel for 36 hours (CCPR/CO/83/MUS, para. 12), he wished to know whether the State party had made any actual changes in its legislation in response to those concerns.

21. He would appreciate additional information on the 2016 amendment to the Prevention of Terrorism Act which gave police officers the power to arrest a person without a warrant if that person wore an item of clothing or displayed an object in a public place in such a way as to arouse reasonable suspicion that he or she belonged to a proscribed organization. It would be useful to learn what items of clothing and which objects were concerned and what safeguards had been put in place to ensure that the amendment did not result in discriminatory practices targeting given religious communities. He asked how quickly individuals arrested without a warrant under that provision had to be brought before a judge. The Committee would appreciate statistics on the number of investigations conducted and arrests made under the Prevention of Terrorism Act in recent years and

would like to know whether there had been any indictments in such cases and, if so, what the outcomes had been.

22. **Ms. Brands Kehris** said that she welcomed the increase in the level of women's participation in political life and wished to know whether a system was in place in the State party to monitor developments in that connection. If so, it would be useful to know which institutions and mechanisms were involved and whether such monitoring continued between elections. Were steps taken to collect and analyse data on any differences between regions or localities? Given that women still made up only 11 per cent of the membership of the National Assembly, she would welcome updated details on the work of the ministerial committee that had been set up to look into electoral reforms. It would be useful to know whether the quota of proportional representation that had been mooted for the National Assembly would stand at 30 per cent, in line with the quota decided on by the Southern African Development Community for women's participation in politics and decision-making. She wished to know whether there were any legal obstacles to the introduction of special measures of that sort at the national level. Were any other measures, such as awareness-raising campaigns or policies, being introduced to promote women's participation in political life in general and at the highest level of decision-making?

23. On the issue of equal opportunities, she would welcome more detailed information on the limited participation in political life of persons who were institutionalized in mental health centres. In view of the inclusion in section 34 (1) (e) of the Constitution of the term "persons of unsound mind" and the State party's assertion that the Government promoted a policy of deinstitutionalization, it would seem that there were persons who were currently institutionalized whose rights, including the right to political participation, might be disproportionately restricted. She would appreciate clarification of the legal definition of "persons of unsound mind" and would be interested to learn whether the limitation of its application to persons who were institutionalized was set in law or was a matter of interpretation. It would be useful to know whether the State party planned to take any measures to facilitate voting procedures for persons with mental, intellectual and psychosocial disabilities. She wished to know whether there were any plans to include additional prohibited grounds of discrimination, such as disability and sexual orientation, in the Equal Opportunities Act or the Constitution, both of which contained closed lists, in violation of the Covenant.

24. The Committee would appreciate additional information on efforts to ensure that the prohibition of discrimination based on gender was comprehensive and thus applied to all women. Were steps being taken to engage in targeted dialogue with religious communities to address the exceptions to that prohibition detailed in paragraph 48 of the written replies? In the light of the blanket exclusion of non-citizens from protection against discrimination, she would like to know whether non-nationals enjoyed any protection in terms of employment, education and access to public services. She would welcome data on the number of cases of racial discrimination that had been identified and investigated and the number of persons suspected of engaging in such discrimination who had been prosecuted. She would like to know whether any steps had been taken to ensure that extreme expressions of hatred based on group characteristics were effectively addressed and whether the State party would consider strengthening the legal framework in place to address hate crimes.

25. **Mr. Santos Pais** said that he wished to know what training was provided to members of the judiciary, law enforcement and other government agencies, and the general public regarding issues relating to sexual orientation and gender identity in order to combat prejudice, social stigmatization, harassment, stereotyping, discrimination and violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. He also would like to know whether the Government planned to enact legislation enabling same-sex couples to enter into civil partnerships and enjoy the same rights as heterosexual married couples and whether the Protection from Domestic Violence Act would be further amended to cover persons in same-sex marriages and civil partnerships. Did that law, as amended, define marital rape as a crime? He would be interested to learn what measures had been taken to provide victims of domestic violence with protection, assistance and adequate redress. How many shelters for victims were there and where were they located? He would

appreciate information on what courses of action were available to victims in the event that police officers refused to receive their complaints, as had been alleged.

26. He wished to know what training had been provided to members of the judiciary and of law enforcement and other government agencies in how to handle cases of violence and abuse against children, particularly children with disabilities, and older adults. Detailed information on the steps taken to address reported cases of abuse of older persons would be appreciated. He also would like to know whether the authorities intended to act upon the suggestion made by the President of Mauritius to increase the penalties handed down in cases of violence and abuse against older persons. In addition, he wished to know how many protection orders on behalf of older persons and how many summonses in reported cases of abuse had been issued under the amended Protection for Elderly Persons Act. It was somewhat surprising that the Welfare and Elderly Persons' Protection Unit processed complaints of abuse against older persons in domestic settings but not in institutions, and he would like to know how many complaints the Unit had received since 2014. He also wished to know how many awareness-raising and sensitization campaigns the Unit had organized for the general public and how many campaigns it had run in order to inform older persons about their rights. He asked whether members of Elderly Watch Committees reported cases of abuse in institutional settings as well as domestic cases.

27. Although corporal punishment appeared to have been prohibited in schools, it had not been fully banned at home, in alternative care settings or in the penal system. He therefore wished to know what progress had been made towards ensuring that an explicit prohibition of corporal punishment in all settings would be included in the children's bill that was being formulated, as had been recommended by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Committee against Torture. It should be recalled that, during the country's second universal periodic review cycle, the Government had accepted the recommendation that it should adopt legislation to that end.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

28. **Mr. Dhalladoo** (Mauritius) said that his country's fifth periodic report had been unavoidably delayed while the Government prepared reports for other human rights treaty bodies. Its late submission should not be interpreted as a lack of respect for the Committee or the country's obligations under the Covenant.

29. Chagossians enjoyed the same rights as other Mauritian citizens. The Government consistently implemented wide-ranging special measures, including the provision of scholarships and educational materials, to improve the well-being of Chagossians.

30. All death sentences in Mauritius had been commuted to life imprisonment under the 1995 Abolition of the Death Penalty Act. However, the death penalty remained a controversial and sensitive issue; the Constitution had not been amended to reflect its abolition as it had not received the required support of a majority of three quarters of the members of the National Assembly. That was also the reason why Mauritius, like many other States parties, had not ratified the Second Optional Protocol to the Covenant.

31. Both the President and Speaker of the National Assembly were women. In addition to occupying decision-making positions in the Government and throughout the public sector, women made up 47 per cent of all Supreme Court judges and 67 per cent of the country's magistrates.

32. **Ms. Goordyal-Chitto** (Mauritius) said that, as Mauritius was a small, densely populated country with limited resources, the Government had no policy on granting refugee status to foreign nationals. However, attempts were made to address applications for asylum or refugee status by facilitating the settlement of applicants in friendly countries willing to receive them.

33. The Covenant had been referred to in a number of court cases, including the *Matadeen v. Pointu and Ors* case, as stated in the country's replies to the list of issues. The provisions of the Covenant were also referenced in the Constitution and other legislation on human rights. However, treaties ratified by the country were not automatically incorporated into national law but instead had to be domesticated.

34. The Criminal Appeal Act had been amended in 2013 to give new powers to the Human Rights Division of the National Human Rights Commission; under that law, a person convicted of an offence was able to ask the Division to determine whether there was sufficient new and compelling evidence to justify the referral of the case to the Court of Criminal Appeal for retrial. The amended law did not restrict convicted persons' right or ability to appeal. A precedent had been established in the case of *Dookee Ajay v. State of Mauritius*, whereby periods of time spent in prison on remand were taken into account during sentencing. Further information would be provided about the case of Liyakkat A. Polin, which was before the Judicial Committee of the Privy Council. Since the Committee had issued its Views in the case of *Devianand Narrain et al. v. Mauritius* (CCPR/C/105/D/1744/2007), the Ministerial Committee on Electoral Reform had been established and had carried out consultations with relevant stakeholders. However, any reform measure would need to take into account the cultural and religious diversity of Mauritian society and would require a constitutional amendment.

35. Women working in the public and private sectors enjoyed the same legal protections. Those working in the private sector had access to a range of legal remedies, including the right to submit complaints to the Office of the Director of Public Prosecutions or petitions to the Attorney General.

36. The Government planned to amend the Criminal Code to improve the legal framework governing sexual crimes. While there were no plans to amend section 250 of the Criminal Code, which established penalties for the offences of sodomy and bestiality, the Committee could rest assured that its concerns regarding the existing legal framework had been duly noted. Under the Equal Opportunities Act, cases that had not been resolved through conciliation could be referred to the Equal Opportunities Tribunal at the request of one or both of the parties involved.

37. With regard to the specific allegations of police brutality discussed earlier in the meeting, the alleged victims were entitled to file complaints with the police. In the event that their complaints were not handled in a satisfactory manner, they could write to the Director of Public Prosecutions or petition the Attorney General. The Criminal Code contained robust provisions for dealing with cases of police brutality, but due consideration would be given to the Committee's concerns in that regard.

38. Sexual intercourse with a person aged under 16 years was an offence. Such crimes could be reported to the police, which had a dedicated unit to handle them. Sexual crimes against minors could also be reported to the Child Development Unit of the Ministry of Gender Equality. Victims of sexual crimes continued to experience some degree of stigmatization, but, following a series of awareness-raising campaigns, they were now more willing to come forward. The legal framework governing the protection of victims' rights was currently under review, and the Office of the Director of Public Prosecutions and the police had held workshops on the rights of victims.

39. As detailed in paragraph 11 of the replies to the list of issues, the Prevention of Terrorism Act provided for the denial of bail in very limited cases. However, it was inaccurate to state that judges were prevented from exercising discretion in those cases. The Act had built-in safeguards to protect persons charged under its provisions, and such persons would not necessarily be denied bail, as they also enjoyed various constitutional guarantees. The Government was currently reviewing bail practices, and a draft police and criminal evidence bill was under consideration. The provision included in the amended Act under which persons who disguised their identity could be arrested without a warrant was designed to ensure that all available measures could be taken to prevent terrorism.

40. Significant progress had been made in terms of increasing the representation of women. The Local Government Act had been amended in 2011 and again in 2016 in advance of the regional elections in Rodrigues in order to ensure that women were more fully represented at all levels, and the ministerial committee that oversaw the electoral reform process was working to increase their representation further. As a majority of three quarters was needed to alter the Constitution, it would take time to achieve further improvements in that regard.

41. Persons confined to psychiatric institutions did not have the right to vote, and there were no plans to grant them that right, but the Committee's concerns in that regard would be communicated to the relevant authorities. The right to vote could not be denied on grounds of disability status or sexual orientation. With regard to discrimination, it should be noted that a bill on disability was being prepared and that sexual orientation had been included among the prohibited grounds of discrimination in the Equal Opportunities Act, Employment Rights Act and Employment Relations Act. Significant progress had been made in addressing issues of sexual orientation in recent years, and a range of cultural, customary and religious factors would have to be addressed in order to achieve further progress. The Constitution did not permit positive discrimination.

42. In order to meet the specific cultural and religious needs of certain communities, the Constitution provided for the application of personal status laws, which addressed sensitive issues and, for that reason, could not easily be repealed. The Muslim Family Council had duly noted the concerns expressed regarding those laws.

43. Foreign nationals who obtained the appropriate work permit and met certain immigration requirements, as set forth in the Immigration Act and other laws, had the right to work in Mauritius, and male and female foreign nationals were treated equally. As detailed in paragraph 49 of the replies to the list of issues, the Criminal Code contained a range of provisions relating to racial discrimination which could be invoked in cases of racial hatred. Extreme hate crimes did not take place in Mauritius, but the legal framework had nevertheless been deemed adequate for dealing with such cases, should they occur in the future.

44. The Institute for Judicial and Legal Studies had begun to organize human rights training courses for judicial officers, judges and barristers. The training courses addressed the issues of sexual orientation and disability, although a dedicated training course on sexual orientation had not yet been organized. The Office of the Director of Public Prosecutions had conducted many training courses, workshops and seminars on human rights in general. There were no plans to enact specific legislation to recognize civil partnerships, nor were there plans to amend the Protection from Domestic Violence Act to recognize same-sex marriage. However, a person who experienced violence at the hands of another person with whom he or she cohabited could file a complaint of domestic violence with the police. Marital rape had not been established as a specific offence, but perpetrators of such crimes could be prosecuted for the offence of rape, as established in section 249 of the Criminal Code. Consideration would be given to the matter of marital rape and the rights of victims of marital rape as part of the Government's review of the legal framework governing sexual crimes.

45. Corporal punishment was not prohibited in all settings. Consideration was being given to the issue as part of the review of the Child Protection Act, and it would be addressed in the children's bill that was to be submitted to the National Assembly in 2018, if possible. In some cases, persons who administered corporal punishment could be prosecuted under section 230 of the Criminal Code and certain sections of the Child Protection Act. The Committee's concerns regarding corporal punishment in educational institutions would be communicated to all stakeholders.

46. **Mr. Gopaul** (Mauritius) said that the Protection for Elderly Persons Act had been enacted in 2005. Campaigns were being conducted to raise awareness of the issue of elder abuse, and most cases of abuse were dealt with through counselling, mediation and family conferencing. In order to provide greater protection for older adults, the Ministry of Social Security, National Solidarity and Reform Institutions was reviewing the Protection for Elderly Persons Act, strengthening relevant legislation and finalizing the National Strategy Paper on Ageing, 2016-2020. The Ministry intended to establish a special support service for elderly persons who lived alone.

The meeting rose at 6 p.m.