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Summary record of the 9th meeting

Held at the Palais Wilson, Geneva, on Friday, 7 May 2010 at 10 a.m.

Chairperson: Mr. Marchán Romero

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The meeting was called to order at 10.10 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Second to fourth periodic reports of Mauritius (E/C.12/MUS/4; E/C.12/MUS/Q/4 and Add.1; HRI/CORE/MUS/2008)

1. *At the invitation of the Chairperson, the delegation of Mauritius took places at the Committee table.*
2. **Mr. Servansing** (Mauritius), introducing the combined second to fourth periodic reports of Mauritius (E/C.12/MUS/4), said that Mauritius was a functioning multiracial and multicultural democracy, founded on the principles of the promotion and protection of human rights, which were enshrined in the Constitution. It had a dynamic and independent judiciary, and strong institutions to guarantee the rights of citizens, including the National Human Rights Commission, the Office of the Ombudsman and the Office of the Ombudsperson for Children. Legislation had been adopted in line with the international human rights instruments to which Mauritius was a party, including legislation that had provided for the establishment of the Truth and Justice Commission. The Commission had become operational on 1 February 2009, the day on which the abolition of slavery was commemorated in Mauritius. The Commission was mandated to assess the consequences of slavery and indentured labour from the colonial period to the present, and to recommend measures to be taken in order to achieve social justice and national unity.
3. The Equal Opportunities Act had been adopted in 2008, and provided for the establishment of an equal opportunities division within the National Human Rights Commission and an equal opportunities tribunal. Measures had been taken to provide financial support to NGOs working for the welfare of underprivileged members of society. A number of support programmes for vulnerable groups had been established, which focused on economic empowerment, poverty eradication and the protection of women.
4. Mauritius was a welfare State offering free education and health services, universal old-age pensions, social security aid and benefits for widows, orphans and persons with disabilities, and free public transport for students and the elderly, as well as other financial assistance schemes for those in need. Economic growth had been a constant over the past five years and Mauritius had already attained most of the Millennium Development Goals. The Government's commitment to the promotion and protection of human rights had been recognized by a number of regional and international institutions.
5. The second to fourth combined periodic reports of Mauritius had been drafted after broad consultations with all relevant government departments, national human rights institutions and a range of NGOs active in the field of economic, social and cultural rights. Further to the information contained in the State party's replies to the Committee's list of issues (E/C.12/MUS/Q/4/Add.1), he drew the Committee's attention to the establishment of an empowerment programme which aimed to address the challenge of preserving welfare while delivering reform, and which allowed the Government to turn deprivation into an adjustment opportunity. The programme aimed to ensure that proper training and support were provided for persons who had lost their jobs owing to change and innovation, in order to reintegrate them in the labour market.
6. Mauritius had ratified the Convention on the Rights of Persons with Disabilities, and a national policy paper and action plan had been launched to ensure the socio-economic integration of persons with disabilities. The policy aimed to ensure that there was no discrimination against persons with disabilities, and to empower them to access the labour

market. Regarding children with disabilities, he said that a national policy was being formulated in consultation with NGOs and other organizations, and awareness-raising campaigns were being conducted to inform parents and children alike about the rights of disabled children. Children with disabilities were encouraged to attend schools, and those who could not be integrated into mainstream schools were educated by government-assisted NGOs. The Government also refunded taxi fares for university students with disabilities.

7. In the current climate of economic and financial crisis, Mauritius viewed the promotion and protection of economic, social and cultural rights as a continuous process, and was not complacent about its achievements. The Government undertook to uphold the highest standards of human rights in order to bring about a qualitative improvement to the lives of all Mauritian citizens.

8. **The Chairperson** invited the members of the Committee to ask questions relating to articles 1 to 5 of the Covenant.

9. **Mr. Kerdoun** asked whether natural resources in Mauritius were the property of the State or of the citizens who owned the land where the resources were found. He wondered what measures were being taken to enable the public to benefit directly or indirectly from the country's natural resources. He wished to know how the establishment of an exclusive economic zone was affected by the proximity of islands that were under the sovereignty of other States and asked what would happen in the event that they also decided to extend their exclusive economic zones. He also wished to know what measures were being taken to ensure the protection of coastal areas.

10. He welcomed the State party's recognition of the need to renew its environmental policy in order to achieve sustainable development. Turning to the eight-point plan for strengthening environmental policy described in paragraph 110 of the State party report, he asked what measures were being taken to enable the public to participate in decision-making processes in the area of environmental policy, and what form that participation would take. He would be particularly interested to know how the State party's online environmental complaints system functioned, how those complaints were addressed, and whether a screening system was in place to identify false complaints. He also asked how the Government intended to strengthen enforcement of environmental policy, and whether enforcement measures would require prior approval from the courts. The delegation should clarify who would benefit from improved access to justice in that regard.

11. Turning to article 2 of the Covenant, he noted that, according to paragraph 166 of the State party report, the law differentiated between citizens and non-citizens in respect of immigration, property and work. He asked what those differences were and what measures were taken to prevent and overcome discrimination against migrant workers. He wondered whether there was evidence of illegal immigration and, if so, what measures were taken to manage it, and how many illegal immigrants there were in Mauritius. He asked whether the State party intended to sign and ratify the International Convention on the Rights of All Migrant Workers and Members of Their Families. Noting that the conditions for granting residence and work permits to non-citizens of Mauritius, as described in paragraph 171 of the State party report, were discriminatory, he asked whether any measures were envisaged to overcome such discrimination.

12. **Mr. Riedel** commended the State party on having ratified the Convention on the Rights of Persons with Disabilities and asked whether it would consider withdrawing its reservation to article 11 of the Convention. He also asked if the State party planned to ratify the Optional Protocol to that Convention and to sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

13. He wished to know whether the Government had responded to the 2007 recommendation of the National Human Rights Commission that a future Constitution

should provide explicitly for the protection and promotion of economic, social and cultural rights. He wished to know in particular if the Law Reform Commission had taken up that recommendation, given that part of its mandate was to keep the Constitution under constant review. While the aims of the Law Reform Commission's strategic plan for 2010 to 2012 were laudable, it would appear that domestic legislation made no reference to the economic, social or cultural rights enshrined in the Covenant. While section 16 of the Constitution contained a non-discrimination clause, non-discrimination was not a stand-alone right and could not be taken up by the Law Reform Commission or any other body in conjunction with economic, social and cultural rights, given that those rights had no legal basis in domestic legislation. He asked whether the time had not come for the State party to amend its legislation, including the Constitution, to include those rights.

14. **Mr. Atangana** said that the Committee would appreciate updated information on the number and content of petitions received by the National Human Rights Commission alleging violations of economic, social and cultural rights, as requested in question 4 on the list of issues. It was difficult to understand how complaints about violations of those rights could be brought before a court, given that they were not enshrined in domestic legislation. He asked whether there was any basis to reports that the State party planned to reintroduce the death penalty and, if so, why.

15. **Mr. Sadi** commended the State party on its many achievements, but asked whether they were not being undermined by the increase in drug-related problems. Tourism was flourishing and had doubtless been at the root of those problems, but it was difficult to understand why the State party was not taking more steps to fight the scourge of drugs.

16. He asked whether there was a clear division between the mandates of the National Human Rights Commission and the Office of the Ombudsman. It would be interesting to know to what extent suitable human rights education was available in schools, the public sector and the judiciary, and what the Government's approach was to human rights education in general. He wondered whether the National Human Rights Commission's lack of a specific mandate for economic, social and cultural rights indicated that those rights did not figure prominently in the State party's priorities.

17. He asked if some legislation on personal status was exempted from the non-discrimination clause of the Constitution because of religious sensitivities. If so, he wished to know whether religious sensitivities took precedence over international human rights law in the State party.

18. **Ms. Bras Gomes** said that, since an entire section of the draft national action plan on human rights had been devoted to civil and political rights, it was disappointing that the document seemed to place so little emphasis on economic, social and cultural rights. She invited the delegation to comment on reports that the Creole community suffered unfair treatment and discrimination on the basis of poverty.

19. She commended the State party on having developed and implemented the "Men as Partners" programme and asked how it had contributed to increasing equality between men and women. She would welcome information on paternity leave provisions, and would like to know if parental leave was shared between men and women. She would also like to know if the Men as Partners programme and other gender-equality measures had raised the percentage of women in high-ranking posts. In general, it would be useful to have examples of ways in which the various gender-equality measures had resulted in greater equality.

20. **Mr. Abashidze** requested additional information on measures taken to implement the Covenant in the State party. He would welcome an explanation of the status of international treaties in the legislation of the State party and said it would be useful to know whether the State party planned to incorporate economic, social and cultural rights in the Constitution.

21. Given that the Supreme Court was responsible for ensuring compliance with domestic legislation, not with the State party's international obligations, he failed to understand how it could rule on alleged violations of economic, social and cultural rights. Similarly, he asked how the National Human Rights Commission could receive complaints concerning those rights. He asked what obstacles the State party faced in incorporating economic, social and cultural rights in the Constitution. It would be useful to know which body was responsible for ensuring that domestic legislation was in line with the provisions of the international human rights instruments ratified by the State party. He asked whether the Supreme Court had ever handed down a decision or issued a statement on the need to amend domestic legislation in order to harmonize it with the State party's international obligations. How did the State party ensure that all citizens were aware of all the domestic legal remedies available to them, including through the Office of the Ombudsman? Lastly, he asked what steps were being taken to raise public awareness of economic, social and cultural rights.

22. **Mr. Kedzia** (Country Rapporteur) requested clarification of the meaning of the term "not ... expressly incorporated" in paragraph 4 of the replies to the list of issues. Did it imply that the provisions of the Covenant had been incorporated de facto in Mauritian law? It would also be useful to know what was meant by the phrase "the generally accepted principles" of the Covenant, in the same paragraph. He sought clarification on paragraph 29 of the periodic report; did it imply that the courts had the power to interpret rights which were not recognized in domestic legislation?

23. He noted that the State party's domestic legislation had developed from a mixture of the civil law and common law systems, and that the rights referred to in the repeated references to the work of the National Human Rights Commission and the Office of the Ombudsman related either to rights enshrined in the Constitution or to rights protected by acts of parliament. It appeared therefore that economic, social and cultural rights were not covered by law or any form of institutional protection, with the exception of the rights in the Constitution which were relevant to the economic, social and cultural areas. That was a matter of great concern to the Committee. He asked whether the courts or the Ombudsman could rule on breaches of economic, social and cultural rights, or whether an act of parliament would be required to enable them to do so.

24. It would be useful to know whether the list of grounds on which discrimination was prohibited in articles 3 and 16 of the Constitution was open-ended. If so, he asked whether discrimination on other grounds, such as sexual orientation, had been prohibited. He also asked if it was true that there were serious tensions between the Hindu majority and the Muslim minority, as alleged in some reports before the Committee. If so, the Committee would welcome information on any measures that had been taken to facilitate mutual understanding between those groups.

25. **Ms. Barahona Riera** requested additional information on the interpretation given to the right to life in constitutional rulings and court decisions. She asked whether the State party planned to reform the Constitution in order to introduce economic, social and cultural rights and to eliminate those provisions that appeared to discriminate against women in terms of inheritance, divorce and adoption. Lastly, she asked whether domestic violence was an offence and, if so, what punishments were handed down to perpetrators of that offence.

The meeting was suspended at 11.25 a.m. and resumed at 11.55 a.m.

26. **Mr. Servansing** (Mauritius) said, with regard to capital punishment, that the Prime Minister had always advocated a tough approach to crime and had reportedly made statements in favour of reintroducing the death penalty. Under his reforms, crime had steadily decreased, although there had recently been a number of isolated cases of very

serious crimes that had caused outrage. The recent election campaign had focused on law and order and it was no secret that the Prime Minister wished to take firmer action. There was no legislative process currently in force, however, and none was envisaged. If such a measure was introduced, it would be subject to a free vote in the National Assembly, with each member voting according to his or her conscience.

27. Mauritius had not escaped the worldwide problem of increasing drug abuse. Small islands faced particular health and security problems in that regard. The incidence of drug abuse had spread from small pockets of the country and become more common, but it was still a marginal issue. International drug traffickers, however, increasingly exploited the geographical vulnerability of island States, taking advantage of the ease of supply and transit. It was impossible to police all incoming vessels or, in view of the country's strategy to increase tourist arrivals to 2 million a year, to check all passengers. Indeed, flight crews had sometimes been involved in trafficking. The Government was adopting a three-pronged strategy to tackle the problem. First, it was conducting education, information and awareness-raising campaigns backed by the National Agency for the Treatment and Rehabilitation of Substance Abusers; secondly, the Agency was running four residential and rehabilitation centres and six day care centres for drug abusers; and, thirdly, the police were cracking down on drug traffickers, using the most advanced technology. There was cooperation across government departments and with other countries, including Madagascar, France and Seychelles, and international organizations for the exchange of intelligence.

28. With regard to the incorporation of human rights in the country's law, he recalled that Mauritius was a multicultural, multi-religious and multi-ethnic society. That meant that a balance had always to be struck between the susceptibilities of the various sectors of the population. The Government had therefore adopted a pragmatic approach: it did not seek to create problems where none existed, for fear of creating larger problems. The question of rights had to be balanced with that of social harmony.

29. In that connection, he emphasized that, by and large, social harmony prevailed in Mauritius, which had no indigenous people, being a colonial construct. It was true that at any given time some people were less advantaged than others. Historically, former slaves had been excluded from the mainstream and some problems remained with their integration. Discrimination was not, however, a deliberate policy but a product of history. The Government had adopted a positive policy to help the Creole people and other poorer sectors by setting up "priority education zones". Housing policy, too, had been geared to providing accommodation for those not fully integrated into society. The country's economic development policy, empowerment programme and affirmative action had succeeded in avoiding major conflict and mitigating minor tensions.

30. **Ms. Narain** (Mauritius) said that it was correct that economic, social and cultural rights were not incorporated in the country's domestic law or Constitution, but not because they were held in low regard. She recalled that the Constitution had been introduced in 1968 and since then Mauritius had passed through difficult economic times. Moreover, to change the Constitution, the votes of three quarters of the National Assembly were required. She was, however, glad to inform the Committee that a significant event had taken place in January 2010, when the Law Reform Commission had approved the preparation of a report, with draft legislation, on the reform of the Constitution, in which it would recommend, in the light of the experience of other Commonwealth countries, such as India, South Africa and Trinidad and Tobago, that economic, social and cultural rights should be guaranteed under the Constitution. The Commission was currently examining how the right to education, to language and culture, to housing, to basic amenities and to a healthy and sustainable environment could be incorporated in the Constitution. She added that almost all recommendations by the Commission had been enacted in the past.

Moreover, there was currently considerable political momentum, with the outgoing Government — which had been voted back into office — having talked of reviewing the Constitution and establishing a Second Republic. There was therefore a possibility of major reform. She hoped that it might thus also be possible for Mauritius to accede to the Optional Protocol to the Covenant, because, following reforms, the domestic remedies that complainants would need to have exhausted would exist. Another possibility was that the National Human Rights Commission could issue direct rulings. The Commission had interpreted its mandate to hear petitions, but it had been unable to rule on breaches of economic, social or cultural rights for lack of jurisdiction. The law governing the Commission might be changed in order to clarify its mandate. As for the right to life, there was not yet any jurisprudence in that regard, but the Commission interpreted its mandate as being to combat extreme poverty and ensure that the poorest Mauritians were afforded a decent standard of living.

31. She confirmed that there was an exclusive economic zone, in accordance with the United Nations Convention on the Law of the Sea and Mauritius' own law, the Maritime Zones Act, around all the islands of Mauritius, including Rodrigues, Agalega, the Cargados Carajos, the Chagos Archipelago and Tromelin, which had always been under the sovereignty of Mauritius, even though the Government was currently unable to exercise its sovereignty. The Government of the United Kingdom of Great Britain and Northern Ireland had unilaterally declared the area round the Chagos Archipelago, which it called British Indian Ocean territory, to be a marine protected area. Mauritius had rejected that declaration, since it had been engaged in bilateral negotiations with the United Kingdom on the joint management of the Archipelago, and was currently seeking redress. The State party was also negotiating a joint management plan with France for the maritime zone around the French-administered island of Tromelin. The plan would include shared management of its resources, in particular fish stocks. The talks did not alter Mauritius' claim to sovereignty over the island. Delimitation agreements had been signed with Seychelles and Réunion in accordance with the United Nations Convention on the Law of the Sea. Mauritius patrolled its coastline with vessels and helicopters. Persons caught fishing illegally in the territorial waters of Mauritius were prosecuted and received hefty fines.

32. "Occupation permits" aimed to attract investors who would bring funds to Mauritius and allowed their holders to work and purchase property. Other non-citizens who wished to reside in Mauritius could apply for a residence permit. They must, however, meet immigration requirements.

33. The absence of a specific mention of economic, social and cultural rights in the Constitution did not mean that they were not applied. Under common law, citizens could reasonably argue in the Supreme Court that the Covenant, which had been ratified by the State, should be applied. She agreed that economic, social and cultural rights should appear in the State party's national action plan on human rights.

34. On the roles of the Office of the Ombudsman and the National Human Rights Commission, she said that the Ombudsman dealt above all with issues of maladministration, while the Commission had a broader mandate. The Commission investigated violations of fundamental rights and freedoms under chapter II of the Constitution and looked into such areas as prison conditions and the treatment of persons held in police custody.

35. Persons convicted of assaulting their spouses or partners received stiff sentences. However, the key to combating that problem lay in changing the way people, particularly men, viewed gender roles. The Men as Partners programme was helping to change those attitudes. Women occupied many senior posts in the public service, which were filled on the basis of merit. However, gender balance had not been achieved across all sectors of the

economy because there was no specific plan in place to achieve that goal. Male workers who had worked for at least 12 consecutive months were entitled to five paid days of paternity leave under the Employment Rights Act. The Equal Opportunities Act outlawed discrimination on the grounds of status, which included sexual orientation.

36. The derogation from article 16 of the Constitution, on protection from discrimination, took into account Muslim personal law, in particular on divorce and succession. A committee had reviewed all legislation to identify laws that could be considered discriminatory and had presented its findings to the Government with a view to rescinding those laws.

37. **Mr. Mownah**, responding to questions on the processing of complaints about environmental problems, said that a telephone hotline was also available to pursue such complaints. In 2008, the Government had launched its Sustainable Mauritius programme to address sustainability issues through conservation projects and awareness-raising campaigns. Solar technology equipment to heat water, and so help reduce dependence on fossil fuels, was being made available to citizens.

38. The Ministry of Education, Culture and Human Resources was working on the inclusion of human rights in the school curriculum. Some concepts had already been included in primary school materials and secondary school textbooks were being prepared, though staff had yet to be trained to prepare the human rights curriculum and teach the subject. Initiatives such as poetry and song competitions and public debates aimed to raise awareness of human rights issues.

39. Turning to the issue of migrant workers, he said the Employment Rights Act and the Employment Relations Act guaranteed the right of workers to lodge complaints against employers. Mauritius had ratified the International Labour Organization (ILO) Convention concerning Migration for Employment (No. 97) and, in that context, encouraged circular migration. For example, a group of workers sent to Canada would return to Mauritius with new skills and savings to start their own businesses. The Ministry of Labour regularly inspected workplaces that employed migrants to ensure compliance with terms and conditions of employment. Of 30,000 migrant workers in Mauritius, there were around 900 illegal migrants whose cases were being examined by the authorities.

40. Persons who were severely disabled received a basic invalidity pension and, where applicable, a carer's allowance. Having ratified the Convention on the Rights of Persons with Disabilities, the Government had launched a national action plan and a public awareness campaign on the rights of the disabled. Specific measures included training and job creation in the information technology sector for young disabled persons.

The meeting rose at 1 p.m.