

**INTERNATIONAL
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ON CIVIL AND
POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

Fifth session

SUMMARY RECORD OF THE 13th MEETING

held at the Palais des Nations, Geneva,
on Thursday, 26 October 1978, at 3.15 p.m.

Chairman: Mr. KOULISHEV

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant:
initial reports of States parties due in 1977 (agenda item 4) (continued)

Initial report submitted by Mauritius

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session.

The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT:
INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 4) (continued)

Initial report submitted by Mauritius (continued) (CCPR/C/1/Add.21)

1. Mr. AHNEE (Mauritius) said that his country, which was deeply committed to the cause of human rights, would welcome any suggestion from the Committee which might help to provide still better guarantees for the Mauritian people. Most of the Covenant's provisions were to be found in the Mauritian Constitution and his Government had therefore not found it necessary to enact special legislation in order to ensure the fulfilment of its obligations under the Covenant. Some members of the Committee had, however, drawn his attention to a few instances where the Mauritian Constitution perhaps did not guarantee certain rights with the rigour required by the Covenant. He had noted their observations and the authorities in his country would consider them and, if necessary, fill any gaps in the legislation.

2. With regard to the language of the Constitution and the historical reasons why the chapter on fundamental rights in so many respects resembled various international instruments on the subject, he reminded the Committee that before independence Mauritius had been administered by the United Kingdom, which had approved the Universal Declaration of Human Rights and had also been a party to the European Convention on Human Rights. When the country had achieved independence, its leaders, traditionally aware of the interests of all the groups constituting the Mauritian community, had agreed that the guarantees afforded in the field of human rights by the various international instruments should be enshrined in the Constitution itself, thus giving something like sanctity to those rights. The Constitution could not be amended by a simple vote of parliament; it was the supreme law of the land, and any law inconsistent with the Constitution was void to the extent of the inconsistency (section 2 of the Constitution).

3. The members of the Committee had expressed interest in the organization of the courts in his country. In fact, the courts played an important part in Mauritius. As the report indicated, the Supreme Court was the guardian of the Constitution (section 83 of the Constitution). The judicial machinery was as highly developed as any in the advanced countries.

4. Mauritius was divided into nine administrative districts, each with a district court presided over by a professional magistrate appointed by the Judicial and Legal Service Commission, which was absolutely independent of the executive. In the larger and more populous districts, the district court had two or three divisions. District courts had a limited jurisdiction both in civil and in criminal matters.

5. Between the district courts and the Supreme Court, there were intermediate courts hearing both civil and criminal cases. They were composed of two professional magistrates sitting together to hear civil cases where the claim did not exceed the sum of 10,000 rupees (about 7,000 French francs) and also criminal cases which were more serious than those heard by the district courts, but not including cases of

murder, which were dealt with by the Court of Assizes consisting of a judge of the Supreme Court and a jury of nine persons. At the top of the pyramid was the Supreme Court of Mauritius, which had absolute jurisdiction to hear and pass judgement in any civil or criminal proceedings. It also sat as an appellate court - in which case it was composed of two judges - to hear appeals in civil and in criminal cases against the decisions of district and intermediate courts. A decision of the Supreme Court could itself be appealed to the Court of Civil Appeal or to the Court of Criminal Appeal as the case might be; both those courts were composed of the full bench of judges of the Supreme Court, with the exception, of course, of the judge whose decision was being appealed.

6. The appointment of Supreme Court judges was governed by section 77 of the Constitution. In theory any member of the bar who had five years' experience of pleading in the Supreme Court could seek appointment as a judge of that Court. In practice, however, the judges of the Supreme Court were appointed from the ranks of magistrates with 20-25 years' experience.

7. Mauritius had adopted the principle of the separation of legislative, executive and judiciary powers. That was why an independent commission presided over by the Chief Justice, who was the head of the judiciary, was responsible for the appointment of magistrates and judges. The Chief Justice himself was appointed by the Governor General after consultation with the Prime Minister. He was invariably chosen from the ranks of the senior judges. The Governor General was bound to consult the Prime Minister before appointing the Chief Justice, but did not have to accept the Prime Minister's views.

8. The judges of the Supreme Court had security of tenure. Under section 78 (2) and (3) of the Constitution, they could be removed only for inability to perform the functions of their office (whether through infirmity of body or mind or from any other cause) or for misconduct. The decision must be taken by the Governor General acting on his own after the case had been investigated by a tribunal composed of at least three persons from among those holding or having held the office of judge of a court having unlimited jurisdiction in civil and criminal cases. The salary of judges was not subject to a vote of parliament.

9. In reply to questions by members of the Committee concerning the population of Mauritius, he pointed out that the island had no indigenous population. Although successively occupied by the Portuguese, the Dutch, the French and the British, settlement had not really begun until the eighteenth century, when the French had brought the manpower needed for agriculture from Africa and Madagascar. With the arrival of the Indians and the Chinese, settlement had continued in the nineteenth century under the occupation of the United Kingdom. In spite of those differences of origin, the people of Mauritius tried to live harmoniously together.

10. French was certainly the language employed by most of the press, but other languages, including Creole, were also used in the mass media.

11. The problem of infant mortality had been solved through social services such as medical treatment for all in hospitals and dispensaries, pre-natal and post-natal care, paid maternity leave before and after confinement, free distribution of milk to children, compulsory vaccination, etc. Currently the population explosion was a much greater problem for the Mauritian Government.

12. Regarding the question whether it was possible for a citizen to obtain damages if his rights had been violated by the administration, he said that it was. There was no administrative jurisdiction in Mauritius and an action could be brought in the ordinary courts against the State, which was liable for any offence committed by one of its agents under article 1382 of the Civil Code. In respect of the amount of damages, Mauritius applied the same principles as those prevailing in the numerous countries influenced by the French Civil Code.

13. The Covenant on Civil and Political Rights could not be invoked by a citizen in a court of law, because the Covenant itself did not form part of the law. Since Mauritius was a party to the Covenant and the provisions of its Constitution provided the same guarantees, the citizen would have to invoke the relevant provisions of the Constitution.

14. There was no special procedure such as the Race Relations Board of the United Kingdom to combat discrimination. Such discrimination violated the Constitution and came within the exclusive province of the Supreme Court.

15. Sir Vincent Evans had expressed the view that the guarantees offered by section 3 of the Mauritian Constitution did not appear to cover fully the rights enumerated in articles 22, 23, 24 and 25 of the Covenant on freedom of movement. Admittedly, section 3 of the Constitution (see document CCPR/C/1/Add.2, page 2) did not cover all the rights enumerated in these articles of the Covenant, but it should be remembered that section 13 of the Constitution guaranteed freedom of association, exactly as provided in article 22 of the Covenant (cf. CCPR/C/1/Add.2, page 13). The provisions of article 23 of the Covenant were embodied both in the Civil Code and in the Civil Status Ordinance. The rights incorporated in article 24 of the Covenant were also guaranteed by those texts, as well as by the Mauritius Citizenship Act, which provided that any child born in Mauritius was a national of that country, whatever the nationality of his parents. The Representation of the People Ordinance, the Local Government Ordinance and the Public Service Regulations guaranteed the application of article 25 of the Covenant, while freedom of movement was protected by section 15 of the Constitution.

16. A member of the Committee had expressed concern at the power of the Chief Justice under section 17 of the Constitution to make rules concerning applications to the Supreme Court in cases where rights guaranteed by the Constitution were violated. It should be remembered that before making such rules - which concerned solely questions of reform and procedure - the Chief Justice had to obtain the approval of all the judges of the Supreme Court. The rules were necessary and the legislator had no doubt considered that, since matters relating to the Constitution came within the exclusive province of the Supreme Court, it was logical that the Chief Justice and the members of that Court should frame those rules. The rules had been published in 1968; they were extremely simple, unlike those governing the cumbersome procedure normally used for any other civil matter submitted to the Supreme Court. For example, if a person considered that his rights under the Constitution had been violated he could address the Supreme Court directly without the aid of counsel.

17. Many questions had been asked about the rights of women marrying under the régime of joint property rights under the Civil Code. It had already been pointed out that the parties to the marriage had the right to choose their matrimonial

régime; moreover, although the law of 1949 instituting the new régime authorized women married prior to its enactment to opt for the new régime within a certain period, very few of them had taken advantage of that provision. The majority of young people were still choosing to marry under the régime of joint property rights. If the system remained so firmly part of Mauritian practice, it must be assumed that it did not present only disadvantages. A particular feature of that régime was that the spouses became partners in something like a company and that, in a country where in the majority of cases the husband was still the breadwinner, the wife acquired part of the joint assets through marriage and did not risk finding herself penniless in the case of divorce or of her husband's death. Nevertheless, such dependence of the wife appeared unacceptable today, and a commission was currently reviewing the entire question. Draft legislation designed to remove the legal incapacity of married women under the régime of joint property rights would soon be introduced in Parliament.

18. It had also been asked whether Mauritian women enjoyed full rights under article 3 of the Covenant and in particular whether, during divorce or separation proceedings, they could invoke the same grounds as their husbands: that was indeed the case. Concern had also been expressed by one member of the Committee at the existence of a clause in an old Mauritian law, the Divorce and Separation Act, under which a husband could claim damages from the co-respondent in the case of his wife's adultery. That clause, which had been based on English law, had just been repealed and the parties to the marriage, husband or wife, could now claim compensation from any person whom they considered responsible for the breakdown of their marriage.

19. Concerning article 4 of the Covenant, on derogation by States parties from their obligations in time of public emergency, he referred members of the Committee to section 18 of the Constitution of Mauritius, which provided for derogation only from sections 5 and 16 of the Constitution, and drew their attention to the strict provisions of section 18 (2).

20. One member of the Committee had enquired about the legislative position concerning capital punishment. The death penalty had not been abolished in Mauritius, but the last execution had taken place in 1958; since then, other criminals had been condemned to death for murder, but had not been executed. The question was at present being debated in Mauritius, as elsewhere, and there was reason to hope that a decision would shortly be taken in the matter.

21. Concerning article 7 of the Covenant, it had been asked whether there was any special provision in Mauritius on medical experiments. It was hardly surprising that no such provision existed in a country whose present priorities were concerned with development. If the question was to come before the courts, they would probably apply the maxim "volenti non fit injuria". Also in connexion with article 7 of the Covenant, questions had been asked about corporal punishment in prisons. Although the old Prisons Ordinance, which provided in certain cases for the use of corporal punishment in the presence of a doctor, was still in force, that provision had become totally obsolete. A new bill for the repeal of the Prisons Ordinance, the Reform Institutions Bill, which made no provision for the use of corporal punishment, was at present before the Parliament.

22. One member of the Committee had expressed concern over the fact that, in the case of complaint against a member of the police, the inquiry was carried out by the police force itself. That was a pertinent objection, but he emphasized that every possible precaution was taken in such a case: a senior police officer was always made responsible for the case, and he was required, at the end of the inquiry, to send the file with all the recorded evidence to the Commissioner of Police. Whatever his conclusions might be, the latter was required by law to refer all the papers to the Director of Public Prosecutions who, if not satisfied, could request the Commissioner of Police to institute a further inquiry. Only then would the Director of the Public Prosecutions take a decision on the complaint: if he considered that there were no grounds for a public prosecution, the plaintiff could bring private proceedings before a court, approach a Member of Parliament who might raise the question in Parliament, or refer the case to the Ombudsman, who had the right to open an inquiry. It was not unusual in his country to see a policeman appearing before a court of law as a result of a complaint made by a private person. All persons had the opportunity of bringing an action under article 1382 of the Civil Code.

23. With regard to article 8 of the Covenant, it had been asked whether convicted persons and detainees were kept together in prison. That was not the case, detainees being placed in separate quarters and being subject to an entirely different régime.

24. Referring to the time-limits within which an arrested person had to be informed of the reasons for his arrest, Sir Vincent Evans had pointed out that article 9, paragraph 2, of the Covenant provided that such information should be given "at the time of arrest", and section 10 (2) of the Constitution that it should be given "as soon as reasonably practicable". The two provisions were, in fact, compatible and should be read together. The Covenant provided that "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him", while the Constitution provided that "Anyone who is charged with a criminal offence ... shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence". The first provision concerned arrested persons, and the second related to persons charged with an offence. In so far as arrest itself was concerned, the Covenant was applied in Mauritius: the Intermediate and District Courts (Criminal Jurisdiction) Ordinance stipulated that any person arresting another person must immediately inform the latter of the reasons for his arrest. A person could be arrested only if a warrant signed by a magistrate, and indicating the reason for the arrest, was delivered to him, or if he was caught in flagrante delicto.

25. A question had been asked concerning the time-limit within which a person must be brought before a court. There was no legislative provision in the matter, but since the courts sat five times a week, any person arrested on a weekday could be called to appear before a judge 24 hours or more after his arrest and, if arrested on a Saturday, as from the following Monday.

26. Sir Vincent Evans had drawn attention to the powers conferred upon the Commissioner of Police by section 5(1)(k) of the Constitution, which provided that a person might be arrested "in execution of an order of the Commissioner of Police, upon reasonable suspicion of his having engaged in, or being about to engage in, activities likely to cause a serious threat to public safety or public order".

That was a power of preventive detention - highly important for the purposes of public security but nevertheless a serious derogation. That was why the Constitution subjected the exercise of that power to numerous formalities in order to prevent its abuse: a person arrested under that provision must have his case reviewed by a tribunal composed of three persons appointed by the Judicial and Legal Service Commission; he could apply for a writ of habeas corpus to the Supreme Court, which would examine all the available evidence on the basis of which the Commissioner of Police had determined that the person concerned was a serious threat to public safety. Section 5(6) of the Constitution provided that, in the exercise of that power, "the Commissioner of Police shall not be subject to the direction or control of any other person or authority"; however, as stipulated expressly in section 119 of the Constitution, the person or authority in question could not possibly be a court, and a Commissioner of Police who had abused his power was liable to pay damages.

27. A question had been raised with regard to article 11 of the Covenant: a debtor in Mauritius who had the means to pay his creditor and who persistently refused to do so was liable to imprisonment. The creditor was first entitled to reimbursement from the assets of the debtor, following a legal decision to that effect. If the debtor had fraudulently disposed of those assets after such a decision, and after confirmation by the judge, the debtor would be summoned to pay his debt within a specified period, failing which he would be imprisoned for contempt of court.

28. A question had been raised about legal aid in relation to article 14 of the Covenant. In Mauritius, legal aid was granted automatically in both criminal and civil cases, and in most divorce cases, to any person who did not have the means to pay lawyers' fees or court costs. Requests for such aid were addressed not to an administrative body, but to the court itself, which inquired into the means of the person concerned. An appeal could be made against any decision to refuse legal aid, since there could always be an appeal even against an administrative decision.

29. Sir Vincent Evans had expressed the view that the wording of section 16(7) of the Constitution allowed derogations which reduced the guarantees provided for in section 16(1) almost to nil. That was not so, since the derogations in question were those already provided for in sections 9(2), 11(5), 12(2), 13(2), 14(2) and 15(3) of the Constitution, all of which were designed to preserve public safety, public order and morality, and were only reasonable in a democratic society.

30. He regretted that he had been unable, for lack of time and because he did not have all the relevant legal texts, to reply more precisely to all the questions raised. He had taken note of them and would submit detailed replies in writing to the Committee.

31. The CHAIRMAN thanked the representative of the Government of Mauritius for his explanations which, together with the statement he had made in introducing the report, were a useful supplement to the report.

32. He noted with satisfaction that many of the questions raised by members of the Committee had received the attention of the Government of Mauritius and were even the subject of legislative reform bills. He hoped that the constructive dialogue which had been begun between the Committee and the Government of Mauritius would be continued.