

## MAURITIUS

### CCPR A/33/40 (1978)

451. The Committee considered the initial report (CCPR/C/1/Add.21) submitted by Mauritius at its 110<sup>th</sup> and 111<sup>th</sup> meetings on 25 and 26 October 1978 (CCPR/C/SR.110 and 111).

452. The representative of that country reminded the Committee that the report had been introduced at a previous session. He said that he had nothing to add to that statement but was at the disposal of the Committee to answer any questions its members might wish to put to him.

453. In the report, it had been stated that Mauritius did not find it necessary to give the force of law specifically to the International Covenant on Civil and Political Rights as the substance of the Covenant was already contained either in the Constitution or in a number of specific enactments, but possible differences and inconsistencies having been noted, some members raised the following questions: (a) Was the text of the Mauritian Constitution influenced by the International Covenant on Civil and Political Rights or by the Universal Declaration on Human Rights or not? (b) In the legislative process, were the provisions of the Covenant applied as laid down in the Covenant or were they adapted to take account of, for example, the country's previous legislation and its practices and customs? (c) Did some of the principles laid down in the Covenant have constitutional force whereas others did not and what practical difficulties were caused by that difference in legal force? (d) Could the provisions of the Covenant be invoked before the courts in order to settle possible inconsistencies between the Covenant and domestic laws and what procedure was followed in such cases? (e) Were there administrative remedies against possible violations of the rights and guarantees established in the Covenant?

454. Further information was also requested concerning the nullity of unconstitutional laws, to which reference is made in the report. Did a mere declaration of unconstitutionality by a court have the effect of nullifying a law for all future legal purposes or was a declaration required for each specific case, and which judicial organs could decree nullity?

455. Further information was requested concerning the suspension of fundamental rights in exceptional circumstances. Members asked which rights and guarantees were suspended by article 18 of the Constitution of Mauritius and whether that article was consistent with article 4 of the Covenant.

456. With reference to economic, social, health, educational and other measures aimed at creating a material context that would permit actual enjoyment of the human rights proclaimed in the Covenant, the question of whether the property system prevailing in Mauritius guaranteed such enjoyment was raised. In connection with the right to life, questions were asked concerning the measures adopted to reduce infant mortality and the results which had been obtained.

457. In relation to article 2, paragraphs 1 and 2, some members of the Committee asked whether,

in view of the fact that the report referred to non-discrimination in the matter of certain rights only, there were specific legal rules prohibiting discrimination in general and in the matter of rights other than those mentioned in the report, and what steps were taken to ensure practical observance of the principle. The representative of Mauritius was asked whether, since the country was made up of a multinational community, there were peaceful means of settling problems that arose in cases of unlawful discrimination on grounds of race, such as bodies or organizations established for that purpose.

458. Members asked questions relating, first, to the extent to which section 16 of the Constitution of Mauritius gave effect to the provisions of article 2, paragraph 1, and articles 3 and 26 of the Covenant, which were designed to ensure equality and non-discrimination, and, secondly, to the extent to which that section was consistent with the provisions of the Covenant in so far as it allowed restrictions on fundamental rights in normal times.

459. One member examined constitutional provisions under which certain persons - for example, members of the armed forces and the police - were deprived of protection with respect to certain fundamental human rights. He then asked what remedies against arbitrary measures were available to those persons and what measures of protection were available to members of enemy forces, who appeared to be excluded from any constitutional protection.

460. With regard to article 2, paragraph 3 (a), information was requested concerning the remedy provided for in article 17 of the Constitution in the event of violation of any of the fundamental rights and freedoms guaranteed by articles 3 to 16 of the Constitution. It was stated that the provisions dealing with that remedy were difficult to understand and that the Chief Justice was vested with unusual powers to make rules regarding the remedy and to lay down time limits within which it must be exercised. Further information was therefore requested on the application of the remedy, how the rules had been interpreted in case law and how often the remedy was used in daily legal practice.

461. Several members of the Committee asked questions concerning the organization and operation of the judicial system and requested general information on that subject. In particular, further information was requested concerning the manner of appointment of judges, magistrates and other court officials, by whom they were appointed, by what means their impartiality and their independence of the executive power was guaranteed in practice, whether judges enjoyed security of tenure and who could order their dismissal. Other questions related to the social composition of the bench, the requirements to be met in order to be appointed a judge and whether women could be judges. The representative of Mauritius was also asked whether there were special courts to deal with labour questions and, if so, how they were structured and fitted into the legal system.

462. One member asked what criteria governed questions connected with the registration of trade unions and whether the need to register workers' associations was merely formal or involved a limitation of the right to freedom of association.

463. A number of questions were also asked, in connection with article 2, paragraph 3 (c), concerning redress by way of damages for violation of a person's rights, including: Did the redress cover both indirect damages and loss of earnings? Did all citizens enjoy the same rights and were

they on an equal footing before the law in claiming their rights, even when the defendant was the State or the authorities of the country? Could the right be enforced, in the event of improper detention, for example, against the police authorities?

464. With regard to article 3, various questions were raised concerning the status of women and their legal equality with men, particularly with respect to the matrimonial régime provided for in the Civil Code under which the wife lacked full capacity and was dependent on her husband.

465. Some members asked why there were two matrimonial régimes, whether the coexistence of the régimes was temporary and which régime was preferred. They also asked whether women who had married before 1949 - or who had opted for the régime provided for in the Civil Code - could avail themselves of the régime established in the 1949 Ordinance without resorting to divorce. Several members requested information concerning the general legal status of women and the consuetudinary factors that caused them to choose one régime rather than another.

466. Doubts were also expressed concerning the system established in the Constitution for determining the nationality of children, which is derived, in accordance with *jus sanguinis*, from the father.

467. Various questions concerning the right to life (article 6) were asked in connection with article 4, paragraph 2, of the Covenant. It was emphasized, in connection with constitutional provisions establishing the cases in which a person may legally be deprived of his life, that such cases must be fully justified and be commensurate with the risk or injury the deprivation of life sought to prevent. Some members asked what practical steps were taken to apply the latter principle, whether citizens were entitled to carry arms and in what circumstances they may use them.

468. The report indicated that the death penalty was in force in Mauritius, and although the Covenant was not mandatory in that respect, some members asked whether the Government had planned to abolish that penalty or had taken steps towards that end. The question of the definition of "high treason", one of the crimes carrying the death penalty, was also raised; was it confined to attacks on territorial integrity or did it also apply to espionage and other crimes committed in the country.

469. With regard to article 7, several members of the Committee expressed concern at the report's reference to corporal punishment, which seemed to be inflicted for breaches of prison discipline. One member asked whether it could be abolished. Explanations were requested concerning the forms of corporal punishment and the frequency of their administration.

470. Other members referred to the prohibition of the use of force against any individual, including medical or scientific intervention. They asked whether there were any laws governing medical or scientific experimentation and whether it was established that no one could be subjected to such experiments without his consent.

471. In connection with article 7, some questions were asked concerning the complaints which, according to the report, could be filed against the police. More information was requested on how those complaints were handled.

472. On the subject of article 8 of the Covenant, the report stated that section 6 of the Mauritian Constitution established exceptions to the right not to be required to perform forced labour. The question was asked, were those exceptions in keeping with article 8 of the Covenant.

473. A number of questions were asked in connection with the part of the report dealing with the right to personal liberty (article 9).

474. One point raised was whether a detained or arrested person was informed of the reasons for his detention at the time of arrest or later, as there appeared to be a discrepancy with the Covenant, which stated that such information was to be given at the time of arrest, whereas under Mauritian law, it was to be given "as soon as is reasonably practicable".

475. Some members referred to the time within which a detained person must be brought to trial. The Government reported that he must be taken "as soon as possible before the court" and that he should be released if he was not tried "within a reasonable time". Several members inquired whether case law had established what constituted "reasonable time" and whether there were any rules prohibiting extension of that period.

476. Section 5 (1) of the Mauritian Constitution contained a long list of cases in which a person may be deprived of his liberty. One member of the Committee asked whether all those restrictions on the right to liberty were necessary, whether such enumeration meant that a watch was kept on arbitrary deprivation of liberty or whether, on the contrary, so many exceptions might not imply a limitation of the right not to be arbitrarily arrested.

477. Another member of the Committee referred to the cases of preventive detention provided for in section 5 (1) (k) of the Constitution, which established special rules for the case of a person arrested on suspicion of possibly engaging in activities threatening public order and safety. The representative was asked whether the fact that the Commissioner of Police, by whose order such arrests were carried out, was not subject to control by other authorities did not prove damaging to the detained person; was it possible to apply for a writ of habeas corpus in order to prevent detention in such a case and, if so, did the judge hearing the application have to confine himself to the formal aspects of the case, or could he also deal with the substantive aspects as well?

478. Some members of the Committee wished to know whether there had been any actual cases of persons being awarded compensation for unlawful arrest, whether - in addition to compensation for damages - provision was made for penalties to be imposed on the authorities responsible for such arrests, and how the matter was handled if the arrested person had contributed to his arrest by his own conduct.

479. In connection with article 11, several members assumed, from the wording of the report, that anyone possessing property who refused to pay a debt was liable, in Mauritius, to imprisonment. That would be incompatible with the provisions of article 11 of the Covenant. More information was requested on the subject, including the grounds for the inclusion of that provision in section 21 of the Mauritius Civil Procedure Ordinance, how often it was applied, the length of the sentence, and what possibilities a detainee had of regaining his freedom in order to assemble the necessary funds to pay his debt.

480. With regard to article 12, several members of the Committee wished to know what were the restrictions, laid down in section 15 (3) of the Constitution, on the right to freedom of movement and freedom to choose one's place of residence. Information was also sought concerning the procedures governing the right to leave the country.

481. In connection with the part of the report relating to article 14, paragraph 1, members of the Committee said they would like to know what were the cases laid down in section 10 (10) of the Constitution that constituted an exception to the rule in section 10 (9) providing that all criminal and civil proceedings were to be conducted in public. They needed the information in order to determine whether the exceptions coincided with those provided for in article 14 of the Covenant. The representative of Mauritius was also asked under what conditions newspaper reporters were accredited to the courts.

482. Referring to article 14, paragraph 2, one member expressed an interest in knowing the Mauritian Government's view on the scope and consequences of the principle of the presumption of innocence as laid down in the Covenant. He also asked whether that principle applied outside the courts, for example, in the administrative sphere.

483. The right to legal assistance proclaimed in article 14, paragraph 3, gave rise to a number of questions. Did everyone have equal access to justice, and was the language used in the courts everyday language or intelligible only to lawyers? Were persons obliged to hire a lawyer to defend them? Was the choice of defense counsel entirely free, or was it subject to restrictions? Did an accused person, having complied with the procedure laid down for determining whether a person was entitled to free legal aid and having been denied that aid, remain, perhaps unjustly, without defense?

484. In connection with article 14, paragraph 6, one member of the Committee asked whether, in view of the absence of legal provision for compensation of persons unjustly sentenced, any measures were contemplated for improving that situation.

485. Several members pointed out that, in examining article 16, the report dealt with a matter different from the one envisaged in the Covenant. They therefore requested some clarification.

486. Some members observed that the concept of privacy referred to in article 17 of the Covenant differed from country to country, and expressed an interest in knowing how that concept was defined in Mauritius: was it taken to apply to the small family unit only, or did it encompass a wider family community, including other persons associated with it? That was important, for example, in determining who was affected by the migration of given persons. They also requested more information concerning the exceptions to the principle of non-interference in a person's private life.

487. With reference to articles 18 and 19, various questions were asked about religious freedom and political opinions; in particular, members of the Committee wished to know whether registers and records were kept of the names of persons belonging to political organizations or parties, whether the police kept secret records of that type, whether the status of State information services was legally regulated, and whether those services were supervised by parliamentary commissions or committees.

488. On the subject of freedom of information, members wished to know in what languages radio and television programmes were broadcast, and, in particular, whether Creole, which was a language understood by one and all, was widely used. They also asked for information concerning the restrictions on freedom of expression referred to in the report, pointing out that, although the cases mentioned seemed reasonable, not all had been expressly indicated in the report, and it would be useful to know all those provided for by the law. Information was likewise requested on the scope of the restrictions, and whether they were applied by means of pre-censorship or post-censorship. Furthermore, was the Mauritius Broadcasting Corporation a public, autonomous or ministerial body, and how was its impartiality ensured?

489. With reference to article 20, information was requested on the existence of rules prohibiting war propaganda. It was also pointed out that the reply in the report on that point did not coincide with the requirements of article 20 of the Covenant.

490. In connection with articles 21 and 22, some members requested information on the economic, social and legal role of the trade unions, their role in production, and the machinery for collective bargaining and the settlement of labour disputes.

491. In view of the reference in the report to restrictions on freedom of assembly and association, several members of the Committee asked what those restrictions were, particularly with regard to freedom to form trade unions, and they also wished to know the scope of articles 16 and 17 of the Public Order Act of 1970 prohibiting unlawful assemblies and riots. Some members sought clarification as to whether meetings were prohibited on grounds of violence, or simply on account of the large numbers involved; they asked what penalties were applicable in the event of disturbances and what procedures were followed in deciding on their applications.

492. With reference to the principles enunciated in article 23, some members voiced doubts as to the existence, in Mauritius, of any real equality between husband and wife in marriage, judging from the relevant part of the report. In that connection, they asked whether the wife, like the husband in similar circumstances, was entitled to claim damages from someone who had committed adultery with her husband. The question was also asked, were the grounds for granting divorce the same for husband and wife?

493. Another member wished to know whether there were other forms of absence of consent which could give rise to the dissolution of a marriage in addition to those mentioned in the report.

494. Referring to the part of the report dealing with article 24, one member of the Committee requested information on the position of the children of parents who were not legally married, and their rights vis-à-vis both parent.

495. With reference to the participation of citizens in the conduct of public affairs (article 25), a member of the Committee asked for further information on how members of Parliament were elected and on the obligations of members of Parliament towards their electors.

496. In connection with the rights enunciated in article 27, one member of the Committee requested information concerning the ethnic composition of the population of Mauritius.

497. The representative of Mauritius answered some of the questions summarized in the preceding paragraphs.

498. He stated that Mauritius had not so far found it necessary to amend its legislation in order to fulfil its obligations under the Covenant. In view, however, of the points raised by members of the Committee regarding certain instances where the legislation did not appear to implement fully the principles of the Covenant, he would invite his Government to consider those points and, if necessary, enact new legislation which would better fulfil the obligations assumed under that international instrument.

499. Replying to the questions regarding the historical reasons for the fact that the Mauritian Constitution contained various provisions which appeared in international instruments, he explained that, before its independence, Mauritius had been a British colony and the United Kingdom had approved the Universal Declaration of Human Rights and was also a party to the European Convention for the Protection of Human Rights. When independence was being negotiated, the political leaders of Mauritius, being aware of the human rights established in those international instruments, had all agreed that the rights and guarantees set forth in those texts should be embodied in the Constitution. That would ensure that any legislation passed in the future respected those principles, since Parliamentary enactments could not amend the provisions of the Constitution and must therefore be consistent with them.

500. Referring to the subject of discrimination, he explained that section 16 (1) of the Constitution contained a general clause prohibiting discrimination and indicating certain exceptions. Those exceptions were set out in section 16 (4) (which referred to the acquisition of property in Mauritius, and to persons who were not citizens of Mauritius and those to whom specific personal laws applied with regard to marriage, divorce, burial, the restitution of property and other similar matters) and in section 16 (5) (which concerned levels of qualifications and had nothing to do with race, religion, caste, place of origin, political opinions, creed or color). Section 9 (2) established other restrictions of that principle, in connection with matters of defense, morality, public order and safety, health, urban planning and other social questions.

501. He further stated, in reply to questions on the organization of the Judiciary, that the Supreme Court was the guardian of the Constitution. There were District Courts and Intermediate Courts which heard both civil and criminal matters, depending on the size of the claim and the importance or seriousness of the case.

502. At the top of the pyramid was the Supreme Court which had original jurisdiction in any matter and could also sit as an appellate court. As such, it was composed of two judges who heard appeals on cases from the District Courts and the Intermediate Courts. The decisions of the Supreme Court could be appealed in the Court of Civil Appeal or the Court of Criminal Appeal, as appropriate, those two Courts being composed of the full Bench of Judges of the Supreme Court, less the judge whose decision was being appealed. In theory, any member of the bar who had at least seven years' experience might be appointed a judge; in practice, however, judges were appointed from the ranks of the senior magistracy, whose members usually had between 20 and 25 years' experience in the field of law.

503. As the system of separation of powers was applied in Mauritius, magistrates and judges were appointed by an independent Commission presided over by the Chief Justice, who was the head of the Judiciary and was appointed by the Governor-General, after consultation with the Prime Minister. The Chief Justice was invariably chosen from the ranks of the senior judges, and the Governor-General was bound only to consult the Prime Minister before making the appointment, but was not bound to accept his views. Judges enjoyed security of tenure and could be removed from their posts only for physical or mental inability to perform the functions of their office or for misbehavior, matters which were decided in accordance with the procedures laid down in section 78 (3) and (4) of the Constitution. That section provided for the establishment of a tribunal composed of three practicing or retired judges to investigate the case. The tribunal then transmitted its findings to the Governor-General who took the final decision. He also drew attention to the fact that the salaries of judges were charged to the Consolidated Fund and were not subject to a parliamentary vote.

504. Replying to the question concerning the population of Mauritius, he said that the island had no indigenous population. Its population was made up of the descendants of those who came to the island during its occupation by France (in the eighteenth century) and the United Kingdom (in the nineteenth), as well as the agricultural workers from Africa, Madagascar, India and China whose settlement had been encouraged by those occupying the island, because they wanted agricultural labour. The people of Mauritius therefore came from Europe, Asia and Africa and, despite different origins and religions, were trying to live together harmoniously fully respecting the freedom of all the religions professed. French was the language used in the majority of the social communication media, but the radio and television services were now broadcasting widely in Creole (the vernacular), although possibly not as much as some people would like.

505. Referring to the question on infant mortality, he said that that was a problem of the past. He did not have the relevant figures with him, but there was a continuous improvement in the medical services and free medical treatment for all citizens, free post-natal care for babies and mothers, paid maternity leave, free distribution of milk to children, compulsory vaccination, etc. The stage had now been reached where the baby boom was much more of a problem than infant mortality.

506. In reply to the question whether a citizen could obtain damages from the administration in the case of a violation of human rights, he replied that that was indeed possible. He explained that there was no administrative jurisdiction (jurisdiction administrative) and that such claims had to be submitted to a court of law. The amount of damages payable was proportionate to the damage caused, and that covered actual damages, loss of profits and even moral damages.

507. The Covenant could not be invoked as a positive right before a court of law; a claimant had to base his action on the constitutional provisions providing the same guarantees and the courts might well be guided in their decision by the principles of the Covenant.

508. There were no special procedures to prevent or combat discrimination, such as the United Kingdom's Race Relations Board. Racial discrimination was a violation of the Constitution of Mauritius and cases involving such violations were dealt with by the Supreme Court, the Highest tribunal of the land.



509. Some members having expressed the view that the guarantees offered by section 3 of the Constitution did not appear to cover all the rights enumerated in articles 22, 23, 24 and 25 of the Covenant, he referred to that subject, first reading out section 3 of the Constitution. He pointed out that, while it was true that section 3 did not cover all the rights enumerated in articles 22, 23, 24 and 25 of the Covenant, section 13 of the Constitution established all the rights enunciated in the Covenant concerning freedom of association; the Civil Code and the Civil Status Ordinance guaranteed the rights enunciated in article 23 of the Covenant and, in conjunction with the Mauritius Citizenship Act, also provided that any child born in Mauritius was a Mauritian national. Implementation of the provisions of article 25 of the Covenant was guaranteed under various other laws, namely the Representation of the People Ordinance, the Local Government Ordinance and the Public Service Regulations made under the authority of the Constitution. Freedom of movement was expressly provided for in section 15 of the Constitution.

510. In reply to another inquiry concerning the power given to the Chief Justice to make certain rules (section 17 of the Constitution), he explained that the rules in question related only to questions of form and procedure and that they must be approved by the whole body of judges of the Supreme Court.

511. Referring to questions concerning the status of women, he drew attention to the fact that there were two marriage régimes and that women could opt for the 1949 régime, which allowed all women married before 1949 to opt, by simple declaration within a period of one year of its promulgation, for the new régime. Most women, however, had adhered to the old régime and the majority of young couples chose the old system. That was because the community-of-property régime did offer certain advantages in a society where the husband was still the bread-winner, and his earnings became part of the communal property. The existence of inequality nevertheless seemed intolerable and for that reason a Commission was currently considering various amendments to the Civil Code designed to improve the situation of women in marriage. The law permitting the husband to claim damages from anyone who had committed adultery with his wife had been repealed six months previously and the Civil Code now provided that both spouses could claim equally against any third person guilty of causing divorce.

512. A number of members of the Committee having drawn attention to article 4 of the Covenant which provided for the suspension, in exceptional circumstances, of certain, but not all, of its rights and guarantees, the representative of Mauritius referred to section 18 of the Constitution which provided for suspension only of the guarantees provided in sections 5 and 16 for the duration of the emergency, and to section 18 (e), which laid down strict provisions for rules concerning the declaration of an emergency.

513. In reply to the questions which had been asked about capital punishment, he stated that the last execution in Mauritius had taken place in 1958. Since then, although death sentences had been passed, they had not been carried out.

514. He stated further that there were no legal rules concerning the conduct of medical experiments without the permission of the persons on whom they were to be carried out. That did not seem to be a problem, however, in developing countries. If such a situation were to arise, the courts would apply the maxim "volenti non fit injuria".

515. He said that he could readily understand the attitude of members of the Committee towards the existing legislation concerning corporal punishment in prisons, but the law dated from 1881 or 1891 and was no longer applied in penal institutions. He added that the law governing the prisons would be superseded during the current year by a new bill which was already prepared for approval by Parliament and did not contain any provision for corporal punishment of prisoners.

516. He admitted the pertinence of the objection voiced by members of the Committee regarding complaints against members of the police, which were investigated by the police force itself, but he pointed out that all steps were taken to guarantee the independence of the persons handling the investigation. First, the investigation had to be carried out by a senior police officer, usually not below the rank of superintendent, or the officer in charge of the district. The Commissioner of Police, the head of the police force, took part and he had to refer the whole inquiry to the Director of Public Prosecutions who could decide that further inquiries were needed if he was not satisfied. The Commissioner would also decide whether there was cause for public prosecution or not. If he decided against such action, the victim could institute a private action.

517. Replying to questions asked by various members of the Committee concerning the information given to a person about the reasons for his arrest at the time when the arrest took place (article 9 of the Covenant), the representative of Mauritius read out paragraph 2 of that article and section 10 (2) of the Constitution, pointing out that the Covenant referred to the arrest, whereas the Constitution referred to the charges of which the arrested person should be informed as soon as reasonably practicable. In his view there was no contradiction between the two provisions. In any case, the Intermediate and District Courts (Criminal Jurisdiction) Ordinance stipulated that any person arrested must be immediately informed of the reasons for his arrest. The person arrested or detained must be brought before a magistrate within approximately five days, according to the practice of the courts. One member had drawn attention to the exceptional powers of the Commissioner of Police under section 5 (1) (k) of the Constitution which provided that a person could be arrested 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. He admitted that that was a power of preventive detention, and then even though it was justified by the requirements of public safety, it was an exceptional power. The Constitution therefore provided for a number of different formalities to ensure that that power might not be abused. The person arrested could demand that his case be reviewed by a Special Tribunal which was invariably presided over by one of the most distinguished lawyers, a Queen's Counsel who had spent all his life defending people before the highest courts of the land. The fact that a special tribunal was envisaged for such cases did not preclude the right of the person to apply for habeas corpus to the Supreme Court, which had to examine both questions of form and questions of substance, including the evidence on which the Commissioner had based his opinion that the detained person was likely to cause a serious threat to public safety. He assured the Committee that although, under section 5 (6) of the Constitution, the Commissioner of Police was not subject to the control of any other authority, that did not exclude the control of the courts (section 119 of the Constitution) and a Commissioner who committed an unlawful arrest or detention could be sued in a court of law and made to pay damages (section 5 (5) of the Constitution).

518. The representative of Mauritius also provided information in reply to the question concerning imprisonment for debt. He explained that no one could be imprisoned before all possibilities of use of his assets to meet his indebtedness had been exhausted. In such a case, if the creditor swore that

the debtor had concealed or maliciously sold his assets in order to evade his obligations and proved the fraud by means of witnesses or other means, the court could decide to grant a time-limit for payment and, if payment was not made within the time-limit, order the debtor to be imprisoned.

519. In reply to the question concerning article 14 of the Covenant, he explained that an administrative investigation was carried out to determine whether a person had the means to pay for necessary legal assistance. If the result was negative, the person could appeal to the courts. In criminal cases, however, the accused never remained without a defense as he was provided with defense counsel by the authorities.

520. The representative of Mauritius stated, in conclusion, that any questions still unanswered would be answered in writing, with quotations from the relevant laws and regulations, which he did not have available at Geneva.

## CCPR A/44/40 (1989)

487. The Committee considered the second periodic report of Mauritius (CCPR/C/28Add.12) at its 904<sup>th</sup> to 906<sup>th</sup> meetings, held on 17 and 18 July 1989 (CCPR/SR.904-906).

488. The report was introduced by the representative of the State party, who apologized to the Committee on behalf of the Government of Mauritius for the extremely late submission of the second report. The delay had been due to various factors beyond the Government's control, in particular, an internal re-organization that had given rise to three general elections in a very short period. He assured the Committee that the Government of Mauritius would make every effort to ensure the early submission of the third periodic report, which would contain any information it had not been possible to provide at the current session of the Committee.

### Constitutional and legal framework within which the Covenant is implemented

489. Members of the Committee asked for an explanation of the reference in paragraph 8 of the report to judgements of the Supreme Court in which the Court had referred to provisions of the Covenant and for examples if possible. They also asked for further information on the efforts made in Mauritius to inform the population at large of the provisions of the Covenant and on any special activities undertaken by the Government of Mauritius to inform the population of the right of every person who believed he had been the victim of a violation of any of the rights guaranteed in the Covenant to address a communication to the Human Rights Committee under the Optional Protocol. Members of the Committee asked whether there were factors or difficulties that might possibly be hindering the implementation of the Covenant.

490. Members of the Committee also asked whether the revision of legislation and of certain parts of the Constitution to bring Mauritian legislation more into line with the Covenant was continuing and what areas were currently being dealt with; what was the legal force of the Covenant in the Mauritian Constitution and legislation; which laws gave effect to the provisions of the Covenant; which guarantees might be suspended in a state of emergency and, in particular, whether article 16 of the Mauritian Constitution could be suspended. They wished to have more information on the exact competence of the Supreme Court, for the report did not indicate clearly whether that body had powers equivalent to those of a constitutional court: was it the Supreme Court that decided whether a law was constitutional, and if so, what was the procedure followed to invalidate a law?

491. Referring to paragraph 7 of the report, members of the Committee asked for clarifications of the terms "two-fold" and "democratic society". Noting that the report was extremely brief, they said they would have liked more information on events in the country during the 10 years that had elapsed since the Mauritian Government's submission of its initial report.

492. Replying to questions raised by members of the Committee, the representative of the State party cited two cases where reference had been made to provisions of the Covenant, including a case where a defendant's conviction had been reversed because of the failure of the authorities to inform him of the charges he faced in a language he could understand, as provided in paragraph 3 (f) of article 14 of the Covenant. He explained that the provisions of the Covenant were mentioned in

trials only occasionally, for reference was usually made to the Constitution. Concerning action by the Government to inform the population of the provisions of the Covenant, he said that only representatives of certain professions - such as judges, lawyers and journalists - were familiar with the Covenant in detail; the rest of the population took little interest in international human rights instruments. However, the Covenant was regularly quoted in newspapers, the National Assembly and the courts when a case involving a possible human rights violation arose; various human rights' defense groups and associations were also familiar with the provisions of the Covenant. Regarding difficulties, he said it was not easy to single out any specific ones but he was certain that they existed in Mauritius, as in all countries.

493. In Mauritius, it was not necessary to adopt a law to give effect to a particular provision of the Constitution. Neither was it necessary to repeal a law that the Supreme Court had declared to be contrary to the Constitution: such a law would automatically become null and void. In Mauritius, the Supreme Court had the power to declare a law unconstitutional; no appeal was therefore possible, except to the Privy Council in London, a procedure that had never been used. The Covenant did not have the force of law as such, but was applied in practice, since all its provisions were reflected in the Constitution. Furthermore, with time, laws were being adopted or abolished continually to bring legislation more into line to the Covenant. In Mauritius there could be no derogation from the Constitution with regard to essential rights such as the right to life, habeas corpus, protection against torture or slavery. Other derogations should not be contrary to the Covenant.

#### Self-determination

494. Regarding this question, members of the Committee asked what Mauritius's position was concerning the right to self-determination of the South African, Namibian and Palestinian peoples; whether Mauritius had taken measures to prevent public or private support for the apartheid régime of South Africa; what the current status of the Chagos Archipelago was under international law; and whether the population of the Archipelago had been asked its opinion about self-determination, including the possibility of being united with Mauritius.

495. Members of the Committee also wished to know the results of the diplomatic efforts undertaken to recover that territory, as well as future prospects or possible difficulties. They asked for more information concerning the inhabitants of the Chagos Archipelago who had been displaced in 1965, in particular their current social and political status and whether they still wished to return to the Archipelago.

496. In his reply, the representative of the State party said that his country, as a member of the Organization of African Unity and the United Nations, had supported all United Nations resolutions concerning the right to self-determination of the South African, Namibian and Palestinian peoples. That stand had been reaffirmed by the Prime Minister of Mauritius in his statement before the General assembly on 12 October 1988, in which he had pronounced himself in favor of the restoration of all of the Palestinians' rights. Regarding measures taken to prevent any public or private support for the apartheid régime of South Africa, he stated that his delegation was happy to have the opportunity to clarify the situation in view of the concerted campaign regarding Mauritius' relations with South Africa. While it was true that certain private enterprises continued

to have ties with South Africa, the existence of such ties had to be seen in the context of the strong administrative and economic links that had existed between South Africa and Mauritius during the British colonial era, the fact that South Africa was geographically the nearest country to Mauritius on the continent, and the continued existence of family connections between some of the inhabitants of the two countries. However, the Government had sought to reduce such relations with South Africa, which were already limited, even further over the several years and there had been reductions during that period in the level of imports, exports, investment and tourism.

497. The Chagos Archipelago, which had been separated from Mauritius in 1965, that is, before independence, had been combined with other territories to form a new colony, the British Indian Ocean Territories. At that time, all Mauritians in the Archipelago had been brought back to Mauritius, and in 1968, at the time of independence, the Mauritian citizenship of persons from the Chagos Archipelago had been retained under article 20.4 of the Constitution. Those who had been living in the Archipelago before separation were Mauritians and had always been considered as such.

498. Mauritius had never given up the idea of obtaining the restitution of the Chagos Archipelago and was making every effort to mobilize international public opinion to that end. The entire Mauritian community was working to obtain the return of the Chagos Archipelago to Mauritian territory and the former inhabitants of the islands were prepared to return there.

#### State of emergency

499. Members of the Committee asked for indications of the legal provisions in Mauritius with regard to the imposition of a state of emergency and for clarifications on their conformity with article 4, paragraph 2, of the Covenant. They also asked for clarifications on the provisions of article 18 of the Constitution, which in their opinion were less strict than the corresponding provisions of the Covenant, and for information as to who actually took the decision to proclaim a state of emergency in Mauritius.

500. The representative of the State party replied that article 18 of Mauritian Constitution set forth the derogations from fundamental rights and freedoms that were authorized under the state of emergency. He explained that the state of emergency was proclaimed by the Governor-General (representative of Her Majesty the Queen) and that the proclamation was preceded by consultations between the Head of State, the Prime Minister, the Cabinet and the Governor-General. The proclamation had to be confirmed by a two thirds majority vote of the members elected to the Legislative Assembly (Parliament).

501. Regarding the use of terms in article 18 of the Constitution that differed from those of the Covenant, he said that in his opinion the only possible interpretation of that article was that of public emergency in the meaning of the Covenant, i.e. circumstances threatening society itself and the nation. The difference between the terms used could not be interpreted as authorizing the proclamation of a state of emergency under circumstances other than those set forth in the Covenant. The provisions of the Constitution relating to the state of emergency had to be considered in the light of his country's special situation and understood in terms of the nature of its institutions.

## Non-discrimination and equality between the sexes

502. Members of the Committee asked whether significant inequalities still existed between spouses with regard to marriage, during the marriage and at its dissolution, even after the recent revision of the Civil Code. They asked for further information on the duties and functions of the Ministry of Women's Rights and Family Welfare and on the activities of the National Women's Council and the effectiveness of its work. With regard to the treatment of foreigners, they wished to know in what respect, apart from political rights, the rights of foreigners were more limited than those of nationals. Members of the Committee also asked to be supplied with further information in accordance with the Committee's general comment No. 15 (27).

503. Noting that article 16, paragraph 3, of the Constitution did not mention either language or sex as grounds for discrimination, members of the Committee said that those two elements should be mentioned if the text of the Constitution was to be fully in conformity with that of the Covenant. They wished to know the meaning of the sentence "tradition and cultural patterns still cause some differences in the lives of men and women" and whether the application of the three matrimonial régimes had raised problems, given the religious and cultural difficulties. Clarifications were requested concerning the contractual régimes entered into by the spouses at the time of marriage. They also asked whether foreign women who married Mauritians could keep their original nationality or whether they automatically acquired their spouses' nationality. Members also asked what percentages the various communities represented within the Mauritian population and to what extent each of those communities participated in public affairs.

504. Replying to the questions raised, the representative of the State party said that in Mauritius, not counting minorities, the population was divided, from an electoral point of view, into four major categories according to origin: the Chinese; what was generally termed the "general population"; the Hindus; and the Muslims. Members of all of these groups having the necessary qualifications could seek public office or election to the assembly without any legal or practical obstacles. Under the Constitution, eight seats in the Legislative Assembly were reserved to ensure a certain equilibrium in the representation of the various electoral groups. With regard to the prohibition of discrimination based on language, he said that nothing in the Mauritian Constitution provided for either advantages or disadvantages linked to language. In practice, for several years all the communities had been able to promote the use of their own language and to study in their language in the public schools.

505. Referring to questions on the matrimonial régimes, he said that in Mauritius there were no significant inequalities between spouses under the law, but it was more difficult to state that there were no significant inequalities between spouses in practice, given the multiracial nature of the Mauritian nation where each ethnic group had its own traditions. The Mauritian authorities made every effort to amend or eliminate legal provisions that did not guarantee equal treatment between men and women, for example, with regard to employment, and they had revised the Civil Code provisions on marriage. The National Women's Council had also been active in making women better aware of their rights regarding such matters as marriage and divorce and in respect of their children, and special consultative groups had also been established to assist women in dealing with their problems. A certain amount of progress in improving the condition of women had already been achieved, as illustrated by the increased participation of women in public life and in sports.

506. He said that, in practice, the matrimonial régimes had not raised any problems so far. The contractual régime entered into by the spouses at the time of marriage was not a very widely used procedure; contracts of that type had never given rise to any inequalities and had never been contested in the courts. He stressed that, if a marriage contract freely entered into by the spouses proved to be at odds with the principles of the law and human rights, the Supreme Court would not recognize the validity of the contract. Women who married foreigners retained their Mauritian citizenship unless they made a formal act of renunciation.

### Right to life

507. With reference to that issue, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and executed since the consideration of Mauritius' initial report; whether there had been any further developments since the submission of the report concerning the appeals of the persons sentenced to death for drug trafficking; what were the rules and regulations governing the use of firearms by the police and security forces; and whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence. With regard to the problem of drug consumption and drug peddling, the representative was asked to comment on the recommendations or findings of the Parliamentary Select Committee and the Commission of Inquiry, as well as on the effectiveness of the campaign against drug abuse and addiction. Members of the Committee also wished to have additional information on article 6 of the Covenant, in accordance with the Committee's general comments No. 6 (16) and 14 (23).

508. Some members expressed their concern about the reintroduction and application of the death penalty for drug traffickers in Mauritius after a 23 year moratorium and said that to extend the death penalty to all cases of drug trafficking, including those involving the sale and consumption of unprocessed coca leaves, was an excessive measure. In the same connection, they wished to know what minimum quantity of drug possession constituted trafficking, whether the possession of that quantity was enough to shift the burden of proof on to the accused person and which dangerous drugs were subject to government authorization. Members also wished to know what discretion a judge would have in pronouncing sentence and why trial by jury had been abandoned; why drug trafficking was considered serious enough to warrant the establishment of a system that did not exist in other countries; what had prompted the enactment of so far-reaching a law; and whether any additional steps had been taken or were contemplated to bring about a reduction in drug trafficking.

509. Members also wished to know whether citizens had a right to the possession and use of firearms in self-defense, whether special licences were required for such weapons and whether the police were permitted to carry machine-guns and other sophisticated firearms.

510. In his reply, the representative of the State party explained that the offences for which capital punishment could be imposed were treason, murder and the recently enacted offence of importing dangerous drugs. The death penalty had not been imposed for treason since the submission of the initial report. Two executions for murder had taken place in 1984 and 1987. The new law imposing the death penalty for the import of drugs had been passed in 1986. There had been two convictions in 1987. Since the submission of the report, there had been a further conviction for the import of drugs in which an appeal to the Privy Council was under consideration. The death sentence was



likely to be imposed only on persons having in their possession a sufficiently substantial quantity of drugs to justify the conclusion that they were drug traffickers. In addition to the introduction of the death penalty for drug trafficking, an amendment to the Dangerous Drugs Act had also increased the penalties for a number of other drug offences, with the result that drug trafficking was largely under control.

511. The types of drug trafficking that involved the death penalty were listed in the Drug Act. As regards coca leaves, the Government's concern had been not so much with consumption as with importation of and traffic in coca leaves. Psychotropic substances were not included in the list of dangerous drugs but prison sentences and/or fines were imposed on persons found to be in possession of such substances. It was up to the court to decide in each individual instance whether an accused person was or was not a drug trafficker. Trial by jury had been abandoned in such cases to prevent tampering with jurors. Judges were empowered to impose the death penalty for drug trafficking just as in cases of murder.

512. Regarding the presumption of innocence, the representative said that it was quite clear under the system of law obtaining in Mauritius that the burden of proof rested on the prosecution and that the accused enjoyed the right of silence. If drugs were found in a person's luggage and the court was satisfied that he had no knowledge of their presence, he could not be convicted under any circumstances. The mere possession of dangerous drugs without any proof of guilty intent was insufficient to obtain a conviction. Mauritius was co-operating with several States to eliminate the threat of widespread traffic in drugs but this did not affect the imposition of the death penalty for drug offences. Indeed the imposition of such penalties on convicted drug traffickers was also likely to benefit other countries.

513. The law governing the use of firearms by the police and security forces was no different from that applying to any member of the public. The police did not carry machine-guns, only hand-guns. There had been no cases in recent years of injuries caused by firearms. Firearms could only be carried by members of the public if they were in possession of a licence issued by the Commissioner of Police. A Firearms Act and Firearms Regulations were in force and the situation was well under control.

#### Liberty and security of the person and the treatment of prisoners and other detainees

514. With reference to that issue, members of the Committee wished to know what proportion of persons charged with criminal offences were denied release with or without bail pending trial; what was the average length of detention for persons who remained in custody pending trial; how quickly after arrest a person's family was informed and how soon after arrest a person could contact his lawyer; what was the current status of the Reform Institutions Bill, which, *inter alia*, would formally outlaw caning in prisons; whether the United Nations Standard Minimum Rules for the treatment of Prisoners were complied with and whether the relevant regulations and directives were known and accessible to prisoners; whether prison authorities still resorted to the application of a bread and water diet for a period of seven days to one month as a means of punishment and, if so, how common was that practice; and what was the minimum age at which a person could be held criminally responsible.

515. Members also wished to know why the time-limit for bringing an arrested person under judicial control was not legally defined; why in Mauritius persons could be imprisoned for failure to pay a debt; whether the offence for which a debtor could be imprisoned was failure to pay a debt or contempt of court; and whether bail was automatically disallowed for certain categories of offences. They also sought additional information on the enforceable right to compensation for anyone who had been a victim of unlawful detention; on the Act enabling the competent minister to refer labour disputes to compulsory arbitration, which might result in the imposition of forced labour; and on the regulation relating to the liability to imprisonment of persons without visible means of support. It was also asked what the minimum age was at which a person could be imprisoned or held criminally responsible.

516. Replying to the questions raised by members of the Committee, the representative of the State party stated that the number of cases in which bail was denied was very small. The Bail Act No. 13/1989 had considerably relaxed the conditions for bail. Persons arrested on charges of murder or the importation of drugs were systematically refused bail, but bail was always considered for other categories of offences, including manslaughter. A person charged with murder might be held under arrest during preliminary investigation for a period of up to 8 or even 12 months, in other cases much less (1 to 3 months). The families of arrested persons were normally informed immediately. The Reform Institutions Bill was now on the statute-book as the Reform Institutions Act No. 35/1988. In consequence, caning and bread and water diets in prisons were no longer legal. The minimum age at which a person could be held criminally responsible had not been specifically laid down by the Parliament, but sections 44 and 45 of the Criminal Code gave an age of 14, below which offenders were not deemed to be criminally responsible. Mauritian law also contained special provisions ensuring that young people were tried separately in juvenile courts and that the punishment applicable to them was modified as compared with that reserved for adult offenders. In the case of unlawful detention by a police officer, the State was responsible for payment of damages.

517. There was no record of trade union officials being imprisoned on account of lawful trade union activities; nor was there any case of workers in either the public or private sector being imprisoned for taking part in strikes, even where such strikes were unlawful. Cases of forced labour, except in connection with lawful prison sentences, were inhuman and there was no provision for such practice in law. Imprisonment was not ordered automatically for simple refusal to pay a debt but only if and when the court was satisfied that the person had the means to pay but was still wilfully refusing to do so. While such a person could be incarcerated, he would be immediately released upon paying the debt.

#### Right to a fair trial

518. With regard to that issue, members of the Committee wished to receive necessary additional information on article 14 of the Covenant, pursuant to the Committee's general comment No. 13 (21). They also asked whether any steps were contemplated to enact legislation providing for compensation to persons wrongfully convicted or imprisoned, in accordance with the requirement in article 14 (6) of the Covenant.

519. In connection with section 4 of the Official Secrets Act, a member pointed out that the

provisions contained therein appeared to lay the burden of proof on the accused and therefore seemed to be contrary to article 14 (2) of the Covenant concerning the presumption of innocence.

520. Replying to the questions raised, the representative of the State party stated that the Committee's general comment No. 13 (21) was very helpful to the legal profession and to the members of the judiciary, but the Constitution of Mauritius contained its own detailed rules concerning due process in section 10. The right to claim damages had always existed under Mauritian law and the country's Civil Code made satisfactory provision for remedy in such circumstances. The Official Secret Act, which had been enacted to protect cabinet documents, sought not to upset the established rule concerning the burden of proof but merely to provide that, if a document had been published with lawful authorization, that fact should be established by the publisher. Requiring the publisher to furnish proof of authorization was a requirement that did not contravene the presumption of innocence or the Covenant's provisions.

#### Freedom of movement and expulsion of aliens

521. With reference to that issue, members of the Committee wished to know whether any restrictions on the freedom of movement or residence of aliens had been adopted pursuant to section 15 (3) (d) of the Constitution; whether appeals against deportation orders had suspensive effect; and whether the permissible restrictions under Mauritian law, "complying with norms that were reasonably justifiable in a democratic society" were the same as those permitted under the Covenant.

522. In his reply, the representative of the State party declared that there were no restrictions on the freedom of movement or residence of aliens in Mauritius. Appeals against deportation orders did not have suspensive effect but, in practice, the person against whom the order had been made was usually allowed to stay in the country pending a decision. If the authorities decided to enforce the order, the person could request a court injunction to prevent the expulsion from being carried out before the hearing had been concluded. The phrase in paragraph 27 of the report and the one in article 12 of the Covenant carried the same implications.

#### Right to privacy

523. With reference to that issue, members of the Committee requested additional information on article 17, in accordance with the Committee's general comment No. 16 (32); and concerning the law and practice relating to permissible interference with the right to privacy and to the collection and safeguarding of personal data.

524. Responding to questions raised by members of the Committee, the representative of the State party pointed out that interference with privacy by the State was permissible in criminal investigations provided that a court order had been obtained on the basis of information given under oath. Interference by private persons was governed by the Civil Code. There had so far been no need for legislation concerning personal data in Mauritius since no private or public institution systematically collected such data except in the field of taxation, electoral law and pension rights.

#### Freedom of religion and expression; prohibition of propaganda for war and advocacy of national, racial or religious hatred

525. In this connection, members of the Committee asked for further information concerning the limitations on freedom of the press and the media permitted by law. They wondered whether propaganda for war was prohibited by law, in conformity with article 20, paragraph 1, of the Covenant.

526. They also asked why the drafters of the new 1985 law had found it necessary to add the offence of contempt of the Government to the current Criminal Code, when the offence of slander was already provided for, whether legal proceedings had been instituted in application of that law and why it had been felt necessary to add the offence of publication of "false reports" to the Criminal Code. In the opinion of members of the Committee, there was a problem of compatibility with article 19 of the Covenant and, in that connection clarifications were requested on the 1970 Act, in particular the rights and remedies available to the accused and who decided whether certain news was seditious. Members also noted that article 12 of the Mauritian Constitution did not provide for freedom to "seek, receive and impart information and ideas" as stated in article 19, paragraph 2, of the Covenant. They asked whether there were legislative provisions in that area and, in particular, to what extent journalists were able to obtain information from the authorities or have access to official files, whether radio stations in Mauritius broadcast programmes in several languages and how air time was divided among the various language groups. Some members of the Committee asked for clarifications of the expression "except with his consent" in article 12 of Mauritian Constitution and on the compatibility of article 296 of the Criminal Code with the corresponding provisions of the Covenant. Some members of the Committee also asked whether the State provided subsidies to the various religious denominations or associations for their schools.

527. The representative of the State party, replying to the questions raised by members of the Committee, stated that freedom of the press was guaranteed in his country and that the Committee need not be concerned by certain legislative provisions that had been adopted in that area. Concerning the publication of "false reports", he explained that the false nature of published reports did not in itself lead to a conviction if there had been no criminal intent. He said that the 1985 law and article 296 of the Criminal Code, which certain members of the Committee had found unduly repressive, had never been used as a basis for legal prosecutions. In the opinion of the Government of Mauritius, freedom of the press did not mean freedom to publish false or distorted information. However, it did include the right to criticize the Government, its policy or positions, and that right was in no way suppressed. The omission of the words "to seek" information from article 12 of the Constitution by no means meant that freedom of expression and information was limited in Mauritius. In his opinion, the freedom to "receive and impart" information set forth in article 12 of the Constitution included the freedom to seek information and, on that basis, the inability to exercise that right could be considered by the courts as a violation of the provisions of the Constitution.

528. Concerning subsidies to educational establishments, he said that there was no discrimination and that all establishments were subsidized sufficiently to pay their staff and to ensure their proper operation. Concerning the reference to air time, he pointed out that it was quite difficult to divide it equally among all the language groups, since Mauritius had only one radio station for a trilingual population. However, efforts were made to distribute the programmes among the different languages equitably. The problem of propaganda for war had never arisen and the law made no provision in that regard. However, the implementation of other legal provisions prohibiting the advocacy of insurrection or violence could have the same result as a specific law. Concerning the

implementation of the articles of the Public Order Act, which provided for the closure of printing houses, he said that his Government would provide the Committee with detailed information in a written note.

#### Freedom of assembly and association

529. Members of the Committee requested information on the number and composition of trade unions in Mauritius; on legislation and practice with regard to the right of peaceful assembly; and on the conditions restricting the right to strike contained in the Industrial Relations Act of 1973.

530. Replying to the questions raised by members of the Committee, the representative of the State party said that the establishment and operation of trade unions were governed by the Industrial Relations Act. As at 31 December 1987, Mauritius had 313 trade unions, of which 10 were federations; that number had now risen to 331. The conditions for joining a union were also governed by that Act, which provided for complete freedom in that area. Concerning the right of peaceful assembly, he informed the Committee that the competent authorities were the courts, in the first instance, followed by the permanent arbitration court. The Commissioner of Police had to be informed before a public meeting was held; if he refused authorization, it was possible to apply to a court. The purpose of the restrictions as far as strikes were concerned was to provide for a cooling off period. If those procedures failed, a strike notice had to be submitted to the Minister for Labour. The only recent example of a strike had been a major strike of the entire civil service at the beginning of June 1989.

#### Protection of the family and of children

531. Members of the Committee asked for further information on the activities of the Ministry of Women's Rights and Family Welfare and on the activities of the National Adoption Council since its establishment in 1987, in particular, whether the Council had been able to eliminate abuses in the adoption of Mauritian children by foreigners. They asked whether a mother of Mauritian nationality could transmit the nationality to her child born outside Mauritian territory, as provided by article 23 of the Constitution in the case of the father.

532. Members of the Committee also asked whether the lack of distinction between legitimate and natural children also extended to children born of adultery and, if so, what possibility the parents had of legitimizing them, and whether natural children and children born of adultery had the same rights as legitimate children with regard to inheritance. With reference to the serious problem of children taken out of a country illegally, they asked whether the National Adoption Council was also empowered to inquire into that type of illegal practice, whether cases of that nature had been brought before the courts in Mauritius and, if so, what sentences had been handed down against nationals and foreigners. Was corporal punishment practised in the schools and, if so, in what form?

533. Replying to the questions asked by members of the Committee, the representative of the State party said that the Ministry of Women's Rights and Family Welfare, in particular, made available to the public the services of lawyers, doctors, psychologists and nutritionists. An amendment to the Civil Code that entered into force in 1982 had abolished the distinction between legitimate and natural children, but that did not apply to children born of adultery. The National Adoption Council

had begun its functions in 1988. In that year, there had been 69 adoption requests, of which 62 had been approved. The Council was empowered to inquire into the activities of certain organizations that obtained children for foreigners. In a number of cases, facts had been brought to the attention of the police. He explained that, under articles 23 and 27 of the Constitution, a mother of Mauritian nationality could not transmit the nationality to her child born outside Mauritian territory. Corporal punishment was not authorized in Mauritian schools.

#### Right to take part in the conduct of public affairs

534. Members of the Committee asked to be supplied with statistical data concerning the proportion of women and minorities elected to office and in public service.

535. The representative of the State party replied that there were more women than men in his country's public service. There were currently three women in Parliament, one of whom, a Hindu, was also the Minister for Labour; there were no statistics regarding minorities. Mauritius might be described as a nation of minorities, since there were about 30 or so of them, and it could not be said that any one dominated the others. For electoral purposes, for reasons of convenience, they were divided into four major categories: persons of Indian, African and Chinese descent and Muslims. No problems arose concerning participation of members of minorities in public service.

#### Rights of minorities

536. In this connection, members of the Committee wished to know whether there were particular difficulties and factors that might affect the enjoyment by minorities of their rights under the Covenant and, if so, what measures had been taken to remedy them. Noting with satisfaction that minorities' rights appeared to be well protected in Mauritius, some members asked whether that was simply so in practice or whether there were special legal provisions to that effect.

537. The representative of the State party replied that, in his country, no law conferred a particular right on any special community. The law simply permitted all individuals to enjoy their rights in any way they pleased. All communities genuinely enjoyed the rights granted to them. That situation was reinforced by the existence of the French, African and Chinese Cultural Centres and the Mahatma Gandhi Cultural Centre. There was no law prohibiting any particular community from enjoying all its cultural rights and expressing itself, in music, in song, or in prayer. If the Government of Mauritius had more means at its disposal, it would provide for even greater enjoyment of those rights.

#### General observations

538. Members of the Committee expressed their satisfaction and thanked the representative of Mauritius, noting that his replies to the Committee's questions had been frank and full and that the dialogue between the Committee and the Mauritian delegation had been fruitful. While regarding the human rights situation in Mauritius as satisfactory, they expressed concern with respect to some provisions in current Mauritian legislation, especially regarding the death penalty and the fairness of proceedings in that area; freedom of expression and freedom of the press; non-discrimination in connection with article 16 of the Mauritian Constitution; the presumption of innocence in the context

of the Official Secrets Act; trade-union freedoms; and the treatment of children born of adultery.

539. The representative of the State party assured the Committee that the Government of Mauritius was resolved to respect both the spirit of the Covenant and the Constitution of the country.

540. Concluding the consideration of the second periodic report of Mauritius, the Chairman again thanked the Mauritian delegation for the constructive manner in which it had conducted its dialogue with the Committee. He believed that the delegation had been able to form a clear idea of what the members of the Committee thought of the human rights situation in Mauritius and to consider their arguments, and that it would now be able to transmit the Committee's observations to the Government of Mauritius.

## CCPR A/51/40 (1996)

136. The Committee considered the third periodic report of the Republic of Mauritius (CCPR/C/64/Add.12 and HRI/CORE/1/Add.60) at its 1476<sup>th</sup> to 1478<sup>th</sup> meetings (fifty-fifth session), on 19 and 20 March 1996, and at its 1497<sup>th</sup> meeting, on 2 April 1996, adopted the following comments.

### 1. Introduction

137. The Committee welcomes the third periodic report presented by Mauritius and expresses its appreciation to the State party for the additional information submitted orally and in writing by a high-level delegation during the consideration of the report. The Committee regrets, however, that the report was long overdue. The valuable supplementary information provided by the delegation, both oral and written, provided a sound basis for a frank and fruitful dialogue between the Committee and the State party.

### 2. Factors and difficulties affecting the implementation of the Covenant

138. The Committee finds no significant factors or difficulties that would prevent the effective implementation of the Covenant in Mauritius.

### 3. Positive aspects

139. The Committee notes that the harmonious coexistence of the multi-ethnic population of Mauritius and its atmosphere of tolerance strengthen the ability of Mauritius to live up to its obligations under the Covenant.

140. The Committee expresses its appreciation for the adoption of the Abolition of the Death Penalty Act 1995, which came into force in December 1995 and provides for the imposition of a sentence of life imprisonment in place of the death penalty.

141. The Committee welcomes the amendment to section 16 of the Constitution by the enactment of the Constitution of Mauritius (Amendment) Act 1995, which adds gender to the grounds on which discrimination by laws or by public authorities is prohibited. The amendment to the Mauritius Citizenship Act 1968, removing discrimination on grounds of gender, the proposed bill on domestic violence and the full recognition of the equal rights of children born in and out of wedlock are also welcomed.

142. The Committee welcomes the large-scale legislative reform that is being contemplated with a view, inter alia, to shortening the length of court proceedings and to reconsidering the system of legal aid.

143. The Committee notes with appreciation the promulgation in 1994 of the Child Protection Act.

144. The Committee welcomes the establishment of a human rights unit by the Attorney-General



with a view, *inter alia*, to undertaking the preparation of the reports of Mauritius to the various United Nations human rights treaty bodies.

145. The Committee welcomes the initiatives of Mauritius to establish an Indian Ocean human rights institute.

146. The announcement concerning the proposed establishment of an independent police complaints board is welcomed.

147. The Committee also welcomes the intention of the Government to set up an independent broadcasting authority.

#### 4. Principal subjects of concern

148. The Committee is concerned that the non-incorporation into domestic law of all the rights guaranteed in the Covenant and the existence of non-permissible limitations affect the full implementation of the Covenant in Mauritius and that, accordingly, the legal system of Mauritius does not ensure effective remedies in all cases of violations of rights guaranteed in the Covenant.

149. The Committee is concerned that excepting personal laws and foreigners from the prohibition of discrimination - as set forth in section 16 of the Constitution - results in a violation of article 26 of the Covenant.

150. The Committee notes with concern that the problem of domestic violence has not yet been the object of appropriate measures.

151. The Committee expresses its concern over the provisions in the so far non-implemented Dangerous Drugs Act 1995 under which an arrested person may be held incommunicado at the discretion of a police officer.

152. The Committee notes with concern that the powers of detention provided for in sections 5 (1) (k) and 5 (4) of the Constitution are incompatible with article 9, paragraphs 3 and 4, of the Covenant.

153. The Committee is concerned that the legislation of Mauritius has not yet been brought into line with article 11 of the Covenant.

154. The Committee is concerned at the extent of de facto limitation on freedom of expression, as exemplified by the banning of two recent literary works without legal measures having been taken to that effect, and at penal offences relating to libel and the dissemination of false news. Extra-legal restrictions on freedom of expression are not compatible with the Covenant.

155. The Committee takes note with concern of the requirement that prior notification be made seven days before any public meeting is held in order to obtain permission from the Commissioner of Police.

156. The Committee is concerned about difficulties faced by those working in export processing

zones in the enjoyment of their rights under article 22 of the Covenant.

#### 5. Suggestions and recommendations

157. The Committee emphasizes the need for legal machinery enabling individuals to enforce all the rights enshrined in the Covenant before domestic courts.

158. The Committee recommends that all grounds on which discrimination is prohibited, as identified in articles 2 and 26 of the Covenant, be incorporated in the relevant non-discrimination provisions of the Constitution and that the provisions be extended to cover aliens. It further recommends that section 16 (2) and 16 (4) (c) of the Constitution be amended to make them compatible with article 2, paragraph 1, and articles 3 and 26 of the Covenant and that steps be taken to introduce comprehensive anti-discrimination laws to cover all spheres, public or private, protected by the Covenant. It is also recommended that the proposed equal opportunity commission consider whether affirmative action measures, including educational measures, are necessary to overcome remaining obstacles to equality, such as outdated attitudes concerning the role and status of women.

159. Following the abolition of the death penalty, it is recommended that Mauritius consider ratification of the Second Optional Protocol to the Covenant.

160. The Committee expresses the hope that the envisaged independent police complaints board will be established as soon as possible and that provisions are included in the law to ensure that the board will enjoy the powers and receive the resources to enable it to investigate allegations of abuse by members of the police.

161. The Committee stresses the need to establish a mechanism to provide legal aid for appeals to the Privy Council.

162. The Committee recommends reconsideration of the legislation on the publication of false news. If the State party considers it necessary to allow for some restrictions on publications and showing of films, legislation should be introduced establishing criteria consistent with article 19, paragraph 3, of the Covenant and providing for judicial review of all decisions to restrict the exercise of freedom of expression. The Committee expresses the hope that the envisaged independent broadcasting authority will be established as soon as possible. It suggests the establishment of a mechanism that would allow for a press code of ethics.

163. The Committee suggests that consideration be given to ensuring that restrictions do not exceed what is necessary in a democratic society, in conformity with article 21 of the Covenant.

164. The Committee expresses the hope that, as part of the planned review of industrial legislation, the Government will consider whether to ensure their full enjoyment of the rights guaranteed by article 22 of the Covenant.

165. The Committee recommends that appropriate steps be taken to ensure that the inhabitants of the islands of Agalega and St. Brandon are able to exercise their right to vote, as required by article 25 of the Covenant.

166. Lastly, the Committee suggests that steps be taken to disseminate in all languages spoken in Mauritius information about the Covenant and about the report and the proceedings before the Committee. It also suggests that steps be taken to publish educational material, particularly for children, in the most used vernacular languages.