



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Summary record of the first part (public)* of the 998th meeting

Held at the Palais Wilson, Geneva, on Thursday, 19 May 2011, at 10 a.m.

Chairperson: Mr. Grossman

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.998/Add.1.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (agenda item 4) (*continued*)

Third periodic report of Mauritius (CAT/C/MUS/3; CAT/C/MUS/Q/3)

1. *At the invitation of the Chairperson, the delegation of Mauritius took places at the Committee table.*
2. **Mr. Varma** (Mauritius) said that, since its independence, his country had been committed to building a society based on democracy, good governance, the rule of law and protection of human rights and fundamental freedoms. Mauritius was therefore a party to most of the major international human rights instruments. The aim of the current human rights system in Mauritius was to enable all persons, regardless of race, ethnic origin, colour, gender, disability or religious beliefs to develop their individual and collective potential. The Constitution would be reviewed during the period 2010–2015 so as to strengthen democracy and nation-building and the enjoyment by all Mauritians of their rights and freedoms.
3. The long delay since submission of the previous periodic report, in 1999, in no way denoted a lack of respect towards the Committee, or for the principles laid down in the Convention or any other human rights instruments. During that period, Mauritius had submitted reports to a number of treaty bodies and had actively participated in the work of the Human Rights Council. Indeed, the country had been subject to review under the Universal Periodic Review mechanism. It had not always been an easy task, bearing in mind the limited resources of Mauritius and the difficult economic and other challenges it had faced over the past 10 years.
4. For the State party, torture remained an abhorrent and unacceptable human rights violation, which it was committed to ending wherever it occurred, but especially in its territory. In that regard, he strongly condemned the fact that the island of Diego Garcia, which formed part of Mauritian territory, had been used since September 2001 as a transit point for illegal rendition flights of persons to countries where they risked being subjected to torture or ill-treatment. The use of Diego Garcia for such a purpose could amount to complicity in torture within the meaning of article 4 of the Convention. In February 2008, the Mauritian Government had urged the United Kingdom Government to refrain from acts that were contrary to the Convention or to any other international human rights instruments in respect of Mauritian territory, and it would continue to press for an early return of the Chagos Archipelago to the effective control of Mauritius, not least to ensure that the obligations of Mauritius under the Convention and other international human rights instruments were fulfilled throughout Mauritian territory. Moreover, displaced Chagos islanders should be allowed to exercise their right to return to the Archipelago in accordance with international law, and be granted compensation by the United Kingdom Government for the denial of that right over an extended period. He urged the Committee to make a recommendation to that effect, along the lines of the recommendation made by the Human Rights Committee in July 2008 in its concluding observations concerning the United Kingdom (CCPR/C/GBR/CO/6).
5. The fact that the State party had been the first country to be visited by the Subcommittee on Prevention of Torture, in 2007, and that many of its recommendations had been or were about to be implemented, testified to its willingness to cooperate to further the work of the United Nations on human rights. Indeed, the Special Rapporteur on the sale of children, child prostitution and child pornography had recently visited Mauritius. During the visit, the Mauritian Government had announced its decision to ratify the

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

6. In its third periodic report to the Committee against Torture, the State party had sought to outline the legislative, judicial, administrative and other measures that gave effect to the provisions of the Convention in its territory. Those measures included, in line with a recommendation of the Committee after consideration of the second periodic report, the enactment of legislation to ensure that public officials who committed torture in Mauritius were held accountable and effectively brought to justice. Mauritius had also prepared draft legislation to review the structure of the National Human Rights Commission (NHRC), in particular to establish a police complaints division — a measure provided for in the Police Complaints Bill — and a division that would discharge the duties of the National Preventive Mechanism for torture, as required under the Optional Protocol to the Convention. Another bill covered the incorporation of the Rome Statute of the International Criminal Court into domestic law. Consultations would also begin shortly on a bill relating to the administration of investigations, proceedings and evidence with the aim of better guaranteeing the constitutional rights of citizens to freedom, protection of property, freedom of movement and protection of the law. The bill would make better provision with regard to the procedures to be followed by police officers and other law-enforcement officers in the exercise of their power to stop and search, of entry, search and seizure, arrest, and with regard to the detention of persons and the questioning and treatment of detainees. It must also make provision for the regulation of the admissibility of confessions.

7. In order to reduce significantly the number of persons in pretrial detention, the Government also intended to introduce a new bill allowing the courts to release detainees and order them to wear electronic bracelets. It further intended to reduce the delays in handling cases and enhance efficiency in the judicial system. In addition, during the period under consideration, the Mauritian Government had spared no effort to entrench a strong human rights culture in its public service. Thus, 8,143 police officers and 700 prison officers had undergone training in human rights with the collaboration of the NHRC and institutions such as the Commonwealth Secretariat, Amnesty International and the United Nations Development Programme. Senior police chiefs had been urged to raise awareness among officers under their command of the importance of respecting human dignity and human rights values at all times. The Commission's recommendations on police procedures and practices to counter police brutality were taken into full consideration and, if need be, were incorporated and disseminated through circular letters and information meetings. Greater use was being made of DNA testing and forensic expertise in crime investigation to avoid relying solely on confessions.

8. As people would be better able to exercise their rights if they were aware of them, the Ministry of Justice had been distributing free copies of the Constitution in schools and colleges. It had also recently launched a free online database of Mauritian laws, including the Constitution. It was also hoping to set up a programme to provide needy persons with access to free legal advice in centres across the island. Furthermore, legislation on protection against domestic violence had been amended in 2007 to enhance the protection afforded to victims through a variety of measures (in particular temporary shelters, psychological counselling and legal aid). Moreover, a victim-friendly approach had been adopted by the police with regard to rape. Awareness-raising campaigns had been conducted by the police family protection units for children from primary school age upwards.

9. The demanding nature of the Convention against Torture meant that States were required to exert continuous efforts and strengthen progress towards its implementation. The significant advances made by the State party since the previous review were outlined in its periodic report. It looked forward to receiving the Committee's concluding observations,

which it intended to take into consideration in its action plan on human rights, currently being finalized, and which would chart the way forward in all sectors with respect to legislation, policies, capacity-building and training on human rights.

10. **Mr. Gallegos Chiriboga** (First Country Rapporteur) welcomed the Mauritian delegation, which he thanked for coming to present the State party's report. He asked whether the attempt to commit torture and complicity or participation in torture were covered by section 78 of the Criminal Code. He also wished to know what appropriate measures had been adopted by Mauritius to incorporate the provisions of the Convention into domestic law, and requested information on the legislative provisions in place with respect to the perpetrators of acts of torture to ensure that only penalties which took into account the grave nature of the offence could be contemplated, given the Convention's aim of ending impunity for such acts. He would also welcome statistical information on the recourse to the derogations set out in section 5 of the Constitution. He noted that, according to the report under consideration, an arrested person must be brought before a court within a reasonable time or released. He wished to know how legislation had been amended to take into account the restrictive interpretation by the Supreme Court of the matter (paragraphs 7, 8 and 9 of the report). He also asked how the provision that any person arrested and placed in detention by the police was informed of their right to request legal assistance was applied in practice and what measures had been adopted to ensure that persons arrested were registered from the moment of their detention. How was the right of access to counsel applied in practice and how much time elapsed after arrest before a detainee had access to counsel? How did the State party apply the right of persons placed in detention to see a doctor, at the moment of their detention or upon request? Were persons informed of that right? He also asked the delegation to specify the steps taken by the State party to guarantee that detainees had access to a private doctor and their right to confidentiality of medical data.

11. He requested information on the composition of the NHRC, the system for appointing members and how their independence was guaranteed. Details of the activities of the Complaints Investigation Bureau, its budget and the guarantees in place to ensure its independence would also be useful. He also wished to know when the codes of practice to regulate the conduct of persons entrusted with investigating offences, which were apparently still in draft form, would be adopted. He would welcome more information on how the State party guaranteed the principle of non-refoulement, in the context of the provisions of the Extradition Act mentioned in paragraph 43 of the report. Were those provisions also implemented if migrants were returned and, if so, what steps were taken by the State party to ensure that the persons concerned were not at risk of being tortured? He wondered whether the State party applied the principle of universal jurisdiction to acts of torture committed abroad.

12. He was aware that Mauritius was about to adopt a new action plan on human rights and wished to make it clear that the Committee often recommended that such documents should include issues relating to persons with disabilities, in particular by providing for policies and measures pertaining to health, education, training, employment, accessibility, etc., as stipulated in the Convention on the Rights of Persons with Disabilities.

13. While welcoming the fact that the State party had been the first to receive a visit from the Subcommittee on Prevention of Torture, he stressed that it was important for the Mauritian authorities to publish the Subcommittee's recommendations, for the sake of transparency, and to ensure that the aim of prevention was achieved, not only with respect to places of detention, but also in health facilities where persons with disabilities, especially those suffering from mental disorders, were cared for.

14. He noted that, in general, many legislative texts mentioned in the periodic report of Mauritius and in the State party's opening statement were still at the drafting stage, and had

been so for some time. Little information had been given on their progress. With regard to the plan for a constitutional review, which would be carried out during the period 2010–2015, he urged the State party to review the human rights legal and constitutional framework and, more particularly, to ensure that the provisions of the Convention against Torture were correctly transposed into domestic law. Concerning the issue of illegal renditions, he would make sure that the Committee considered the State party's request.

15. He welcomed the fact that the NHRC had been invited to provide input for the drafting of legislation and that the State party was using electronic bracelets to reduce the number of persons placed in pretrial detention. He also welcomed the various measures adopted to enhance efficiency in the judicial system, such as increasing the number of judges sitting on the Supreme Court, and commended the adoption of a national action plan to combat domestic violence and the willingness of the State party to develop a national action plan on human rights. In his view, the Mauritian Government should raise public awareness to ensure that the fight against torture and other cruel, inhuman or degrading treatment of punishment became everyone's concern.

16. **Mr. Bruni** (Alternate Country Rapporteur) said that he regretted that the State party had been so late in submitting its third periodic report and emphasized that it was in everybody's interests to engage in regular dialogue. Expressing his concern about the lenient penalties for acts of torture, with a maximum prison term of 5 years, he wished to know whether those penalties also applied in cases of an aggravated crime, particularly when, for example, the offences had resulted in the permanent incapacity of the victim.

17. He referred to paragraph 188 of the report under consideration, which stated that five prison officers from the high security La Bastille prison had been charged with the offence of "acts of torture committed by a public official" under section 78 of the Criminal Code, but that the District Court of Curepipe had dismissed proceedings on 26 February 2009. He requested the Mauritian delegation to provide more information on the case, and to specify whether there had been any convictions in other proceedings involving similar offences.

18. It was stated in paragraph 15 of the report that "Courts in Mauritius are unlikely to find that exceptional circumstances can justify torture". He wondered how the courts could be aware of acts of torture committed in "exceptional circumstances" if such circumstances were not provided for in national legislation. The State party should therefore adopt provisions to that effect.

19. With regard to paragraph 16 of the report, he requested more information on the administrative provisions guaranteeing the right of a subordinate to disobey the order of a superior that might result in an act of torture. He asked the Mauritian delegation to give dates for the NHRC's most recent visits to places of detention and what had been the outcome. He would also welcome more details on the conclusions of the most recent study on detainees' living conditions.

20. Referring to the implementation of article 3 of the Convention, he considered that the absence of any provision prohibiting the expulsion, return or extradition of persons to another State where there were substantial grounds for believing that they would be in danger of being subjected to torture, was a "gap" in domestic legislation.

21. Moreover, as he found the information provided by the State party in response to question No. 11 of the list of issues (CAT/C/MUS/Q/3) insufficient, he repeated the question and invited the Mauritian delegation to give a full oral response.

22. The delegation was also invited to give information on the specific outcomes of the educational and awareness-raising programmes on the absolute prohibition of torture provided in conformity with article 10 of the Convention and, in particular, to specify

whether the programmes had influenced the behaviour of law-enforcement personnel during the custody or detention of a suspect, reflected, for example, in a decrease in the number of police brutality complaints. The Committee also wished to know whether the Istanbul Protocol was included in the training given to medical staff tending to detainees.

23. As for respecting the rights of suspects, he wondered whether suspects were still being denied access to counsel in the first 36 hours, the period of detention stipulated in the two acts on the prevention of terrorism, and, if so, whether that was compatible with the fundamental right to be represented by a lawyer, mentioned in paragraph 69 of the report under consideration.

24. He also requested more information on the 62 cases (out of a total of 104) implicating police officers or public officials, which the NHRC had already dealt with after being notified of them between 1 January and 31 August 2010. Had the alleged authors of acts of torture been tried and, if so, what was the length of the sentences imposed? He asked the Mauritian delegation to specify whether the special measures for the protection of witnesses and vulnerable persons, described in paragraph 86 of the report under consideration, had already been introduced. He would also appreciate a fuller response to question No. 22 of the Committee's list of issues to explain why, depending on the nature of the complaint, the outcomes of the investigation were communicated in writing only to "some" of the complainants, and not to all. He also wished to know the outcome of the appeal hearing, which had been due to take place on 21 February 2011, in the case involving the death of Mr. Ramlogun, in which four police officers were implicated, and requested further details of the judicial enquiry held concerning the death in police custody of "B", mentioned in paragraph 97 of the report. He also asked the Mauritian delegation to provide specific examples of cases in which statements obtained under torture had been declared inadmissible by the courts. He also wished to know whether the plan of action to prevent violence against children, mentioned in paragraph 105 of the report, had been finalized, whether the 2007 act amending the Protection from Domestic Violence Act had been fully implemented and what progress had been made on the Sexual Offences Bill (mentioned in paragraph 149 of the report), which criminalized marital rape. Furthermore, he asked whether the State party was giving consideration to alternative forms of punishment to deprivation of liberty for minor offences to alleviate prison overcrowding. Had the Juvenile Offenders Act been brought into line with the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice? He also asked the delegation to specify what follow-up action had been taken on the suggestion of the NHRC to issue to former detainees convicted of one of the most serious offences, in addition to a certificate of morality, another document indicating the type of offence committed, the period of sentence served and any rehabilitation undertaken for the purposes of reinsertion (para. 206). He also wished to know whether the State party intended to make the declaration provided for under article 22 of the Convention.

25. **Mr. Gaye** asked how effective the Bureau responsible for investigating complaints made by individuals against the police was, given that it came under the control of the Commissioner of Police. Since the Extradition Act did not specifically prohibit the transfer of persons to another State where there were substantial grounds for believing that they would be in danger of being subjected to torture, he wished to know whether the Convention could be invoked directly before the national courts. He also wished to know the minimum deadline for bringing a suspect before a judge. In addition, he expressed surprise that the NHRC could simply deal with a complaint not falling within its jurisdiction, instead of informing the complainant of the measure in place to enable him/her to notify the competent authority.

26. To alleviate the problem of prison overcrowding, he suggested that the courts in the State party might consider imposing, in addition to community service, more suspended sentences. He also wondered whether the fact that no further complaints of torture had been made against prison administration officials was linked to the dismissal of proceedings in February 2009 in the La Bastille prison case, which might have dissuaded any new victims from filing complaints. Furthermore, given that prison building and refurbishment works were often carried out by the detainees themselves, he asked whether they were paid.

27. Lastly, the Committee would like to receive more information on the guarantees for persons accused of terrorist acts, especially their right to notify a relative of their placement in detention, to have access to counsel and to be examined by a doctor.

28. **Mr. Mariño Menéndez** welcomed the Mauritian delegation and commended the efforts of Mauritius to prevent torture. He had further questions on article 3 of the Convention, under which no persons could be expelled, returned or extradited to another State where there were substantial grounds for believing that they would be in danger of being subjected to torture. Paragraph 46 of the report mentioned a decision of the Supreme Court (*Mahmotaky v. The State of Mauritius 2003 SCJ 238*) in which the highest jurisdiction had considered the legality of an expulsion order in reference to the Universal Declaration on Human Rights. He wished to know why the courts had failed to invoke article 3 of the Convention directly, which was perfectly appropriate in the case in question. Moreover, the State party specified, in paragraph 15 of its report, that the Mauritian courts were “unlikely” to find that exceptional circumstances could be invoked to justify torture. The word was rather weak; the Committee hoped that it did not imply that torture could be justified in some way, which would be contrary to the principle of its absolute prohibition.

29. Antiterrorist legislation included provisions that restricted the rights of suspects. The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism had already had occasion to draw the attention of Mauritius to certain aspects of the legislation, not least to the power that the Ministry responsible for national security had to accuse any person of being a “suspected international terrorist”. He had asked the Mauritian Government to specify the criteria used to classify persons as “suspected international terrorists”, and the judicial guarantees permitting persons thus accused to challenge the classification, and had also asked how the issue might influence the right to seek asylum. As the questions had unfortunately remained unanswered, he asked the delegation to provide the desired information.

30. Paragraph 62 of the report stated that the police Forensic Science Laboratory worked directly under the authority of the Prime Minister’s Office, which posed a problem as doctors had to be entirely independent in the exercise of their duties. The Committee was concerned by the average length of pretrial detention and the high number of detainees and wished to know, in addition, what measures had been adopted to remedy the situation. Paragraph 22 of the fourth periodic report of Mauritius on the measures adopted to give effect to its obligations under the International Covenant on Economic, Social and Cultural Rights (E/C.12/MUS/4) stated that the Supreme Court could inflict sentences of penal servitude for life or sentences for terms not exceeding 60 years where the law so provided. Could the delegation explain why the sentences imposed were so long? He requested more information on the rules in place on the use of corporal punishment in prisons, where such punishment appeared not to be specifically prohibited. Paragraph 34 of the report stated that the NHRC had not submitted any acceptable norms/standards for Police cells, but had suggested several modifications during its visits to various police stations and detention centres. The Committee wished to know whether formal measures would be adopted by the Government to regulate police cells. He also requested more information on incommunicado detention, touched upon briefly in the report, in particular its maximum length and the number of persons who had been so detained. He also asked the delegation

to specify how civil liability and criminal liability came into play in cases of acts of torture or ill-treatment. More precisely, did the absence of civil responsibility extinguish criminal action? Lastly, noting the 2009 Truth and Justice Commission Act, which provides for the setting up of a truth and justice body to conduct enquiries into slavery and indentured labour during the colonial period in Mauritius, he wished to know whether the Commission had assumed its duties and had already compensated the beneficiaries of victims.

31. **Ms. Kleopas** said that the statistics given in the report painted a somewhat rosy picture of the situation, which perhaps highlighted the effectiveness of the measures adopted by the Government to combat torture and ill-treatment inflicted by police officers. Nonetheless, it was worth mentioning that the NHRC and the Ombudsperson were empowered to investigate complaints relating to acts of torture or ill-treatment. She asked how persons deprived of their liberty were informed of their right to file a complaint and how, in practice, they accessed the relevant mechanisms? She also wished to know how the right to have access to counsel, which was an essential requirement of the right to a fair trial, was applied in practice.

32. She welcomed the measures adopted by the State party to combat domestic violence; statistics revealed, however, a steady increase in that type of violence. Nevertheless, there was no indication in the information provided by Mauritius of the number of cases that had resulted in an investigation, prosecution and, where appropriate, in the conviction of the guilty parties. That was regrettable, as that kind of information was useful to the Committee in its mission to monitor implementation of the Convention. Section 249 of the Criminal Code criminalized rape, but did not specifically criminalize the offence of marital rape. Had the Sexual Offences Bill, currently under consideration, been amended to criminalize marital rape?

33. **Ms. Sveaass** regretted that Mauritius had not imposed an absolute prohibition on corporal punishment. She noted that several institutions were involved in children's rights, in particular the Office of the Ombudsperson for Children, but also, it would seem, a special division of the NHRC, and asked the delegation to provide more detailed information on the respective duties of the two institutions. The issue of guarantees afforded to detainees in psychiatric hospitals had not been addressed in the report considered. The reports available on the NHRC Internet site did not address it either. She requested information on legislation on forcible confinement and other coercive measures. She also wished to know why the report of the Subcommittee on Prevention of Torture had not been published and when the National Preventive Mechanism Bill would be adopted.

34. **Ms. Belmir** welcomed the delegation and asked whether the national action plan on human rights mentioned in the report had been adopted. It would be useful to be informed of its key elements and whether it had been implemented. The issue of juvenile justice raised some difficulties; for example the age of criminal responsibility had not been clearly set. Juvenile offenders, who were apparently on the increase, were not treated in accordance with the relevant international instruments. It was known that the number of victims of trafficking continued to rise, often without the perpetrators being brought to justice and convicted. The Committee requested further details on the Judicial Committee of the Privy Council, the body competent to review the decisions of the Supreme Court in cases which were of "significant general and public interest". She also wished to know whether steps had been taken to end police brutality and the use of violence to obtain confessions. She also asked the delegation to specify whether steps had been taken to amend section 5 of the Constitution, which had been declared contrary to the International Covenant on Civil and Political Rights. Lastly, the length of pretrial detention and the number of detainees remained a cause for concern for the Committee.

35. **Ms. Gaer** said that she had a few specific questions. First, she commended the State party on the progress it had made in combating trafficking, thanks in particular to the

various measures aimed at combating child prostitution. Referring to the report of the mission of the Subcommittee on Prevention of Torture, she urged the State party to publish it as soon as possible. Paragraph 188 of the report by Mauritius stated that, since the Phoenix prison case, there had been no allegations of prison officer brutality. It would appear, however, that ill-treatment had been inflicted on some of the 34 detainees who had escaped from the Grand River North prison during the summer of 2010. Could the delegation specify whether those acts had resulted in an investigation and criminal proceedings?

36. **The Chairperson** said that, in view of the time, the Committee would resume consideration of the third periodic report of Mauritius at a later session.

37. *The delegation of Mauritius withdrew from the Committee table.*

The first part (public) of the meeting rose at 12.05 p.m.