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HUMAN RIGHTS COMMITTEE

Fifth session

SUMMARY RECORD OF THE 111th MEETING

held at the Palais des Nations, Geneva, on  
Wednesday, 25 October 1978, at 3 p.m.

Chairman:

Mr. MAVROMMATHIS

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session.

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The meeting was called to order at 3.15 p.m.

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

Mauritius (CCPR/C/1/Add.2, CCPR/C/1/Add.21) (continued)

1. Sir Vincent EVANS said that Mauritius had shown a remarkable spirit of co-operation with the Committee, both in preparing the report and in sending a representative to attend the session; its initiative in providing the members of the Committee with a copy of the Constitution of Mauritius was very commendable and it would be helpful if, in the future, the Secretariat would, whenever possible, distribute in advance the texts of the Constitutions of the countries whose reports were to be examined.

2. Other speakers had already referred to most of the important points in the report CCPR/C/1/Add.21, part I of which provided a particularly clear and concise description of the general legal framework within which human rights were protected in Mauritius. Part II of the report called for certain comments. Firstly, with regard to article 2, paragraph 1, of the Covenant, the report referred to section 3 of the Constitution of Mauritius which, as Mr. Tomuschat had pointed out, did not cover all the rights provided for in article 2 of the Covenant: it did not, for example, cover freedom of movement, family rights or political rights. However, it was apparent from the first report submitted by Mauritius (CCPR/C/1/Add.2) that other parts of the Constitution, particularly section 16, contained provisions relating to certain aspects of those rights. He drew attention to an apparent contradiction in the wording of section 16 of the Constitution: referring to subsections (1), (3) and (7) of that section, and pointing out that the definition of "discriminatory" treatment given in subsection (3) did not cover all the cases provided for in article 2 of the Covenant, he observed that section 16 (7) appeared precisely to authorize the application of discriminatory treatment to certain persons on grounds of race, caste, origin, political opinion, colour or belief in respect of the rights guaranteed by sections 9, 11, 12, 13, 14 and 15 of the Constitution. That would be contrary to the provisions of section 3 of the Constitution, and he would welcome an explanation.

3. In the section of the report relating to article 9, paragraph 2, of the Covenant (CCPR/C/1/Add.21, p.8), it was stated that any arrested or detained person must be informed "as soon as is reasonably practicable" of the grounds of his arrest, as stipulated in section 5 (2), of the Constitution. That did not seem to meet the requirements of article 9 of the Covenant, which provided that anyone who was arrested should be informed "at the time of arrest" of the reasons for his arrest. He also had a question about section 5 (1)(k) of the Constitution, which in view of the use of such vague expressions as "upon reasonable suspicion" or "being about to engage in", appeared to confer particularly wide powers on the Commissioner of Police. That provision must be read in conjunction with section 5 (4) and (6), which had the effect of establishing a special régime for the cases

referred to in subsection (1)(k). Under section 5 (4), cases of detention under subsection (1)(k) must be reviewed by an independent tribunal consisting of a chairman and two other members appointed by the Judicial and Legal Service Commission, the chairman being a jurist but not a judge. Subsection (6) provided that the Commissioner of Police should not be subject to the direction or control of any other person or authority - a provision which was perhaps intended to protect the detainee against possible political or other pressure, but might also be prejudicial to him. It would therefore be useful to have some explanation of that particular régime, which appeared to amount to a system of preventive detention. He wished to know how those provisions were justified under the Covenant: for instance could a person detained under section 5 (1)(k) apply to an ordinary court for a writ of habeas corpus, and if so, did the court in question merely verify that the procedure was in conformity with section 5 (1)(k) or could it consider whether the grounds for detention were sufficient?

4. In the section of the report relating to article 14, paragraph 5, of the Covenant, it was stated that if a person convicted of an offence appealed to the Supreme Court, no new evidence would be heard by that Court: what was the position if new facts were discovered?

5. In connexion with article 3 of the Covenant, it was indicated on pages 4 and 5 of the report that, while married women suffered certain incapacities under certain matrimonial régimes, that was not the case with all matrimonial régimes and that women were free to choose whatever matrimonial régime they wished at the time of marriage. It should be remembered that young people generally married in a state of euphoria and insouciance; the maintenance of the matrimonial régimes in force before 1949 might well give rise to more human problems than would appear at first sight.

6. Lastly, he drew attention to the fact that eight daily newspapers of all shades of opinion were published in Mauritius, which was a shining example as far as freedom of the press was concerned.

7. Mr. MOVCHAN associated himself with the congratulations which had been addressed to the Government of Mauritius. The report submitted by that Government contained interesting and important information on the fulfilment by a developing country of its obligations under the Covenant, and the fact that a representative of Mauritius was attending a session of the Committee for the second time testified to the importance which that country attached to the realization of human rights.

8. It appeared that a legislative process had been initiated in Mauritius to enable its people, which had freed themselves from oppression, to improve their way of life. He wished to know whether that process was based on the Covenant or whether it was founded on the legislation, tradition, customs, and conditions peculiar to Mauritius, a situation which might if necessary entail an appropriate amendment of certain provisions of the Covenant.

9. He next referred to the implementation of article 2, paragraph 3 (b), of the Covenant (p. 4 of the report). Recognizing the diversity of the legal systems in the world and noting that in Mauritius all judges were appointed he asked to what extent that system of appointment guaranteed the independence and impartiality of judges in the exercise of their functions, and who appointed the Chief Justice and in accordance with which procedures. He also wished to know how the Supreme Court was constituted and the conditions under which the Judicial and Legal Service Commission was established. Were those conditions such as to ensure its independence?

10. Turning to the implementation of article 12, paragraph 3, of the Covenant, he requested details of the restrictions imposed by section 15 (3) of the Constitution of Mauritius (p. 12 of the report) on the rights provided for in article 12, paragraphs 1 and 2, and asked whether propaganda for war was prohibited?

11. What were the qualifications for membership of Parliament or local authorities, as referred to in relation to article 25 of the Covenant (p. 21 of the report)? Did the Government of Mauritius intend to make the qualifications more flexible?

12. On the occasion of the celebration of United Nations Day, he wished to emphasize the noble task that the Organization had set itself in the field of human rights. As a result of the establishment of the United Nations, the international community had, for the first time in the history of mankind, been given a mandate for the collective defence of human rights. All States, including the Soviet Union, which had triumphed over Hitlerian fascism had contributed to that mandate, thus safeguarding peace and ensuring that deep-rooted revanchism did not again lead mankind into war.

13. In accordance with the Charter of the United Nations, Member States must ensure conditions of stability and well-being in their territory as indispensable elements in the maintenance of peaceful and friendly relations among nations. The concept of economic and social rights, to which reference was made in the third preambular paragraph of the Covenant, had been introduced by the great October Socialist Revolution. It was of unquestionable importance, and in that connexion he wished to draw particular attention to the relevance of paragraph 8 of the report submitted by Mauritius (p. 2) and to remind the Committee that it had an obligation to consider not only the measures already adopted by States in order to fulfil their obligations under the Covenant, but also the progress achieved in that respect.

14. The CHAIRMAN wished the United Nations, on the occasion of United Nations Day, every success in the many efforts which it was making to promote the cause of human rights. The Committee constituted a living example of those efforts.

15. Mr. ESPERSEN said that the report submitted by the Government of Mauritius provided an excellent basis for discussion.

16. With regard to the implementation of article 2 of the Covenant, the comments made by Sir Vincent Evans on paragraphs 1 and 2, and on discrimination in particular, were relevant and important. With respect to the independence of the judiciary in Mauritius (art. 2, para. 3(b), of the Covenant; p. 4 of the report), he wished to know in relation to which authority that independence manifested itself. He also asked what criteria governed the registration of trade unions (p. 4, para. 3, of the report). Was registration a mere formality? Were workers free to form trade unions? Were there any restrictions on the right to form associations?

17. With regard to the implementation of article 3 of the Covenant concerning the equal rights of men and women, he would like to ask the following additional question: could a married woman change her matrimonial régime?

18. With regard to article 7 of the Covenant, which prohibited torture and cruel, inhuman or degrading treatment or punishment, he noted that corporal punishment existed in Mauritius. While not explicitly forbidden by the Covenant, corporal punishment could be regarded as torture or cruel, inhuman or degrading treatment or punishment. He wished to know whether corporal punishment was actually practised, what methods were used and whether there were plans for its abolition.

19. Noting that the use of force against any individual, including for that purpose medical or scientific intervention, was also sanctioned by both criminal and civil law (p. 7, para. 3, of the report), he asked whether that meant that no one could be subjected to a medical or scientific experiment without his consent.

20. With regard to the investigation of the complaints that could be filed by any member of the public against a police officer (p. 7, para. 7, of the report), he wished to know whether the fact that the investigation was conducted by the Superintendent of Police did not adversely affect the independence of the investigation. Regrettably, the same practice was followed in many countries, including Denmark, but if article 7 of the Covenant was to be fully implemented, it was essential that such investigations should be as independent as possible.

21. Questions had been asked, in particular by Sir Vincent Evans, concerning the time within which an arrested or detained person must be informed of the reasons for his arrest or detention: must such a person be informed as soon as possible or at the time of arrest? The matter was important, and it would be interesting to discuss it after hearing the reply of the representative of the Government of Mauritius.

22. With regard to article 14, paragraph 1, of the Covenant, he noted that Supreme Court judges in Mauritius could be removed from office only for inability to perform their functions or for misbehaviour. He wished to know who decided that a particular situation justified the removal of a judge from office and who took the decision actually to remove him from office.

23. The rights recognized in article 14, paragraph 3 (d), of the Covenant were protected by section 10 (2) of the Constitution of Mauritius. However, he wished to know whether there was complete freedom with regard to the choice of a defence counsel or whether there were restrictions.

24. According to the part of the Mauritian report relating to article 14, paragraph 4, of the Covenant, the persons allowed to attend hearings in juvenile courts included accredited newspaper reporters. He wished to know who accredited such reporters (the court, the Government or some other authority) and what conditions governed their accreditation.

25. With regard to article 14, paragraph 6, of the Covenant, the Government of Mauritius stated in its report that there was no provision in Mauritian law to compensate persons wrongfully convicted of criminal offences but later exonerated or pardoned. In that respect Mauritian law was not completely consistent with the provisions of the Covenant, and it would be useful to know whether there were plans to amend the law.

26. With regard to article 18 of the Covenant, he wished to know whether the political convictions of individuals in Mauritius were placed on record; for example, were records kept of members of a party or participants in demonstrations, and were secret records of any form kept in files by the police or any other body?

27. The first of the three paragraphs which the Government of Mauritius had devoted to article 19 of the Covenant dealt with the conditions under which freedom of expression could be checked. Did "checked" mean that certain forms of expression were subject to penalties a posteriori or that certain publications were vetted and banned before they could appear?

28. According to the third paragraph on article 19, the Mauritius Broadcasting Corporation provided independent and impartial information broadcasting services. He wished to know whether the Corporation was an independent public body or a government body, and what administrative procedures were followed in order to ensure that programmes were independent and impartial.

29. Section 13 of the Mauritian Constitution sanctioned freedom of peaceful assembly and association, as provided for in articles 21 and 22 of the Covenant, but imposed certain restrictions. How were those restrictions formulated? If a peaceful meeting or demonstration resulted in a disturbance of public order, what penalties were imposed? Were the penalties light or severe, and did they involve fines or prison sentences?

30. Mr. GRAEFRATH said that he wished to ask three additional questions. Firstly, with regard to the judiciary, he wished to know the conditions that had to be fulfilled in order to be a judge, and the type of training required and the social composition of the members of the Bench. He also wished to know whether women could become judges or jurors, whether it was expensive to take legal action, whether it was necessary to have a lawyer and whether the language used by the courts was the language of everyday use or some other language.

31. Secondly, he wished to know the situation with regard to infant mortality in Mauritius. What had been done to reduce infant mortality and, if a special programme had been put into effect, what results had been achieved?

32. Lastly, with regard to article 19 of the Covenant, he asked whether the information services broadcasted radio programmed in Creole, which was no doubt the language spoken by most of the population. The other questions that he had intended to ask had already been put by other members of the Committee.

33. Mr. BEN-FADHEL said it might be asked whether it was not inhuman to expect government representatives to answer dozens of questions within 24 hours. It might be possible to improve the Committee's methods of work. When the Secretariat received reports between sessions, it could send those reports to the members of the Committee so that they could study the reports and, through the Secretariat, submit written questions to the Government concerned. That Government would then have ample time to prepare its answers for its representative when he came to participate in the Committee's deliberations.

34. The CHAIRMAN considered that Mr. Ben-Fadhel's suggestions, like those of Sir Vincent Evans, were interesting. It would be very useful to have countries' reports as soon as possible, and the Secretariat should perhaps consider the matter. In any case, when informing a country of the date on which its report would be considered, it would be helpful to point out that the Committee would find it very useful to have the country's Constitution at its disposal. As for the questions that had been asked, the Committee knew that some of them could not be answered immediately. However, the representative of the Government whose report was being considered was quite entitled to postpone his answer and submit it in writing later or include it in an additional report.

#### FUTURE MEETINGS OF THE COMMITTEE

35. The CHAIRMAN reminded the Committee of the provisional agreement it had reached at its fourth session concerning the dates of its future meetings. He invited the representative of the Secretary-General to inform the Committee where and when its next sessions could be held.

36. Mr. MAZAUD (Representative of the Secretary-General) said that the Secretariat had drawn up its plans on the basis of the suggestions of the working group which had been asked by the Committee to fix the dates for the Committee's 1979 sessions. The sixth session of the Committee could be held from 9 to 27 April 1979 in New York. It would be preceded by a session of the Working Group, to be held from 2 to 6 April. The seventh session of the Committee would be held in Geneva from 30 July to 17 August 1979. The Working Group would meet from 23 to 27 July. The eighth session of the Committee could be held in Geneva as from 15 October 1979. However, the Committee had not decided whether the eighth session would be of two or three weeks' duration, or whether or not it would be preceded by a session of the Working Group.

37. The CHAIRMAN said that, if there was no objection, he would take it that, for its sixth and seventh sessions, the Committee agreed to the places and dates mentioned by the representative of the Secretary-General.

38. It was so decided.

39. The CHAIRMAN suggested that the Committee's eighth session should be of only two weeks' duration, should not be preceded by a session of the Working Group and should be devoted to completing consideration of the reports already begun. If there were any urgent communications, they could be considered through the special rapporteur system.

40. Sir Vincent EVANS pointed out that, although there were few communications to be considered at the current session, the situation might be different in October 1979. The Committee would have to consider the substance of the communications at that time, and that would add considerably to its work. It would undoubtedly prove necessary to request the working group on communications to make substantive recommendations. If the working group did not meet in October 1979, little progress would be made in the consideration of communications between August 1979 and April 1980. The Committee should consider the communications as soon as possible, both for the sake of its reputation and for humanitarian reasons. A session of the working group should therefore be scheduled before the October 1979 session. As for the duration of the Committee's eighth session, for budgetary reasons it would be preferable to schedule a three-week session, even though it might have to be shortened to two weeks if circumstances so required.

41. The CHAIRMAN reminded the Committee that it also had to decide whether it intended to adopt its annual report at its summer session. If it adopted its report in August, it could do more work in a two-week October session than in a three-week summer session at which several meetings would be devoted to the adoption of the report.

42. Mr. LALLAH said that it would be preferable for the Committee to adopt its annual report at the autumn session rather than the summer session. The report would then be more complete and would give a more accurate idea of the work accomplished. Furthermore, the Rapporteur would have more time to carry out his work.

43. The CHAIRMAN said that the ideal course would obviously be to adopt the report in October, but in practice that was scarcely feasible because it could not then be communicated to the General Assembly in time. In 1978 the Economic and Social Council had agreed that the report should be transmitted directly to the General Assembly, but that involved overriding the provisions of the Covenant. Even in that situation, the General Assembly would be able to give the report only very cursory consideration during the last days of its session. That accelerated procedure was prejudicial to the activity of the Committee, because it wanted its work to be given detailed consideration in the hope of gaining the full support of the Assembly and the Council. If that was to be achieved, the Council must consider the Committee's annual report at its resumed session, in other words, in September.

44. Mr. OPSAHL shared the views expressed by Sir Vincent Evans concerning communications.

45. The duration of the October session depended on when the Committee intended to adopt its annual report. If it adopted the report at its summer session, two weeks might be sufficient in October. If necessary, the Committee could hold meetings on Saturday mornings.

46. The CHAIRMAN said that it would be difficult, but perhaps not impossible, to hold meetings on Saturday mornings.

47. Mr. MOVCHAN asked whether the report for the current year would cover the three sessions held in 1978, while the 1979 report would cover only two sessions, namely the spring and summer sessions?

48. The CHAIRMAN replied that the annual report must cover the two regular sessions referred to in the rules of procedure, namely, the spring and summer sessions, if the Committee decided to adopt its report in August. The autumn session would be covered in the report for the following year. In that way the Economic and Social Council and the General Assembly would receive the Committee's annual report in good time.

49. In view of the opinion already expressed by several members of the Committee on the need for sufficient time to consider communications in 1979, he suggested that the working group should meet from 8 to 12 October in Geneva, immediately before the Committee's session scheduled for 15 - 26 October 1979.

50. It was so decided.

51. The CHAIRMAN suggested that the working group which would deal with communications at the April 1979 session should be established forthwith. Its members would have to be selected from among the Committee members who had been re-elected, since the new members would not be taking up their duties until 1 January 1979. In that connexion, he expressed regret concerning the non-attendance of Asian members and suggested that they might be contacted. He also suggested that, if necessary, he could attend the meetings of the group as an alternate member.

52. Sir Vincent EVANS said that the Committee should exercise a little more flexibility and should not lay undue stress on geographical distribution since, after all, the members of the Committee carried out their functions in a personal capacity. Obviously, it was useful for the different regions and different legal systems to be represented, but it was not absolutely essential. He proposed that the Chairman should be left to form the next working group on communications and agreed that it should be composed of re-elected Committee members.

53. Mr. OPSAHL considered that the participation of an Asian member in the working group would be desirable even though, as Sir Vincent Evans had pointed out, it was not necessary to adhere to strict geographical distribution.

54. The CHAIRMAN agreed that it would be better to exercise a certain flexibility. He nominated Mr. Prado-Vallejo, the only Latin American member who could be sure of participating, Mr. Lallah, as the African member until new members joined the Committee, and Mr. Hanga, who had not yet served as a member of the working group. A fourth member remained to be appointed and that task could be entrusted to the Chairman.

55. Mr. MOVCHAN said that he was not in favour of breaking with the tradition that the working group should be composed of five members. That principle had yielded good results in the past and there was no reason to depart from it.

56. In his opinion the Chairman's suggestion that he (the Chairman) should replace an Asian member was acceptable. However, newly-elected members should be asked to serve on the working group as that would enable them to become acquainted with the Committee's work.

57. The CHAIRMAN said that there was no question of abandoning a principle; it was simply a matter of not insisting on strict adherence to that principle in difficult circumstances.

58. The members of the Committee might wish to agree on the choice of four members immediately, and the fifth could be appointed in due course after he had held consultations. He would not himself be excluded from membership of the group. He nominated Mr. Tomuschat as the fourth member.

59. Mr. LALLAH suggested that, if one of the members appointed was unable to participate in the group, the new members might be contacted.

60. The CHAIRMAN said that the alternate member could perfectly well replace an absent member. He asked the members of the Committee whether they were prepared to take a decision immediately on the proposal to adopt the annual report at the summer session.

61. Mr. TOMUSCHAT said he had no objection to an immediate decision that the Committee should adopt the report at the summer session. That procedure would in fact be preferable because it would give the General Assembly time to consider the report in depth. It should then be possible to devote the two weeks of the autumn session entirely to consideration of communications, which required a great deal of time. It was not essential that future reports - if it was decided to follow the procedure he had mentioned - should cover the last session of the year since that session should be devoted mainly to communications which could hardly be referred to in the annual report.

62. Mr. OPSAHL considered that a decision should be taken immediately. Despite the difficulties inherent in the fact that the report would not - if the proposal was adopted - cover the entire calendar year, he was inclined to support that solution since it would have the advantage of enabling the General Assembly, in 1979, to consider in greater depth both the annual report for 1978 and that for 1979.

63. The CHAIRMAN said that, if there was no objection, he would take it that the members of the Committee adopted the proposal that as from 1979 the Committee should adopt its annual report at its summer session, and that the records of any further session that might be held in the autumn, as would be the case in 1979, should be included in the report for the following year.

64. It was so decided.

65. Mr. MAZAUD (Representative of the Secretary-General) said that, at the Committee's request, he had asked the competent departments for information regarding the possibilities for holding meetings in 1980. He informed the Committee that it could hold its ninth session in New York from 10 to 28 March 1980,

with the Working Group meeting from 3 to 7 March. It could hold its tenth session in Geneva from 14 July to 1 August, with the Working Group meeting from 7 to 11 July. It could hold its eleventh session in Geneva from 13 or 20 October to 31 October, depending on whether the session was of three or two weeks' duration; the Working Group would meet in the preceding week, in other words, in the first case from 6 to 10 October, and in the second from 13 to 17 October.

66. The CHAIRMAN said that, since a consensus had emerged at the Committee's previous session in New York concerning the dates mentioned by the representative of the Secretary-General, he proposed to include them in the calendar of meetings.

The meeting rose at 5.55 p.m.