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SUMMARY RECORD OF THE 110TH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 25 October 1978, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.50 a.m.

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

Report of Mauritius (CCPR/C/1/Add.21)

1. At the invitation of the Chairman, Mr. Ahnee (Mauritius) took a place at the Committee table.
2. Mr. AHNEE (Mauritius) said that his country's report (CCPR/C/1/Add.21) had already been introduced by the Solicitor General of Mauritius at the Committee's previous session. He had nothing further to add but would be pleased to answer any questions raised.
3. He would arrange for copies of the Constitution of Mauritius, in English and French, to be forwarded to members of the Committee on his return to Mauritius.
4. Mr. TOMUSCHAT said that the report submitted by Mauritius, which was both succinct and comprehensive, was of a very high standard and it was clear that, though still a developing country, Mauritius was far advanced in the matter of human rights. The International Covenant on Civil and Political Rights was in some ways a rather sophisticated instrument and its implementation presupposed the existence of a judicial and administrative structure which called for considerable investment in both intellectual and financial terms. Furthermore, civil and political rights must be enjoyed together with economic, social and cultural rights, since both categories of rights formed an inseparable whole within which a balance had to be struck.
5. Referring to specific points in the report, he said that the section relating to article 2, paragraphs 1 and 2, of the Covenant seemed to suggest that discrimination might be allowed on grounds other than those specified in subparagraphs 1(a), (b) and (c) of the section. Since the principle of non-discrimination was basic to the Covenant, he would like to know in particular whether non-discrimination on the ground of political opinion was recognized and how that principle was guaranteed. He assumed that, in a multi-racial community such as that of Mauritius, non-discrimination on grounds of race was regarded as a cornerstone of society, but he would like to know whether there was any procedure or body for dealing with alleged cases of racial discrimination such as, for instance, the Race Relations Board in the United Kingdom.
6. He doubted whether the different treatment accorded to foreign wives of Mauritian husbands and foreign husbands of Mauritian wives was consistent with article 3 of the Covenant. That article appeared to lay down a rigid principle which could be departed from only in the narrow range of cases where it was self-evident that the different sexes had to be treated differently, maternity leave being a case in point. Some indication was required of the political reasons underlying the enactment of legislation that must inevitably cause serious

hardship to many women. The same remarks applied to sections 22 and 23 of the Constitution which governed the nationality of a child born of Mauritian parents. It appeared from page 21 of the report that in certain cases a child took the nationality of its father. That again could result in discrimination against a Mauritian woman married to a foreigner. A child who did not have Mauritian nationality would not have a legal right to reside in Mauritius, which meant that a Mauritian woman might have to leave the country in order to be able to live with her children. Even if that did not happen in practice, the point of principle remained and he would like to know whether the possibility of bringing existing legislation on that point into line with the Covenant was under consideration.

7. With regard to article 6 of the Covenant, he would like to know whether the crime of high treason, as defined in Mauritius was confined to an attack or a planned attack against the territorial integrity of the State or whether it applied to the activities of a spy operating in the interests of a foreign power. Also, with regard to article 7 of the Covenant, he would like to know the meaning of the expression "punishments which were lawful in March 1964" in paragraph 2 of the relevant section.

8. He noted, in regard to article 9 of the Covenant, that the Constitution of Mauritius provided that a detained person must be tried within a reasonable time. That was a sound rule and wholly in keeping with the terms of the Covenant. He would, however, like to know whether the concept of reasonableness had been further developed by case law, and whether any rule had been evolved for determining the period of time in detention which should on no account be exceeded.

9. It was stated on page 9 of the report that the Constitution provided for compensation in cases of unlawful arrest. He asked whether compensation had in fact been paid on such grounds and how the matter was handled when the accused had contributed to his arrest by his own conduct. In such instances, many States excluded compensation.

10. The District Prison Board, referred to in connexion with Article 10 of the Covenant, was a valuable means of preventing ill-treatment of prisoners and an important contribution to the promotion of human rights.

11. He had certain misgivings about the scope of the rules relating to the imprisonment of debtors, referred to in the section on article 11 of the Covenant. It was essential to distinguish between inability to pay, which must never attract a term of imprisonment, and unwillingness to pay, which was not protected by article 11 of the Covenant.

12. With regard to article 12 of the Covenant, he would like to know the precise scope of section 15(3) of the Constitution, which provided for exceptions to the rights of freedom of movement, freedom to reside in any part of Mauritius and freedom to leave Mauritius. Similarly, in regard to article 14 of the Covenant, he would like to know what exceptions were permitted, under section 10 of the Constitution, to the rule that all criminal and civil proceedings must be conducted in public, and whether those exceptions were in conformity with article 14, paragraph 1, of the Covenant.

13. Lastly, with regard to article 17 of the Covenant, he asked whether there were any statutory regulations regarding the status and powers of the intelligence services. For instance, were wire-tapping and electronic surveillance permitted or prohibited, and was there a parliamentary commissioner to supervise the intelligence services?

14. Mr. OPSAHL said that the Constitution of Mauritius seemed to have been directly inspired by the international instruments for the protection of human rights. It would be interesting to know whether that was in fact so or whether it was but a happy coincidence.

15. It was stated in the first paragraph of the report submitted by Mauritius that an Act of Parliament and any subsidiary enactment made under it were void to the extent to which they were inconsistent with the provisions of the Constitution. Did that mean that the courts were empowered to declare an Act void and, if so, was such power vested in all courts or only in the Supreme Court? He would also like to know whether a declaration of a violation by the Supreme Court, as referred to in Part I, paragraph 7, of the report, was in any way connected with a declaration to the effect that an Act was void. That was particularly important in view of the fact that control of constitutionality was an important aspect of the safeguarding of human rights in Mauritius.

16. Under section 17 of the Constitution of Mauritius, a special remedy was available to citizens in that they could have recourse to the Supreme Court without prejudice to any other action taken in regard to the same matter. He would like to know how often that remedy had been invoked in practice. The fact that the Chief Justice was vested with wide powers to make rules regarding the remedy and, in particular, to lay down time limits within which it must be exercised was perhaps an indication that it was not often invoked. In his view, some parts of Section 17 were not altogether clear, and subparagraph (3) in particular seemed to be particularly abstract.

17. The main difficulty regarding the implementation of article 3 of the Covenant concerned the legal capacity of women who had married before 1949, under one of the matrimonial régimes provided for in the Civil Code. The problem did not arise in the case of women who had married after that date, since they had been free to marry under a different régime. He would like to know whether there was any possibility for the first group of women to acquire full legal capacity without having to resort to divorce. If not, it seemed highly doubtful that the Constitution was compatible with the Covenant on that point.

18. The right to life, laid down in Article 6 of the Covenant, was protected by section 4 of the Constitution. A person could, however, be lawfully deprived of that right, by the use of such force as was "reasonably justifiable", for the reasons specified in section 4 (2), which included inter alia protection of property and prevention of the commission of a criminal offence. Killing on such grounds seemed to be a very drastic measure and he would therefore like to know more about the situation and practice in that regard in Mauritius. Were the police armed and did they often have recourse to weapons for the purpose of protecting property and preventing crimes? Were private persons allowed to carry weapons, and did they use them to protect their property?

19. Another aspect of the right to life concerned abortion. The statement on page 6 of the report regarding the practice in Mauritius with regard to procurement of miscarriages seemed indicative of a rather rigid attitude and he would like to know whether there was in fact no legalized abortion in Mauritius. It was a dilemma that arose in many countries and was caused by the existence of two opposing principles: the right to life of the unborn child and the right of the woman to decide whether or not to have a child.

20. The provisions of article 7 of the Covenant, relating to protection against ill-treatment, were directly reflected in the Constitution, and the report contained a detailed account not only of the manner in which the substantive law afforded protection against ill-treatment but also of the remedies available. That was of crucial importance since, without remedies, protection against ill-treatment would be illusory.

21. It was stated on page 6 of the report that no sentence for a criminal offence could lawfully include corporal punishment, but it seemed from the following sentence that corporal punishment was inflicted for certain breaches of prison discipline. He would like to know more about the nature of such corporal punishment. Although article 7 of the Covenant did not refer explicitly to corporal punishment, the Committee would have to express an opinion sooner or later as to whether or not that form of punishment conflicted with the terms of the Covenant. He had noted that, in addition to the remedies mentioned, there was a further guarantee in Mauritius whereby individuals claiming that their rights under article 7 of the Covenant had been infringed could communicate directly with the Committee about the matter.

22. With regard to the rights to liberty and freedom from arbitrary arrest, guaranteed under article 9 of the Covenant, he noted that, under section 5 (1) of the Constitution, a person could be deprived of those rights in almost twice as many cases as under the European Convention on Human Rights. He wondered whether it was necessary to provide for so many exceptions to the application of those rights and whether the somewhat vague terms in which they were couched might not leave the way open for arbitrary arrests.

23. Article 9, paragraph 4, of the Covenant provided in effect for a writ of habeas corpus, and he assumed that the practice in that regard in Mauritius was akin to that of the United Kingdom. When deciding whether detention or arrest was illegal, however, he wondered whether the courts confined themselves to the formal aspects of the matter or entered into the substantive reasons for the arrest or detention with a view to determining whether it was justified.

24. The report seemed to indicate that the principle of the presumption of innocence, referred to in article 14, paragraph 2, of the Covenant, was interpreted as meaning only that the burden of proving the guilt of the accused beyond reasonable doubt was on the prosecutor. He wondered, however, whether it did not have other implications as well. For example, it might also require that the judge must be impartial. It also raised the question of whether a defendant

could be obliged to pay court costs, even though he had been acquitted, because of provocative behaviour during the proceedings. He also wondered whether the presumption of innocence was applicable in Mauritius outside of the court as well. It was important that that principle should be respected by the Government and its officials, as well as by the media.

25. In connexion with article 17 of the Covenant, he noted that the concept of privacy was subject to different interpretations and asked what its scope was in Mauritius. In paragraph 7 of the section dealing with article 17 of the Convention, the report referred to control of prisoners' correspondence. He wondered in that connexion whether letters could be stopped or only perused.

26. With regard to article 23, paragraph 1, he noted that the report referred to the family in terms of blood relations between father, mother and child. In some societies, however, the concept of family covered more than just spouses and minor children, and the scope of its definition could be extremely important in cases where members of the family were dispersed through separation, emigration and so forth. With respect to the rights of children, he wondered what the position of a child of unmarried parents was in Mauritius.

27. As could be seen from document CCPR/C/1/Add.2, certain categories of individuals were excluded from human rights protection under Chapter 2, section 19, of the Mauritian Constitution. While it might be understandable that soldiers, prisoners and hospital patients could not have the same freedom of movement as other people, they did, nevertheless, enjoy human rights under the Convention. He drew attention specifically to paragraphs 4, 5 and 6 of section 19 and the exemption of soldiers from all provisions of the Convention except those relating to the right to life, torture and slavery, and asked what remedy soldiers in Mauritius had against unfair deprivation of liberty. According to paragraph 5 of that section, Mauritius gave no protection to soldiers belonging to allied or enemy forces, though he assumed that that did not imply that they could be tortured or killed with impunity. Such exemption clauses raised serious problems under the Covenant.

28. Mr. KOULISHEV commended the Government of Mauritius for submitting an excellent, succinct and frank report which complied with the Committee's guidelines. He particularly commended Mauritius for having overcome many of the difficulties faced by developing countries, and called particular attention to the reference in Part I, paragraph 8, of the report to the economic, social, health, educational and other measures required for the actual enjoyment of human rights. Part I, paragraph 3, made it clear that the Covenant was being implemented in Mauritius in a manner fully consistent with article 2, paragraph 2, under which the Covenant could be legitimately and effectively implemented through measures other than direct applicability.

29. In connexion with Part I, paragraph 5, of the report, he noted that under article 4 of the Convention derogation in time of public emergency applied only to certain rights, and that paragraph 2 of that article specifically excluded the right referred to in articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the Covenant. He wondered from what rights derogation could be made in Mauritius.

30. Reference was made in the first paragraph of the report to the possibility of declaring an Act of Parliament void. In that connexion, he would like to know what body was empowered to make such a declaration. The report was not altogether clear with respect to the legal and court system of Mauritius, and he felt that a comprehensive survey providing more information would be useful.

31. It was not clear whether the three subparagraphs of the first paragraph of the section of the report dealing with article 2, paragraphs 1 and 2, of the Covenant were taken from the Constitution or were merely descriptive. He also wondered whether Mauritian legislation contained any general provision to prevent discrimination.

32. In the section on article 3 of the Covenant, the report referred to the difference between the matrimonial régimes provided in the Civil Code and the one established under the Ordinance of 1949. The reason for the existence of different régimes was unclear, however, and he wondered which was preferred in practice. Did Mauritius consider the existence of those régimes to be temporary or did it envisage their merger into a single one?

33. In dealing with article 7 of the Convention, the report mentioned the existence of corporal punishment and its applicability to prisoners. In that connexion, it would be useful to have specific information as to the punishments involved.

34. The imprisonment of debtors who had the means to pay but refused to do so was not covered in the Covenant, and he wondered what the reasons for the provisions referred to in the section on article 11 of the Covenant were and whether they were often applied.

35. In dealing with article 16, the report stated that there was no situation in Mauritius where a person might be deprived of the protection of the law. Article 16 of the Covenant, however, stated that everyone should have the right to recognition everywhere as a person before the law, and would therefore like to know how Mauritius complied with that article of the Covenant.

36. It was stated in paragraph 1 of the section on article 17 that no person or authority had any right to interfere with the rights referred to in that article "except as provided by law". He would like to know what exceptions were permitted.

37. Lastly, in connexion with article 27 of the Convention, he would like more information regarding the national and ethnic composition of Mauritius.

38. Mr. HANGA, referring to Part I, paragraph 3, of the report, asked whether the fact that some of the provisions of the Covenant had constitutional force, whereas others did not, gave rise to any difficulties.

39. It seemed possible that section 18 of the Mauritian Constitution, as referred to in Part I, paragraph 5, of the report, conflicted with the provisions of article 4 of the Covenant, and he would like to know whether the two texts were in fact compatible.

40. As stated in the report, the actual enjoyment of human rights largely depended on economic, social, health, educational and other measures designed to create a just society. It would be interesting to have details about the property system prevailing in Mauritius and the laws governing it.

41. With respect to paragraph 1 of the section on article 2, paragraph 3(a) of the Covenant, he asked what was the extent of the redress made by way of damages or compensation to a person whose rights had been violated. Did such redress cover earnings lost by the person concerned? According to the section on article 2, paragraph 3(b) of the Covenant, judicial remedies were available to persons whose rights had been violated, but he wondered whether administrative remedies were also available, since in some cases they were more effective than judicial remedies. It would also be useful to know whether there were special courts to deal with labour disputes and, if so, what was their legal status.

42. Referring to the section on article 3 of the Covenant, he said that the Status of Married Women Ordinance, 1949, seemed to be a special law. In that case, did it not, in accordance with the maxim lex specialis derogat generali, overrule the general law? It would also be useful to know what role women played in the political and social life of Mauritius.

43. In connexion with article 7 of the Covenant, he asked whether Mauritian legislation contained any provision relating to medical or scientific experimentation.

44. It would be interesting to know whether the "certain limited circumstances" referred to in paragraph 1 of the section on article 8 of the Covenant were the same as those set out in article 8, paragraph 3(c), of the Covenant.

45. According to the section on article 9, paragraph 5, of the Covenant, there was a constitutional right of action for compensation for unlawful imprisonment. It would be useful to know whether administrative staff could be punished if, by their activities, they violated the provisions of article 9 of the Covenant.

46. With regard to article 10, paragraph 2(a) of the Covenant, he asked whether untried prisoners were confined separately from convicted prisoners in Mauritius.

47. He doubted that the provisions of section 24 of the Mauritius Civil Procedure Ordinance relating to imprisonment for debt were consistent with those of article 11 of the Covenant.

48. Turning to article 14 of the Covenant, he said that it would be interesting to have further information regarding the laws ensuring the independence and impartiality of the criminal and civil courts or tribunals. It would be useful to know whether the provisions of section 10(a) of the Constitution, to which reference was made in the section on article 14, paragraph 1, of the Covenant, were consistent with the provisions of that paragraph. The information provided by the Mauritian Government concerning Juvenile Courts was most interesting from the viewpoint of comparative law.

49. With respect to articles 21 and 22 of the Covenant, the report stated that trade unions were recognized as lawful. It would be interesting to know what role trade unions played in the economic, social and political life of the country.

50. It would appear from the section on article 23 of the Covenant that wives did not enjoy absolute equality of rights with their husbands. Perhaps the representative of Mauritius would comment on that point. It would also be interesting to know whether there were grounds for the dissolution of a marriage other than those mentioned in the report.

51. Mr. MORA ROJAS said that it appeared from the Mauritian Government's comments on certain articles of the Covenant that the provisions of Mauritian law were not always absolutely consistent with those of the Covenant. He asked how such inconsistencies would be remedied.

52. Referring to Part I, paragraph 8 of the report, he expressed the view that civil and political rights should be developed on an equal footing with economic and social rights.

53. Turning to Part II of the report, he asked which of the matrimonial régimes mentioned in the section on article 3 of the Covenant was most widely used. Were there any reasons why women should choose one régime rather than another? What steps did the Government take to ensure real equality between men and women?

54. With regard to article 6 of the Covenant, he asked what steps had been or might be taken to abolish the death penalty in Mauritius. It would be useful to know exactly what form of corporal punishment was administered and how often it was administered. The Committee should also be informed how frequently the punishments referred to in paragraphs 8 and 9 of the section on article 10, paragraph 1, of the Covenant, were administered. The fact that corporal punishment was administered in the presence of a medical officer implied that the wounds inflicted were sometimes serious.

55. Referring to article 9, paragraph 1, of the Covenant, he said that the circumstances under which a person could be subject to arbitrary arrest should be explained. The meaning of the words "as soon as possible", which occurred in paragraph 1 of the section on article 9, paragraph 3, of the Covenant, was unclear. Did they signify a period of hours, days or months? Similarly, more information should be provided concerning the exact meaning of the words "his representative", which appeared in the section on article 9, paragraph 4, of the Covenant. Did they mean the person's legal representative?
56. Presumably, the persons referred to in the paragraphs concerning article 11 of the Covenant were confined in a debtor's prison. It would be interesting to know what opportunities were available to such persons to pay off their debts. The Mauritian provisions on the matter appeared to conflict with the provisions of article 11 of the Covenant.
57. Another point on which clarification was necessary was that concerning control of prisoners' correspondence, to which reference was made in paragraph 7 of the section on article 17 of the Covenant. What form did the control take? Was prisoners' mail censored or was it held up?
58. Further information should be provided concerning the conditions under which freedom of expression, the subject of article 19 of the Covenant, might be checked.
59. Lastly, with respect to article 23 of the Covenant, he would like to know whether the grounds on which divorce could be granted could be invoked by women as well as men. In particular, could a woman divorce her husband if he had committed adultery?
60. Mr. PRADO VALLEJO, referring to Part I, paragraph 3 of the Mauritian report, asked whether, in the event that some of the rights established in the Covenant were not fully guaranteed by Mauritian law, a Mauritian citizen could invoke the Covenant before the courts.
61. It appeared from the section on article 5, paragraph 1, of the Covenant, that limitations on rights and freedoms recognized in the Covenant were possible. It would be interesting to know the extent of those limitations.
62. The paragraphs relating to article 7 of the Covenant should be read in conjunction with the section on article 10, paragraph 10 of which contained the word "etc.". That implied that corporal punishment was administered for reasons other than mutiny. It would be interesting to know what those other reasons were. It would also be interesting to know the exact meaning of the words "escaping from legal custody" in paragraph 2 of the section on article 7 of the Covenant.

63. With regard to article 12, paragraph 3 of the Covenant, he asked what restrictions were applied to a persons's right to liberty of movement and to freedom to choose his residence.

64. It appeared from the section on article 14 of the Covenant that a procedure existed in Mauritius for determining whether or not a defendant was eligible to receive legal aid. It seemed, however, that there might be cases in which, for one reason or another, a defendant might not receive the aid to which he was entitled. It would be interesting to have further information on the manner in which that system operated.

65. It was stated in the same section that there was no provision in Mauritian law to compensate a person wrongfully convicted of criminal offences but later exonerated or pardoned, but that such a person might bring a civil action for damages against any person or authority which had maliciously or unreasonably instituted criminal proceedings against him. Had there in fact been cases in which a person had brought a civil action for damages for wrongful conviction? Were steps being taken to make it easier for individuals to obtain the compensation referred to?

66. In paragraph 1 of the section on article 19 of the Covenant, it was stated that freedom of expression might be checked, for example, in cases of statements that amounted to contempt of court, were seditious or were defamatory of or insulting to another person. Were there other cases in which freedom of expression might be checked?

67. Reference was made in paragraph 1 of the section on article 20 of the Covenant to "misdemeanours" against the safety of the State. The provisions of that paragraph appeared to be inconsistent with the provisions of article 20 of the Covenant, which referred to "propaganda for war".

68. It would be interesting to know what restrictions were placed on the rights established in articles 21 and 22 of the Covenant. In particular, it would be interesting to know the meaning of the words "inter alia" in paragraph 3 of the section on articles 21 and 22 of the Covenant and to be informed of the other reasons for non-registration of a trade union.

69. Lastly, it would be interesting to receive further information about the contents of the Public Order Act, 1970.

The meeting rose at 1 p.m.