



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

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Summary record of the 1588th meeting

Held at the Palais Wilson, Geneva, on Friday, 17 November 2017, at 10 a.m.

Chair: Mr. Modvig

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The meeting was called to order at 10 a.m.

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

Fourth periodic report of Mauritius (CAT/C/MUS/4; CAT/C/MUS/QPR/4)

1. *At the invitation of the Chair, the delegation of Mauritius took places at the Committee table.*
2. **Mr. Gobin** (Mauritius), introducing his country's fourth periodic report (CAT/C/MUS/4), said that, since its independence in 1968, Mauritius had been steadfastly committed to democracy, good governance, the rule of law and the promotion and protection of human rights and fundamental freedoms. The Government, under the leadership of Prime Minister Pravind Kumar Jugnauth, was determined to adopt a human rights-based approach to the socioeconomic and cultural development of the country in order to enable citizens to enjoy a good quality of life based on core values such as human dignity, respect, equality of treatment, economic empowerment and social justice.
3. Mauritius had acceded to almost all the core United Nations and African Union human rights conventions and had ensured that their provisions were incorporated in domestic legislation. Chapter II of the Constitution provided for, inter alia, protection from slavery, forced labour and inhuman treatment.
4. Mauritius was committed to strengthening its national human rights institutions and would continue to play a constructive role in upholding human rights principles. Over the previous two years, wide consultations had been held with all relevant stakeholders prior to the submission of periodic reports on the implementation of the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the Convention against Torture.
5. During the course of 2017, Mauritius had also submitted periodic reports on its implementation of the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination and a voluntary mid-term report under the universal periodic review mechanism.
6. Mauritius had recently enacted several laws and amended others with a view to complying with the international human rights instruments to which it was a party. Of relevance to the Convention and its Optional Protocol was the adoption of the Criminal Code (Amendment) Act, which contained a definition of torture in line with article 1 of the Convention; the Combating of Trafficking in Persons Act, the main aim of which was to give effect to the Trafficking in Persons Protocol; the Police Complaints Act, by which the Police Complaints Division had been set up within the National Human Rights Commission; the National Preventive Mechanism Act, to give effect to the Optional Protocol; the Independent Police Complaints Commission Act; and the Social Integration and Empowerment Act, which sought to combat absolute poverty.
7. Amendments had been made to the Criminal Appeal Act and the Protection of Human Rights Act, to strengthen the powers of the National Human Rights Commission; the Protection from Domestic Violence Act; the Prevention of Terrorism (Amendment) Act; and the Extradition Act.
8. The National Preventive Mechanism Division of the National Human Rights Commission was tasked with providing human rights training to prison officers, for which it drew on the Istanbul Protocol, conducting regular visits to prisons and thorough investigations into deaths in custody and allegations of violence against detainees.
9. The Police Complaints Division was also operational. Since 2014, it had received 2,177 complaints, of which 1,875 had already been disposed of, 294 were being investigated and the remainder had been referred to either the Director of Public Prosecutions for advice or the Disciplined Forces Service Commission for appropriate disciplinary action. To address allegations of police brutality in a more expeditious manner, the Government had established the Independent Police Complaints Commission, which was to be chaired by a former Supreme Court judge.

10. In 2015, an interministerial committee had been established under the aegis of the Attorney General's Office to examine issues related to trafficking in persons, including children. As part of efforts to combat trafficking, the committee was finalizing a draft national action plan and had developed a capacity-building programme for a range of relevant stakeholders.

11. Given that foreign workers from Bangladesh, China, India and Madagascar, among other countries, travelled regularly to and from Mauritius, and that some of those persons had reportedly been involved in human trafficking, controls had been tightened at points of entry to prevent the illegal entry and exploitation of foreign workers.

12. Combating the scourge of domestic violence was high on the Government's agenda. The Ministry of Gender Equality, Child Development and Family Welfare had already implemented an array of measures in that respect, including improvements to the legislative framework, awareness-raising campaigns and advocacy through the media. Moreover, the Protection from Domestic Violence Act had been amended in 2007, 2011 and 2016 to reinforce the protection measures in place for victims.

13. Pursuant to the Government Programme 2015-2019, the National Coalition against Domestic Violence Committee had been created to work on an appropriate framework for the protection of victims. In its first report, published in December 2015, the Committee had recommended the establishment of a command centre against domestic violence and an observatory on gender-based domestic violence and the development of procedures to keep victims safe and away from perpetrators. Between 2015 and 2016, there had been a 19 per cent increase in the number of reports of domestic violence filed with the authorities.

14. The Child Protection and Care Bill was a priority piece of legislation that was expected to be brought before the National Assembly in 2018. The Child Protection Act of 1994 was under review. In that context, it was likely that the issue of corporal punishment and the "child beyond control" regime would be considered.

15. The Government intended to prepare a bill modelled on the United Kingdom Police and Criminal Evidence Act to address the system of provisional charges and had requested the assistance of an international consultant for that purpose. The consultant, Mr. Geoffrey Rivlin, QC, had submitted a first report that was being examined by the Attorney General's Office.

16. Since 2012, annual consultations had been held with all relevant stakeholders to take stock of the progress made in implementing the National Human Rights Action Plan 2012-2020. According to an initial progress report published in December 2014, at least 80 per cent of the recommendations in the Plan were being implemented.

17. The Government regarded torture as one of the worst human rights violations and fully supported international initiatives to end the practice. In that connection, Mauritius wished to reaffirm its sovereignty over the Chagos Archipelago, which formed an integral part of its territory under both international and domestic law. It strongly condemned the illegal excision of the Archipelago from Mauritian territory in 1965 and the shameful eviction of Mauritians of Chagossian origin who had been residing there. It also condemned, in line with article 4 of the Convention, the use of Diego Garcia as a transit point for rendition flights carrying persons to countries where they risked being subjected to torture or ill-treatment.

18. **Mr. Bruni** (Country Rapporteur), noting that section 78 of the Criminal Code (Amendment) Act incorporated the definition of torture found in article 1 of the Convention, said that he would be grateful for information on any measures taken to incorporate the other provisions of the Convention into domestic law. He wished to know whether the principle of the absolute prohibition of torture was applied at all times, including during states of emergency, and why acts of torture did not carry penalties commensurate with the gravity of the crime. In its concluding observations on the third periodic report of Mauritius (CAT/C/MUS/CO/3), the Committee had expressed concern that some aggravating circumstances, such as the permanent disability of the victim, were not taken specifically into account in the Criminal Code and that penalties for other crimes, such as drug trafficking, were higher than those for torture. With that in mind, he asked the delegation

whether it would be possible to bring section 78 of the Criminal Code into line with article 4 of the Convention.

19. He would welcome information on the number of complaints investigated by the National Preventive Mechanism Division since June 2014 and on the outcome of those investigations and of the investigations conducted by the Police Complaints Division since its inception. It would be particularly helpful to know what measures had been taken to prevent deaths in police custody.

20. According to a recent newspaper article, the mandate of Anishta Babooram, a member of the National Human Rights Commission, had been revoked without explanation in June 2017. He asked the delegation whether that information was correct and, if so, why Ms. Babooram's mandate had been revoked.

21. He invited the delegation to elaborate on the plan, outlined in paragraph 17 of the State party's report, to replace the Police Complaints Division with an independent police complaints commission, and asked what was preventing the Division itself from expediting the handling of complaints of police brutality. Detailed updates on the status of the Police and Criminal Evidence Bill, the progress made in installing video and audio recording equipment in police stations and improvements to methods of investigation based on scientific evidence would also be appreciated.

22. According to the National Human Rights Commission's report for 2015, pretrial detention periods were excessively long, particularly in drug-related cases, and sometimes lasted years. What steps did the national authorities intend to take to rectify the situation?

23. In paragraph 36 of the State party's report, it was mentioned that the Government intended to amend the Protection from Domestic Violence Act to introduce the elements of psychological and sexual abuse and economic deprivation, among others, in the definition of domestic violence. In paragraph 37, it was stated that the Government was considering amendments to the Criminal Code to make marital rape an offence. In paragraph 57, it was noted that the Juvenile Offenders Act was being reviewed, while in paragraph 58, it was stated that a juvenile justice bill was being prepared. He would be interested to hear what progress had been made with regard to all that legislative work since the submission of the report.

24. Concerning the implementation of article 3 of the Convention, he wished to know whether the State party respected the principle of non-refoulement; whether it would consider adhering to the Convention relating to the Status of Refugees and its 1967 Protocol; whether it planned to ratify the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa; and whether it would be prepared to develop legislation and a national framework for the protection of asylum seekers that established procedures for refugee status determination.

25. Despite the construction of the new Eastern High Security Prison, overcrowding in prisons and correctional youth centres apparently continued to be a problem since, according to a recent newspaper article, the average prison occupancy rate was 117 per cent, with peaks reaching 127 per cent. It would be helpful if the delegation could confirm the accuracy of those statistics. Given that another new such prison was reportedly being built on the island of Rodrigues, he asked whether those facilities were expected to significantly decrease or eliminate overcrowding in places of detention. He would also like to know whether the Government intended to implement non-custodial measures for minor offences as an additional means of reducing overcrowding.

26. **Mr. Hani** (Country Rapporteur) asked whether specific training on the Convention and the Optional Protocol was given at the Police Training School and the Prisons Training School, and to officers who were part of the Intelligence Unit and 24/7 Team of the Mauritius Prison Service. He would welcome information on training programmes for medical and other personnel associated with places of deprivation of liberty and on the training given to physicians, lawyers and judges regarding the Istanbul Protocol. He asked whether there were statistics on complaints of torture filed by detainees for the years 2016 and 2017 and what the outcome of any such complaints was. It would be useful to hear an assessment of the work of the Area Domestic Violence Committees and of the content and

impact of the training given to officials serving on those Committees. In view of the absence of a methodology for assessing the results of training for officials on human rights and the prevention of torture, he asked what measures would be taken to address that shortcoming.

27. He would be interested to hear about the impact of the Costed National Action Plan to End Gender-Based Violence, including advances made and areas needing improvement, and the gaps identified in the national legal framework on family protection during the 2014 *Assises de la Famille* consultation.

28. Referring to paragraphs 86 and 87 of the report, he requested an update on the six cases of violence against women police officers that had been reported within the police force itself between 2010 and 2015 and specific information on the investigation into a death in police custody which had taken place during the same period, including whether forensic experts had been consulted in order to determine the cause of death. He would welcome clarification of the apparently incorrect totals given in the table in paragraph 89 of the report on statistics on complaints of police brutality, as well as information on the corresponding statistics for the period subsequent to September 2015 and an explanation of why so few such complaints had been referred to the Director of Public Prosecutions. He wished to learn about the measures envisaged to enhance the independence of the Police Complaints Division of the National Human Rights Commission.

29. He would like to know the occupancy rate for Beau-Bassin Prison and would welcome an account of any measures taken to convert the prison into a remand detention centre. He would appreciate an explanation for the increase in the number of people held in remand detention and the fact that detention periods remained very long, despite the very welcome establishment of the Bail and Remand Court. What had been the impact of the Court in that regard?

30. He asked whether, pursuant to an amendment to the Criminal Procedure Act allowing for a sentencing review before the Supreme Court, a definitive judgment had been handed down establishing whether time spent in remand should, as a rule, be considered time served. In that connection, he wished to know the status of the case of Liyakkat A. Polin, which was particularly relevant to the issue.

31. He would appreciate disaggregated statistics on assaults among prisoners and by detainees on prison staff, which continued to occur despite the introduction of security measures; up-to-date statistics on investigations conducted by the Police Complaints Division into allegations of violence; and details of the legislative progress made in establishing an independent police complaints commission separate from the National Human Rights Commission, including information on measures to ensure that the commission would comply with recommendations issued by the Committee. He asked whether the fact that, following an inquiry, the Office of the Director of Public Prosecutions had advised that no further action should be taken in a case involving a serious allegation of violence against a woman police constable by a police inspector in 2013 reflected a lack of independence on the part of the investigative mechanism.

32. Noting that reparation for persons who were unlawfully arrested and subsequently tortured appeared to be limited to monetary compensation, he asked what comprehensive reparation was available for torture victims. He would also welcome details on the judgment handed down by the Supreme Court in the case of four police officers who had been accused of acts of violence in 2006, as well as updates on the appeal against the acquittal of the four police officers involved in the case of *Police v. Jagdawoo & ORS 2007 INT 197* and on the case of the five police officers arrested for torture following the death of a person in police custody in 2015, including whether medical and legal opinions had been sought in the course of the investigation. It would be interesting to know what steps the Office of the Attorney General intended to take in order to strengthen the jurisdiction of appellate courts to overturn trial court convictions on the grounds of the inadmissibility of statements obtained under duress.

33. He would appreciate a detailed update of discussions between the Police Department and the Child Development Unit regarding a memorandum of understanding defining their respective roles in the handling of child abuse cases and updated statistics on cases related

to the abuse and sexual exploitation of children, as well as the outcome of those cases. The State party claimed that there were no street children, by drawing a distinction between the number of children “on the street”, in reference to children who spent most of their time on the street and returned to their families at the end of the day, and children “of the street”, who lived there permanently. Since in his view that distinction merely obfuscated the issue, he would welcome additional figures and more detailed information on the numbers of street children.

34. He requested further details on legislation to combat human trafficking, updated statistics on violence against women for 2016 and 2017 and the measures taken to reduce the rates of such violence, which did not seem to vary from year to year. He would appreciate comments on the outcome of the measures to raise awareness of the Police Complaints Division and its role. He wished to know whether any complaints of ill-treatment of Chagos Islanders had been received and whether a complaints mechanism was in place.

35. **Mr. Zhang** said that the Committee would welcome detailed information on the simplification of the Extradition Act, including whether it incorporated the principle of non-refoulement enshrined in article 3 of the Convention and contained provisions on diplomatic assurances. It would also appreciate the delegation’s comments on reports that an Eritrean national who had been granted refugee status in Ethiopia had been denied asylum in Mauritius and faced deportation to the last country of transit, from where he might eventually be returned to his home country, where he would be at risk of torture.

36. **Ms. Gaer** requested updates on plans to amend the Criminal Code in order to make marital rape an offence, including on when the amendment was expected to take effect; to remove from article 242 of the Code a provision under which manslaughter was excusable when committed by a person who found his or her spouse committing an act of adultery; and to amend the Protection from Domestic Violence Act so as to include psychological and sexual abuse within the definition of domestic violence. She asked whether the statistical tables on cases of domestic violence presented in the report reflected the amendments already made to the Act and whether the Ministry of Justice, Human Rights and Institutional Reforms collected data on the number of prosecutions and convictions of persons found guilty of such offences. In view of United States Department of State reports indicating that victims of sexual violence, rape and human trafficking, including trafficking for labour exploitation, were reluctant to file charges due to, among other things, the lengthy court process, she asked whether any steps had been taken to address that issue and whether the delegation could provide statistics on complaints, prosecutions and convictions in that regard. She asked whether it was the case that, as indicated in the 2017 United States Department of State *Trafficking in Persons Report*, that arbitration and mediation, rather than criminal investigation and prosecution, were used in labour trafficking cases, allowing traffickers to continue offending and only face administrative penalties. In that connection, she enquired whether criminal penalties could be imposed for labour trafficking and whether the delegation could provide data on trafficking of foreign persons disaggregated by ethnicity and nationality.

37. She would welcome clarification as to whether the term “disposed of”, as used in the table in paragraph 89 of the State party report, meant “dismissed”. It appeared that few cases of violence by police officers had been referred to the Director of Public Prosecutions. She would welcome further information on those cases, including the fate of the police officers involved and the lessons that the State party had learned from the complaints procedure.

38. Noting that evidence obtained through torture was inadmissible before the courts of the State party, and that a case had been quashed on the basis that such evidence had been used, she asked whether any charges had been brought against the persons responsible for obtaining the evidence, either in that case or in similar cases.

39. **Ms. Belmir** said that she was concerned about the fact that only case law, rather than legislation, allowed time spent in pretrial detention to be deducted from the final sentence. She was also concerned about the possibility of having the same court retry cases where there had been fresh and compelling evidence for an offence, which violated the double jeopardy principle, and she would appreciate clarification in that regard. Given that, according to paragraph 54 of the State party report, trials in which juveniles were charged jointly with an adult took place before ordinary rather than juvenile courts, she wished to know whether such trials were closed to the public or whether those minors received the same treatment as adults. She would like the delegation to explain at what age children could be held criminally responsible and the role of the Director of Public Prosecutions in deciding whether or not children could be prosecuted.

40. **Ms. Racu** said that NGO reports indicated that the protocol in place for arresting minors was not followed in practice; that there were frequent cases of police brutality during the arrest of minors; that the police often did not inform the children's parents of their arrest; and that children were frequently not informed of their rights, including their right to a lawyer and to have an appropriate adult present. She would therefore welcome statistics on the mistreatment of children by police officers, including the number of investigations and prosecutions carried out and the penalties imposed on the officers responsible for such mistreatment. She would also appreciate information on any developments in terms of legislation and practice aimed at improving the situation of juveniles in police detention and guaranteeing their access to fundamental legal safeguards.

41. **The Chair** said that it was stated in the State party report that medical examinations of prisoners were conducted on a routine basis. However, in terms of legal safeguards, the right to have access to a doctor meant that persons deprived of their liberty should be able to receive medical treatment on request. He invited the delegation to clarify policy in that regard. Medical examinations often took place in the presence of a prison guard or police officer, which breached international standards; police officers should be present only at the request of the doctor. Since the State party had acknowledged that there was room for improvement in that regard, he would welcome the delegation's assurances that its practice would be brought into line with international requirements. He would appreciate clarification as to whether detainees were allowed to have a lawyer present during police interrogation at all times. He commended the State party for its control mechanism whereby the Police Information Room was informed of the details of all persons arrested, as it could be a useful tool to ensure the implementation of legal safeguards. He would welcome more elaborate information as to how the mechanism worked, what details were communicated and whether it recorded information such as whether or not a lawyer was present, a doctor had been requested, or the detainee's family had been notified. According to the State party's report, persons who had been, were being or were likely to be subject to torture could apply to the Supreme Court for redress, and civil action for damages could be brought against the perpetrator (CAT/C/MUS/4, para. 25). He wished to know how effective the two mechanisms were, how many cases had been brought before the Supreme Court and how many victims had sought damages through civil action. What had been the outcomes of those cases and, if applicable, how much compensation had been awarded?

42. **Mr. Hani** (Country Rapporteur), noting that the State party was planning to modernize the legal framework governing police investigations with a view to preventing the use of torture and that the National Human Rights Commission had recommended that confessions should be recorded on video as a preventive measure, asked whether steps had been taken to act on those plans and that recommendation.

43. In view of the 34 complaints related to medical services that had been received by the national preventive mechanism and the three suicides that had been reported, he asked whether the State party had a plan to address the issue of suicide and whether the National Human Rights Commission report of 2015 had been followed up. He would appreciate statistics on the use of alternative measures to imprisonment, along with the corresponding results. Had it reduced reoffending?

44. According to reports by civil society organizations, there had been cases of imprisonment without evidence, ostensibly as part of the fight against terrorism. Nevertheless, the State party report stated that no person had been convicted of terrorism

offences under the Prevention of Terrorism Act. He invited the delegation to update that information and to state what measures had been taken to ensure that anti-terrorism legislation was not used as a “legal” means of arbitrary detention.

45. **Mr. Gobin** (Mauritius) said that the purpose of provisional charges was to bring a person’s arrest and detention under the supervision of a judicial officer as expeditiously as possible, in line with the rights guaranteed by the Constitution. There was no specific legal framework governing the use of such charges; rather, it was a century-old practice developed by the courts to cover the grey area that existed between a person’s arrest and subsequent trial. Provisional charges were based on reasonable suspicion and were brought on the understanding that formal charges for trial would later be filed, once the police investigation had been completed. Their use enabled the detainee to appear before a magistrate, thus creating a court record of their arrest from the outset, and allowed the courts to exercise judicial control over the individual’s continued detention. As such, the problem lay not with the practice of using provisional charges but with police officers who arrested individuals before a reasonable suspicion had been established.

46. Efforts were being made to gradually modernize the criminal justice system, which was to be modelled on the Police and Criminal Evidence Act of the United Kingdom, while taking into account the need to ensure that police and judicial officers received the corresponding training. Much of the background work had already been completed in readiness for the enactment of the police and criminal evidence bill.

47. The Bail and Remand Court had to strike a delicate balance between releasing a potentially guilty person and placing a possibly innocent person in pretrial detention. More often than not, judges would consider that the risk of absconding was just too high. There were myriad ways for alleged offenders to disappear from an island nation. The vast majority of cases involving pretrial detention concerned drug-trafficking offences, and it was the international aspect of that offence that accounted for delays in their investigation. In fact, international drug-trafficking had become so widespread in Mauritius that a commission had been set up to investigate and recommend measures to combat that scourge.

48. The right to access legal counsel of one’s own choosing was a principle enshrined in law and upheld in practice from the outset of police custody. The system was assumed to be functioning well, since there had been no complaints to suggest otherwise. Regarding the Police Information Room, the information shared was limited to data such as the detainee’s date of arrest and place of detention, the police station or unit in charge of the inquiry and the charges being filed. However, in the light of the Committee member’s comments, he would seek further clarification.

49. Referring to paragraph 117 of his country’s periodic report, he said that it was rare for an appellate court to interfere with findings of fact of a trial court. It did have the power to do so, however, when it was clear that the trial judge’s finding of fact had been plainly wrong. There were a number of the factors preventing the expeditious determination of complaints against the police. For instance, the investigators of the Police Complaints Commission sometimes lacked the experience necessary to deliver a flawless investigation, an issue which became apparent once the files had reached the Director of Public Prosecutions. For that reason, the decision had been made to elevate the Police Complaints Division to the level of a fully-fledged independent police complaints commission, presided over by a judge, whose appointment was in the pipeline. The budget and premises for that commission had already been identified and approved. All being well, the commission should therefore be up and running by the end of the first quarter of 2018 at the latest.

50. Under article 113 of the Constitution, appointments made to certain offices could be revoked following a general election, allowing the newly installed Government to nominate its own candidates. As such, any office holder who had been appointed by a government minister could be required to vacate their office at any time after a general election, which was exactly what had happened in the case of the member of the National Human Rights Commission whose mandate had been revoked. As regards the national preventive mechanism, he expressed the hope that the Committee could provide guidance on best practices or point to a model that the Government could replicate. As things stood, the Mauritian national preventive mechanism was conducting outreach, training and seminars,

but not necessarily identifying areas for improvement and making recommendations. Prisons in Mauritius faced a serious challenge with regard to illicit activities, and it was important to reconcile the need for discipline with the mandate of the national preventive mechanism.

The meeting rose at 12.40 p.m.