



***Concluding observations of the Human Rights Committee : Mauritius.
27/04/2005.
CCPR/CO/83/MUS. (Concluding Observations/Comments)***

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HUMAN RIGHTS COMMITTEE
Eighty-third session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

MAURITIUS

1. The Human Rights Committee considered the fourth periodic report of Mauritius (CCPR/C/MUS/2004/4) at its 2261st and 2262nd meetings (CCPR/C/SR.2261 and 2262), held on 17 and 18 March 2005, and adopted the following concluding observations at its 2278th meeting (CCPR/C/SR.2278), held on 31 March 2005.

A. Introduction

2. The Committee welcomes the renewal of the dialogue with the State party nine years after the consideration of the previous report. It notes that the report submitted by the State party contains useful information on domestic legislation and on developments in certain legal and institutional areas since the consideration of the third periodic report. It welcomes the dialogue with the high-level delegation and notes with appreciation the oral and written replies to the Committee's list of issues.

B. Positive aspects

3. The Committee welcomes certain initiatives taken in recent years by the State party in the area of human rights, including the enactment of the Protection of Human Rights Act 1998, the Sex Discrimination Act 2002 establishing a Sex Discrimination Division under the National Human Rights Commission, the Criminal Code (Amendment) Act 2003, which introduced a new section 78 on "Torture by public official", and the Ombudsperson for Children Act 2003 enacted in November 2003.

4. The Committee also notes with satisfaction the measures taken by the State party to promote the use of written Creole in schools.

C. Principal subjects of concern and recommendations

5. The Committee takes note of the continuing dispute between the State party and the United Kingdom Government with respect to the legal status of the Chagos Archipelago, whose population was removed to the main island of Mauritius and other places after 1965 (Covenant, art. 1).

The State party should make every effort to enable the population concerned who were removed from these territories to fully enjoy their rights under the Covenant.

6. The Committee reiterates its concern over the failure to integrate all the rights guaranteed under the Covenant into national legislation, more particularly the maintenance of legislative and constitutional provisions at variance with the Covenant. It stresses once again that the Mauritian legal system does not provide effective remedies in all cases of violations of the rights guaranteed by the Covenant (Covenant, art. 2). The Committee notes yet again that the maintenance of article 16 of the Constitution, by virtue of which the prohibition of discrimination does not apply to personal-status laws and to foreigners, might well result in the violation of articles 3 and 26 of the Covenant.

The State party should give full effect to the provisions of the Covenant in its domestic legislation prohibiting all forms of discrimination.

7. While the Committee welcomes the establishment in April 2001 of the National Human Rights Commission, it notes the Commission's shortcomings in terms of guarantees of independence in appointing and dismissing its members. Furthermore, the Commission does not have its own budget and its investigative powers are restricted. Moreover, it often requests the police to investigate the complaints submitted to it (Covenant, art. 2).

The State party should ensure that the Human Rights Protection Act 1998 establishing this Commission and its practice are in line with the Paris Principles.

8. While the Committee welcomes the progress achieved with respect to gender parity in the public sector, it notes with concern that few women are employed in the private sector and in executive positions. It also remains concerned over the wage gap between men and women. Finally, the participation of women in political life remains inadequate (Covenant, arts. 3 and 26).

The State party should pursue and strengthen its measures to ensure that women enjoy equal access to the private sector labour market, including executive positions, and to equal pay for work of equal value. Women's participation in political life should also be enhanced through effectively applied positive measures.

9. The Committee notes with concern that section 235 of the Penal Code penalizes abortion even when the mother's life is in danger, and thus may encourage women to resort to unreliable and illegal abortion, with inherent risks for their life and health (Covenant, art. 6).

The State party should review its legislation to ensure that women are not forced to carry pregnancies to term in violation of the rights guaranteed by the Covenant.

10. While taking note of the new Protection from Domestic Violence Act 1997 and its amendment in 2004, the establishment of support structures for victims and awareness-raising programmes, including training for police officers and prosecutors to ensure that cases of violence are not considered as private matters, the Committee regrets that the number of

domestic violence cases reported by concurring non-governmental sources remains high (Covenant, arts. 3 and 7).

The State party should strengthen its measures aimed at preventing and reducing cases of domestic violence against women and children and address obstacles such as economic dependence on their partners that prevent women from reporting such violence.

11. The Committee notes the persistence of child labour and child prostitution (Covenant, arts. 7, 8 and 24).

The State party should pursue and strengthen its measures aimed at eradicating child prostitution and child labour.

12. While the Committee understands the security obligations required in the fight against terrorism, it believes that the impact of the Prevention of Terrorism Act 2002 may be all the more serious as the notion of terrorism is vague and lends itself to broad interpretations. While noting that no arrests have been made under the counter-terrorism Act and despite certain guarantees undertaken by the State party such as video recordings of interrogations and of suspects in detention, the Committee expresses concern that the provisions of that Act denying bail and access to counsel for 36 hours are at variance with the provisions of the Covenant (Covenant, arts. 7 and 9).

The State party should ensure that its legislation adopted in the context of the fight against terrorism is fully consistent with all the provisions of the Covenant, including article 4, taking into account general comment No. 29.

13. The Committee notes with concern concurring reports from non-governmental organizations on numerous instances of ill-treatment and deaths of persons in custody and in prisons attributable to police officers. The Committee is concerned at the fact that few complaints are actually investigated in order to identify and punish the officers responsible. It notes with concern the limitations of the investigations carried out by the Complaints Investigation Bureau, as well as the shortcomings of the National Human Rights Commission (Covenant, arts 6, 7 and 10). In that regard, it is concerned at the absence of an independent appeals body for complaints against the police authorities.

The State party should ensure that investigations into all violations under articles 6, 7 and 10 of the Covenant are carried out. It should, depending on the findings of the investigations, prosecute the perpetrators of such violations and pay compensation to the victims. The State party should also ensure that the victims have access to genuinely independent bodies for investigating those complaints. The State party is invited to provide in its next report detailed statistics on the number of complaints against State officials, the nature of the violations, the State departments involved, the number and nature of the investigations and the action taken, as well as the compensation granted to the victims.

14. The Committee reiterates its concern that the powers to detain provided for by article 5, paragraphs 1 (k) and 4, of the Constitution are incompatible with article 9, paragraphs 3 and 4, of the Covenant.

The State party should review these constitutional provisions that are incompatible with the Covenant.

15. The Committee notes with concern that bail is not allowed under the Dangerous Drugs Act 2000 for persons arrested or held in custody for the sale of drugs, especially where they have

already been convicted of any drug offence. The Act also permits suspects to be remanded in custody for 36 hours without access to counsel (Covenant, art. 9).

The State party should review the Dangerous Drugs Act 2000 in order to enable judges to make a case-by-case assessment on the basis of the offence committed and to give full effect to the provisions of article 9, paragraph 2, of the Covenant.

16. The Committee notes with concern the alarming finding of the report "Developments in the conduct of imprisonment". drawn up in the wake of the Beau Bassin prison incidents of 26 September 2003, which shows, in particular, the considerable percentage of the inmate population in pre-trial detention (36 per cent) and the excessive length of such detention for serious offences (Covenant, art. 9).

The State party is urged to draw all appropriate conclusions from the above-mentioned report and ensure that its pre-trial detention practice is compatible with article 9 of the Covenant.

17. While taking note of the delegation's explanations, the Committee reiterates its concern with respect to the incompatibility of Mauritian legislation with article 11 of the Covenant.

The State party is once again invited to bring its legislation in line with the provisions of article 11 of the Covenant.

18. The Committee notes that expulsion procedures contain no provisions guaranteeing respect for the rights protected by the Covenant (Covenant, art. 13).

The State party should integrate into its legislation all the safeguards which should accompany an expulsion procedure.

19. The Committee notes that the Industrial Relations Act, which is still in force, places restrictions on trade union rights that are at variance with article 22 of the Covenant.

The State party should ensure that the ongoing review of that legislation leads to full respect for the provisions of article 22 of the Covenant.

20. The State party should widely disseminate the text of its fourth periodic report and the present concluding observations.

21. Pursuant to article 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within a year, additional information updating the Committee on the situation and on the implementation of its recommendations in paragraphs 10, 13 and 16. The Committee requests the State party to provide, in its next report, to be submitted to it by 1 April 2010, information on the other recommendations made and on the implementation of the Covenant as a whole.