



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

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Committee against Torture

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Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

Mauritius

1. The Committee against Torture considered the third periodic report of Mauritius (CAT/C/MUS/3), submitted in accordance with the new optional reporting procedure, at its 998th and 1001st meetings, held on 19 May and 20 May 2011 (CAT/C/SR.998 and 1001), and adopted, at its 1015th meeting, held on 31 May (CAT/C/SR 1015), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Mauritius in accordance with the new optional reporting procedure of the Committee consisting of replies by the State party to a list of issues prepared and transmitted by the Committee. The Committee expresses its appreciation to the State party for agreeing to report under this new procedure which facilitates the dialogue between the State party and the Committee. However, the Committee regrets that the report was submitted eight years late, which hinders the Committee from ongoing analysis of the implementation of the Convention.

3. The Committee appreciates that the replies to the list of issues were submitted within the requested deadline. It also appreciates the open and constructive dialogue with the State party's high-level delegation, as well as the additional information and explanations provided by the delegation to the Committee.

B. Positive aspects

4. The Committee welcomes the ratification of the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 21 June 2005;

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 12 February 2009;

(c) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 24 September 2003;

(d) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on 24 September 2003;

(e) Rome Statute of the International Criminal Court, on 5 March 2002;

(f) United Nations Convention against Transnational Organized Crime, on 21 April 2003.

5. The Committee notes with satisfaction the efforts being made by the State party to amend its legislation in order to ensure greater protection of human rights and welcomes the adoption of:

(a) The Criminal Code (Amendment) Act (article 78), in 2003, which incorporates in national law the definition of torture set out in article 1 of the Convention against torture;

(b) The Amendments, in 2004, to the Protection from Domestic Violence Act of 1997;

(c) The Amendments, in 2005 and 2008, to the Child Protection Act 1994;

(d) The Combating of Trafficking Act on 21 April 2009;

(e) The Criminal Procedure (Amendment) Act 2007 (section 5(1)) to abolish mandatory sentences in relation to offences under the Criminal Code and the Dangerous Drugs Act and to restore the sentencing discretion of the Court in 2007;

(f) The Imprisonment for Civil Debt (Abolition) Act 2006;

(g) The Sex Discrimination Act 2002 which creates a Sex Discrimination Division within the National Human Rights Commission;

(h) The Transfer of Prisoners Act passed in 2001.

6. The Committee welcomes the efforts made by the State party to operationalize the National Human Rights Commission in April 2001 and to establish an Office of Ombudsperson for children.

C. Principal subjects of concern and recommendations

Incorporation of international law

7. While noting that the State party has a dualist system of reception of international treaties, the Committee is concerned that the State party has not yet fully incorporated the Convention in its domestic law (art. 2).

The State party should, in the context of the forthcoming constitutional review announced by the delegation, consider fully incorporating the provisions of the Convention in its domestic legislation in order to allow the application by domestic courts of obligations set out in the Convention.

Appropriate penalties for acts of torture

8. While noting that penalties foreseen in Section 78, as revised, of the amended Criminal Code (2008), provide for a maximum fine of 150,000 rupees and for an imprisonment for a term not exceeding 10 years for the offence of torture, the Committee is remains concerned that some aggravating circumstances, such as the permanent disability of the victim, are not taken specifically into account. It also notes with concern that penalties for other crimes, such as drug trafficking, are higher than those for torture (arts. 1 and 4).

The State party should revise its Criminal Code to make acts of torture offences punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 of the Convention.

Absolute prohibition of torture

9. While noting that “courts in Mauritius are unlikely to find that exceptional circumstances can justify torture” (CAT/C/MUS/3, para. 15), the Committee is concerned about the absence in the legislation of the State party of a provision to guarantee that no exceptional circumstances whatsoever may be invoked as a justification of torture, as prevented by paragraph 2 of article 2 of the Convention.

The State party should incorporate in its legislation a provision on the absolute prohibition of torture and that no justification may be invoke in any circumstances.

Fundamental legal safeguards

10. While noting the information provided by the State party, the Committee is concerned at the lack of clarification as to whether arrested and detained persons in police custody have access to a doctor, if possible, of their choice, at the outset of their detention and preserving the right to privacy. The Committee is also concerned at the lack of clear information as to whether detained persons are promptly informed on their right to contact their family or a person of their choice. The Committee is further concerned about the appropriate registration of persons between their arrest and the moment they are brought before a judge (art. 2).

The State party should take measures to ensure that:

- (a) **Persons arrested and detained in police stations have access at the outset their detention, to a doctor, if possible, of their choice;**
- (b) **Visits by a doctor are conducted in a confidential manner;**
- (c) **They can inform their family or a person of their choice about their detention.**

The State party should also set clear and appropriate rules and procedures on the registration of persons from the outset of their detention and on ensuring that they are brought before a judge within a short period of time.

Complaint mechanisms

11. While noting that different mechanisms are charged to receive and inquire on complaints against police officers for excessive use of force, such as the National Human Rights Commission and the Complaints Investigations Bureau, the Committee is concerned about the independence of the Complaints Investigation Bureau, as it remains under the administrative control of the Commissioner of Police. The Committee regrets the lack of information on the implementation of recommendations made by the National Human Rights Commission in its report of 2007 regarding the police (arts. 2, 12 and 13).

The State party should take concrete measures to ensure that complaints lodged against the police are addressed promptly, thoroughly and impartially by independent complaint mechanisms and that those responsible can be prosecuted, convicted and punished. In this regard, the State party should rapidly adopt and implement the draft Police Complaints Bill under preparation and establish the Independent Police Complaints Bureau; adopt a new Police Act and a Police Procedures and Criminal Evidence Act, as well as Codes of Practice to regulate the conduct of persons entrusted to investigate offences. The State party should also ensure the implementation of recommendations made by the National Human Rights Commission in 2007 regarding the conduct of the police and inform the Committee on its concrete results.

Non-refoulement

12. The Committee is concerned that the legislation of the State does not clearly and fully guarantee the principle of non-refoulement set out in article 3 of the Convention, as requested by the Committee in its concluding observations (A/54/44, 1999, para. 123 (c)). It is also concerned about the lack of sufficient information regarding the process followed in cases of requests for extradition as well as the procedural guarantees the person extradited enjoys, including the right to appeal against the extradition, with suspensive effect (art. 3).

The State party should revise its legislation guaranteeing the principle of non-refoulement. The State party should review its Extradition Act to make it in full compliance with article 3 of the Convention, in particular, it should clarify the process under which extradition is requested and decided, the guarantees offered, including the possibility to challenge the decision with suspensive effect in order to ensure that persons expelled, returned or extradited are not in danger of being subject to torture. The State party should also provide detailed statistical data on the number of requests received, the requesting States and the number of persons extradited or not.

Human rights education and training

13. While noting efforts undertaken by the State party to provide human rights education and training to police officers and other personnel, including on the prevention of torture, the Committee regrets the lack of information about the concrete results of such training programmes. The Committee is also concerned about the fact that training programmes for medical personnel do not include the “Manual on the Effective Investigation and Documentation on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol) (art. 10).

The State party should reinforce its training programmes to law enforcement and medical personnel, and to those involved in documenting and investigating acts of torture, on the provisions of the Convention, as well as on other instruments, such as the “Manual on the Effective Investigation and Documentation on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol). The State party should also set out a methodology to assess the concrete impact of such training programmes and inform the Committee on their results. In this regard, the State party is encouraged to seek technical assistance from international bodies and organizations.

Conditions of detention

14. The Committee takes note of the information provided by the State party regarding its efforts to improve conditions of detention, including the construction on a new Prison for 750 detainees at Melrose. However, the Committee is concerned about the

overcrowding in some prisons of the State party (in particular in the Beau Bassin, Petit Verger and GRNW prisons), and that prison conditions are inadequate, that separation between remand and convicted detainees is not always guaranteed, as well as about a high rate of inter-prisoner violence. The Committee is also concerned about the high rate of remand detainees (arts. 11 and 16).

The State party should take additional appropriate measures to reduce overcrowding and improve conditions in all prisons. The Committee also urges the State party to make use of alternative and non-custodial measures and to reduce pre-trial detention periods. The State party should also take measures to ensure the separation of remand detainees and adopt a plan to reduce inter-prisoner violence.

Complaints, investigations and prosecutions

15. The Committee is concerned that only few complaints for torture, excessive use of force or ill-treatment by law enforcement or prison officers or cases of death occurred in police custody are investigated and prosecuted and do not usually lead to compensation (arts. 12, 13 and 14).

The State party should systematically conduct impartial, thorough and effective inquiries into all allegations of violence committed by the police or prison officers, and prosecute and punish the perpetrators in proportion to the seriousness of their acts. It should also ensure that victims or their families obtain redress and fair and adequate compensation, including means for as full rehabilitation as possible. The State party should inform the Committee of the outcome of current proceedings and on the results of the appeal lodged by the Director of Public Prosecutions against the case dismissing four police officers accused.

Violence against women, including domestic violence

16. The Committee notes efforts undertaken by the State party to combat domestic violence, in particular violence against women and children, such as the amendment brought in 2004 to the Protection from Domestic Violence Act and a number of plans and strategies adopted and implemented as well as mechanisms established. However, the Committee is concerned that domestic violence, in particular violence against women and children, including sexual violence persists in the State party and that marital rape is not criminalized (art. 2 and 16).

The State party should continue to effectively address domestic violence, including violence against women and children. In this regard, the State party should ensure the entry into force of the amendments brought to the Protection from Domestic Violence Act in 2007; continue to conduct awareness-raising campaigns and training of its officials on domestic violence, including sexual violence. The State party should also take measures to facilitate complaints by victims and inform them about recourse available. It should investigate, prosecute and punish those responsible. Moreover, the State party should specifically criminalize marital rape in its Criminal Code and adopt, as soon as possible, the Sexual Offences Bill which is under preparation.

Corporal punishment and child abuse

17. While taking note of the information supplied by the State party, according to which section 13 of the Child Protection Act makes an offence to expose any child to harm, the Committee is concerned that corporal punishment is not fully prohibited in the legislation of the State party, including in penal institutions and in alternative care settings. The Committee is also concerned at information provided by the State party that some cases of

“molestation”, including sexual abuses, are reported every year to the appropriate authorities. These cases are referred to the police, who take disciplinary measures against the culprits, but no information, is provided about the penal consequences of such abuses (art. 16).

The State party should adopt legislation to prohibit corporal punishment, in particular in social institutions and in alternative care settings. To that end, the State party should incorporate this issue in its Children’s Bill under preparation. The State party should also pursue awareness-campaigns on the negative effects of corporal punishment. Finally, it should strengthen its efforts to combat child abuse, including by investigating, prosecuting and punishing those responsible. The State party should provide the Committee with statistical data regarding cases of child abuse, the investigations, prosecutions, sentences imposed and redress or rehabilitation offered to victims.

Adoption of draft human rights bills

18. While noting the explanation provided by the delegation of the State party on the difficulties faced in finalizing and adopting draft bills, the Committee is concerned that a number of draft human rights bills aiming at preventing torture, such the draft Independent Police Complaints Commission Bill, the Victims Right Act and the Victims Charter, the new Police Act and a Police Procedures and Criminal Evidence Act, have been under preparation or consideration before the Parliament for long periods of time, in some case for many years, not to be adopted (arts. 2 and 4)

The State party should take the necessary steps to speed up the process of adoption of draft bills on human rights, especially those aiming at preventing torture and other cruel, inhuman and degrading treatment, and implement them as soon as adopted.

National Preventive Mechanism

19. While noting that the National Human Rights Commission has been entrusted to act as the National Preventive Mechanism to implement the Optional Protocol the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee is concerned at the fact the draft National Preventive Mechanism Bill is still being in the process of finalization and that the National Preventive Mechanism has not yet been established despite the ratification of the Optional Protocol by the State party in 2005 (art.2).

The Committee recommends that the State party:

(a) Finalize the draft National Preventive Mechanism Bill, adopt and establish the mechanism, as soon as possible. The National Preventive Mechanism should be provided with necessary human and financial resources, in compliance with the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as with the principles relating to status of national human rights institutions for promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex).

(b) Make public the report of the Sub-Committee following its visit in 2007.

National Plan of Action for Human Rights

20. While noting the information provided by the State party and its delegation that a Plan Action on Human Rights will be shortly finalized, the Committee regrets that this Plan

aimed at providing a general framework for the promotion and the protection of human rights in the State party, including prevention and protection against torture, has not yet been adopted (art. 2).

The State party should speed up the adoption of the Plan of Action on Human Rights and implement it in order to afford effective protection of human rights, including against torture. The State party should take into account the recommendations made by the Committee and consult the civil society when drafting and implementing such plan.

Data collection

21. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on death row prisoners, ill-treatment of migrant workers, trafficking in humans and domestic and sexual violence.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of persons guilty of torture and ill-treatment, ill-treatment of migrant workers, death row prisoners, trafficking in humans and domestic and sexual violence, disaggregated by age, sex, ethnicity and type of crime, as well as on means for redress, including compensation and rehabilitation, provided to the victims.

22. The Committee invites the State party to consider ratifying the core United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

23. The Committee recommends that the State party adopt the Criminal Court Bill aiming at incorporating the provisions of the Rome Statute on the International Criminal Court in domestic law.

24. The Committee invites the State party to consider making the declaration required under article 22 of the Convention relating to individual complaints.

25. The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to update its common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

26. The State party is urged to ensure wide circulation, in all its official languages, of the report submitted to the Committee and of the Committee's concluding observations through official websites, the media and non-governmental organizations.

27. The Committee requests the State party to report, within one year, on its follow-up to the Committee's recommendations contained in paragraphs 11, 14, 19 (a) and 19 (b) of the present document.

28. The Committee invites the State party to submit its next periodic report, which will be the fourth report, by 3 June 2015.
