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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 August 2000, at 10 a.m.

Chairperson: Ms. MOTOC

later: Mr. RODRIGUEZ CUADROS
(Vice-Chairperson)

later: Ms. MOTOC
(Chairperson)

CONTENTS

FREEDOM OF MOVEMENT:

- (a) THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING ONE'S OWN, AND TO RETURN TO ONE'S OWN COUNTRY, AND THE RIGHT TO SEEK ASYLUM FROM PERSECUTION;

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GE.00-15142 (E)

CONTENTS (continued)

(b) HUMAN RIGHTS AND POPULATION DISPLACEMENTS (continued)

SITUATION REGARDING THE PROMOTION, FULL REALIZATION AND PROTECTION
OF THE RIGHTS OF CHILDREN AND YOUTH

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

FREEDOM OF MOVEMENT:

- (a) THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING ONE'S OWN, AND TO RETURN TO ONE'S OWN COUNTRY, AND THE RIGHT TO SEEK ASYLUM FROM PERSECUTION;
- (b) HUMAN RIGHTS AND POPULATION DISPLACEMENTS (agenda item 10)
(continued)

6. Ms. HAMPSON

7. The case concerning the Ilois was currently before the British courts. The Chagos islands had remained under British rule after Mauritius gained its independence and were known as the British Indian Ocean Territory. The United States Government had then concluded an agreement with the British Government with a view to establishing an airbase on the main island in the territory, Diego Garcia, but without the local population living on the island. All the Ilois had therefore been driven out of the territory, forced to settle in Mauritius and never allowed to return by the United States Government. She hoped that the problem would be settled quickly

but, so far, the United States had opposed the return of the Ilois, including to Peros Banhos and Salomon, two islands that were in fact uninhabited, even though the return of the Ilois to their original lands was considered quite viable.

9. Mr. SIK YUEN welcomed the statement by Ms. Hampson on the question of the Ilois. There was information to the effect that some 577 families totalling some 2,425 persons had been displaced from the Chagos islands to Mauritius between 1965 and 1972. Prior to 1968, the General Assembly of the United Nations had adopted a number of resolutions emphasizing that the detachment of the Chagos islands from Mauritius was in contravention of the Declaration on the Granting of Independence to Colonial Countries and Peoples. A group of Ilois claiming the right to return to the Chagos islands had taken the case, which had been covered by the media, to the High Court of Justice in London. The British authorities had undertaken to return the Chagos islands to Mauritius when they were no longer used for defence purposes. However, as there had been no change in the situation, in July 2000 the Organization of African Unity (OAU) had insisted that the Chagos islands should be returned to the Republic of Mauritius without delay and that the British authorities and the Mauritian Government should enter into a constructive dialogue on the subject. The case of the displaced Ilois population, whose right to return was still being denied, was a human tragedy that deserved the attention of the Sub-Commission. He cited the decision in Sub-Commission resolution 1994/24 to keep under constant review respect for the right to freedom of movement.

16. Mr. BENTALL (Observer for the United Kingdom) said that as the case mentioned by Ms. Hampson and Mr. Sik Yuen was currently before the British courts, he could not go into details about the issues raised. However, he wished to make it clear that the British Government did not share Ms. Hampson's views, in terms of either the historical facts or the legal issues. Furthermore, her reading of what was only a preliminary study of the feasibility of resettlement in the Chagos islands, was, to say the least, simplistic. She had not taken into account the analysis showing that no firm conclusion could yet be drawn on the feasibility of resettlement in an environment of limited natural and other resources.

17. In reply to Mr. Sik Yuen's comments, he reaffirmed that the Government of the United Kingdom had not the slightest doubt about its sovereignty over the British Indian Ocean Territory, which had been ceded to the United Kingdom by France in 1914.

18. Mr. BAICHOO (Observer for Mauritius) said that his delegation had taken note of Ms. Hampson's statement and shared her concerns about the plight of displaced persons and the fact that they were denied the right to return to their home. However, he wished to stress a number of points: while the Chagos Archipelago had always been an integral part of the territory of Mauritius, the inhabitants of those islands had been forcibly displaced by the Government of the United Kingdom and prevented from returning to that part of Mauritian Territory. The Ilois had always been Mauritian citizens and, as such, had always lived in Mauritius. The Mauritian Constitution stipulated that Mauritius consisted of the islands of Mauritius, Rodrigues, Agalega, Tromelin, Cargados Carajos and the Chagos islands, including Diego Garcia and any other island that was part of the State of Mauritius. The Chagos Archipelago had been unlawfully detached from Mauritius in contravention of General Assembly resolutions 1514 (XV), 2066 (XX), 2232 (XXI) and 2357 (XXII). Since then, the Mauritian Government had consistently pressed the United Kingdom Government for the early and unconditional return of the Chagos Archipelago to Mauritius. The United Kingdom

Government had stated in official communications that the Chagos Archipelago would be returned to Mauritius when it was no longer required for defence purposes. As far as he knew, the cold war was over. At the OAU summit held in Lomé from 10 to 12 July 2000, African Heads of State had adopted a decision urging the early return of the Chagos Archipelago to Mauritius. Moreover, the payments supposedly made as compensation, in the form of either grants for development projects or payments into the Ilois Trust Fund, could in no way be construed as compensating the Ilois for the harm they had suffered. Those payments were insignificant in comparison with the benefits which had accrued, directly or indirectly, to the British Government from agreements reached with third parties. Furthermore, those payments did not call into question the sovereignty of Mauritius over the islands. Lastly, the Mauritian Government, as the legal representative of all Mauritian citizens, favoured an early resolution of the issue on a bilateral basis. While awaiting a settlement, it urged the United Kingdom to authorize the return of displaced persons to the Chagos Archipelago.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 17th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 10 August 2001, at 3 p.m.Chair: Mr. WEISSBRODTlater: Mr. OGURTSOV
(Vice-Chair)

CONTENTS

CONSIDERATION OF DRAFT DECISIONS

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GE.01-15344 (E) 261001 180202

CONTENTS (continued)

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (continued)

The meeting was called to order at 3 p.m.

CONSIDERATION OF DRAFT DECISIONS

20. Draft decision E/CN.4/Sub.2/2001/L.5 was adopted.

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (agenda item 5) (continued)

(E/CN.4/Sub.2/2001/2, 15, 16, 18, 19, 20 and Add.1, 21 and 22; E/CN.4/Sub.2/2001/NGO/2 and 6; E/CN.4/Sub.2/AC.4/2001/4 and 5; E/CN.4/Sub.2/AC.5/2001/2 and 3; E/CN.4/Sub.2/AC.5/2001/WP.2-WP.4 and WP.6; E/CN.4/Sub.2/AC.5/2001/CRP.4; E/CN.4/2001/85)

54. Mr. NAQSHBANDI (Liberation) said that Liberation represented a number of minority groups campaigning against discrimination in all parts of the world, ranging from asylum-seekers in Western Europe to all those deprived of access to justice. He wished to draw the Sub-Commission's attention to certain specific issues.

55. With reference to the Chagos islands, he recalled that, in the late 1960s, the British and United States Governments had concluded an agreement to turn the island of Diego Garcia into an American military base. The islanders had been removed to Mauritius. They claimed the right of return but that right still had not been granted.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 August 2001, at 10 a.m.Chairperson: Mr. WEISSBRODT

CONTENTS

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF
INDIGENOUS PEOPLES

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GE.01-15397 (E)

CONTENTS (continued)

- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES
(continued)

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

OTHER HUMAN RIGHTS ISSUES:

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) OTHER ISSUES

The meeting was called to order at 10.05 a.m.

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA;
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES;
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (agenda item 5) (continued) (E/CN.4/Sub.2/2001/2, 15-19, 20 and Add.1, 21 and 22; E/CN.4/Sub.2/2001/NGO/2 and 6);

Statements in exercise of the right of reply

25. Mr. SAWMY (Observer for Mauritius) said, with reference to a statement made by an NGO concerning the Chagos Archipelago, that the territory had been unlawfully annexed by the United Kingdom, in violation of a series of United Nations resolutions, before Mauritius had gained its independence. The inhabitants of the Chagos Archipelago, who were also Mauritian citizens, had been forcibly displaced and prevented from returning to their homes in what had always been an integral part of Mauritian territory. At the United Nations General Assembly in 2000, his Government had reiterated its demand for its citizens to be allowed to return to the Archipelago. It would continue to monitor any attempts to infringe upon its sovereignty.

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15 August 2001

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
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Fifty-third session
Agenda item 5

PREVENTION OF DISCRIMINATION**Letter dated 14 August 2001 from the Chargé d'Affaires of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva addressed to the Chairperson of the Sub-Commission on the Promotion and Protection of Human Rights**

I refer to the statement made by the delegation of Mauritius on 14 August 2001 to the Sub-Commission on the Promotion and Protection of Human Rights (under item 5 of the agenda) which *inter alia* called into question British sovereignty over the British Indian Ocean Territory.

For the record, the Government of the United Kingdom remains convinced of its sovereignty over the British Indian Ocean Territory, which was ceded to it by France in 1814.

Please could you arrange for this letter to be circulated as an official document of the United Nations under agenda item 5 of the Sub-Commission's agenda.

(Signed) Guy WARRINGTON
Chargé d'Affaires

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17 August 2001

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-third session
Agenda item 5

PREVENTION OF DISCRIMINATION**Letter dated 15 August 2001 from the Permanent Mission of Mauritius to
the United Nations Office at Geneva addressed to the Chairperson of the
Sub-Commission on the Promotion and Protection of Human Rights**

I refer to the letter dated 14 August 2001 addressed to you by the United Kingdom Mission to the United Nations and other International Organizations at Geneva in connection with the statement made by the Mauritius delegation on 14 August 2001 and wish to bring the following to your kind attention and for record purposes:

The Chagos Archipelago, including Diego Garcia, has always been an integral part of the territory of Mauritius. The Chagos Archipelago was unlawfully excised by the United Kingdom from the territory of Mauritius, prior to Mauritius being granted its independence. This excision was done in violation of the Declaration contained in General Assembly resolution 1514 (XV) and United Nations resolutions 2066 (XX), 2232 (XXI), and 2357 (XXII). Ever since, the Government of Mauritius has consistently pressed the United Kingdom Government both bilaterally and internationally for the early and unconditional return of the Chagos Archipelago to Mauritius.

Mauritius has never acquiesced in the creation of the so-called British Indian Ocean Territory, which it does not recognize or accept.

Mauritius will continue to press for the return of the Chagos Archipelago in the appropriate forums and would not accept any action which would undermine the sovereignty of Mauritius over the Chagos Archipelago.

We would appreciate if you could arrange for this letter to be circulated as an official document of the United Nations under item 5 of the Sub-Commission's agenda.

(Signed): U.D. CANABADY
Deputy Permanent Representative



Economic and Social Council

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E/CN.4/Sub.2/2001/SR.24
6 December 2001

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

CONTENTS

OTHER HUMAN RIGHTS ISSUES:

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) OTHER ISSUES (continued)

* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/2001/SR.24/Add.1.

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GE.01-15430 (E)

The meeting was called to order at 10.05 a.m.

OTHER HUMAN RIGHTS ISSUES:

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) OTHER ISSUES

(agenda item 6) (continued) (E/CN.4/Sub.2/2001/4, 23, 24 and 26-32;
E/CN.4/Sub.2/2001/NGO/23 and 24; E/CN.4/2001/82 and Add.1 and 96)

9. Mr. SIK YUEN said that the Chagos Islands had been annexed by the United Kingdom shortly before Mauritius had obtained its independence in 1968. The former inhabitants, the Ilois, had been forcibly displaced to Mauritius in the early 1970s. At the fifty-second session of the Sub-Commission, he had been unable to support a resolution submitted by Ms. Hampson that concerned the situation of the Ilois.

10. Since then, a judgement handed down by the United Kingdom High Court of Justice had exposed the attitudes of the British authorities at the time of the annexation. The strategy had been to detach the Chagos Islands from Mauritius on the eve of its accession to independence in order to hand Diego Garcia over to the United States of America for the establishment of a military base. The High Court had found in favour of Mr. Bancoult, an Ilois, ruling that the British authorities had had no lawful power to remove him from the Chagos.

11. Quoting excerpts from the judgement of Lord Justice Laws, he drew attention to paragraphs 6 to 20. In paragraph 9, it was made clear that the British authorities were well aware of the incompatibility of their actions with a United Nations resolution. In paragraph 11, it was indicated that the United States Government had made it plain that, in the interests of security, it would be unacceptable for its military base to be subject to any degree of control by a newly

emergent State, namely, Mauritius. Paragraph 12 contained comments on the concern of the British authorities to present to the outside world a scenario in which there were no permanent inhabitants of the Archipelago. Paragraph 19 contained further information relating to the efforts of the British Government to ensure that the displacement of the civilian population took place as discreetly as possible. In the light of the High Court judgement, a Bill was hastily submitted to the House of Lords for the purpose of offering British nationality to the Ilois, including the right of residence in Britain.

12. He was unable to accept the new draft resolution on the subject of the right to return of internally displaced persons and refugees (E/CN.4/Sub.2/2001/L.39), initiated by Ms. Hampson, which was a wolf in sheep's clothing. There were a number of specific aspects of the draft resolution that he found unacceptable. The proposed alternative of compensation, should the return of displaced persons prove impossible, suggested that the impossibility of return was almost a foregone conclusion. The repeated reference to the possibility of displaced persons settling elsewhere drew the focus away from the right to return. Finally, there was a shift in emphasis away from return altogether, to references to exchanging property rights over original homes or places of habitual residence for "similar rights over another property" or to "undertake other possible transactions".

13. In view of the fact that displaced persons were already in a vulnerable situation, it would be fallacious to believe that, in the difficult conditions in which they found themselves, they would be able to exercise "free choice" when faced with what appeared to be an easy and short-term solution. The Ilois, for instance, would effectively lose their right to return in exchange for a sum of money or other benefits illusorily described as "compensation".

UNITED
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**Economic and
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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 August 2001, at 3 p.m.

Chairperson: Mr. WEISSBRODT

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CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (*continued*)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (*continued*)

Draft decision E/CN.4/Sub.2/2001/L.2

Draft resolution E/CN.4/Sub.2/2001/L.39 (the right to return of internally displaced persons and refugees) (continued)

25. Ms. HAMPSON said that the amendments to the third paragraph of the preamble and to operative paragraphs 2 and 9 proposed during the previous meeting by Mr. Sik Yuen were surprising, since their effect would be that the right to compensation would be enjoyed only by displaced persons whose property had not been destroyed, who constituted only a minority. Moreover, it would run counter to the freedom of movement to delete the phrase “or they can voluntarily settle elsewhere” in operative paragraph 10, since the purpose of that phrase was to prevent displaced persons being forced to settle at a location where they were not safe and which they could not leave of their own free will. In addition, she was opposed to the deletion of operative paragraph 11; the purpose of the version of that paragraph which had been amended by the co-sponsors was to prevent attempts to convince members of the indigenous population of Diego Garcia, for example, to renounce all their rights to their land in exchange for British citizenship, it being envisaged that independent and impartial observers would verify that the displaced persons were accepting the proposed compensation of their own free will.

26. In her view, the draft resolution, as amended by the sponsors, effectively protected the right of return of refugees and internally displaced persons, and she hoped that the Sub-Commission would adopt it.

27. The CHAIRPERSON invited four persons for and four persons against the draft resolution to present their arguments before a vote was taken on the text.

28. Mr. SIK YUEN, supported by Mr. SORABJEE, asked what authorities would be responsible for determining that property could not be restituted and that displaced persons were really exercising their free will. Also, he wondered whether the impossibility of restituting property might not be used against the inhabitants of the island of Diego Garcia who had been displaced and could not invoke their right of return. In his view, operative paragraph 11 applied particularly to the inhabitants of islands and could give rise to abuses, since it authorized renunciation of the right to compensation in transactions which could harm the persons concerned by nullifying their right of return.

29. Ms. DAES expressed support for the draft resolution as amended. In response to the question as to what authorities would take decisions relating to compensation, she said that, in practice, it was competent national courts which decided to grant compensation in cases where return was not possible.

30. Mr. PREWARE said that he had requested that his name be deleted from the list of co-sponsors of the draft resolution, since he had been convinced by the arguments of certain experts that many of the provisions might give rise to interpretation disputes and therefore harm the persons whom this text was meant to benefit.

31. Mr. PINHEIRO, inviting support for the draft resolution, said that part of it had been directly inspired by experiences which he had had as an observer in various countries. The question of the restitution of the property of refugees and displaced persons was a very topical one and the subject of growing attention on the part of international and regional organizations, since the thorny problems that arose in that area represented a major obstacle to return.

32. Ms. HAMPSON said that the draft resolution had been examined by the Office of the High Commissioner for Refugees, which had also taken note of the amendments; that was a guarantee of its political neutrality. Moreover, operative paragraph 2 could not, after being amended, be interpreted to mean that compensation would prevent return; reparation was foreseen only if the property in question had been destroyed and could not be restituted. In the case of the island of Diego Garcia, there was theoretically no obstacle to restitution and the return of the inhabitants of the island. The United Kingdom should therefore give up its base and restore the land to its original state.

37. Mr. YIMER recalled that, when responding to Mr. Sik Yuen, Ms. Hampson had referred to the situation on the island of Diego Garcia—thereby touching on what was for Africa a very sensitive point. How could she assert that the draft resolution under consideration had no political implications?

38. Ms. HAMPSON said that she had referred to a specific situation because a specific problem had been raised and because she wished to show that the amended text would not have a negative impact on the situation in question. If a specific situation had not been referred to, she would have confined herself to general comments regarding the right of return of refugees and internally displaced persons. The Office of the High Commissioner for Refugees would certainly not have approved a text concerning specific situations.

39. Mr. FAN, explaining his vote before the vote, said that he would vote against the draft resolution. It was undoubtedly meant to promote respect for human rights, but there were cases where invoking human rights was unwise. Having listened to Ms. Hampson's explanation regarding the draft resolution and the amendments to it, he was convinced that questions relating to the human rights of refugees and internally displaced persons could not be isolated from their particular historical and geographic contexts. Human rights were not something vague. They related to very specific situations.

40. *A vote by show of hands was taken on draft resolution E/CN.4/Sub.2/2001/L.39, as amended.*

41. *Draft resolution E/CN.4/Sub.2/2001/L.39 was rejected by 11 votes to 9, with 3 abstentions.*



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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-third session
Agenda item 6

OTHER HUMAN RIGHTS ISSUES

**Ms. Daes, Mr. Gómez-Robledo Verduzco, Mr. Goonesekere, Mr. Guissé,
Ms. Hampson, Mr. van Hoof, Mr. Joinet, Mr. Park, Mr. Pinheiro,
Mr. Preware and Mr. Yokota: draft resolution**

2001/... The right to return of internally displaced persons and refugees

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling Sub-Commission resolutions 1994/24 of 26 August 1994 and 1998/26 of 26 August 1998, and Commission resolutions 1999/47 of 27 April 1999, 2000/53 of 25 April 2000 and 2001/54 of 24 April 2001,

Conscious that serious human rights violations and breaches of international humanitarian law are among the reasons why people flee their homes or places of habitual residence and become refugees or internally displaced persons,

Recognizing that the right of refugees and internally displaced persons to return freely to their original homes or places of habitual residence in safety and dignity, and their right to adequate housing and property restitution or, should this not be possible, appropriate compensation or another form of just reparation, form indispensable elements of national reintegration, reconstruction and reconciliation, and that the recognition of such rights, as well as judicial or other mechanisms to ensure the implementation of such rights, should be included in peace agreements ending armed conflicts,

Recognizing also the right of all returnees to the free exercise of their right to freedom of movement and to choose their residence, including the right to re-establish residence in their original homes or places of habitual residence and to the issuance of relevant documentation, including identity cards where applicable, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination,

Noting that the right to freedom of movement and the right to adequate housing and property restitution include the right of protection for returning refugees and internally displaced persons against being compelled to return to their original homes or places of habitual residence and that the right to return to their original homes or places of habitual residence must be exercised in a voluntary and dignified manner,

Observing that, in the present resolution, “those displaced” and “displaced persons” refer to both refugees and internally displaced persons, unless otherwise indicated,

1. *Confirms* that all those displaced have the right to return in safety and dignity, and where conditions are not yet in place, displaced persons cannot be obliged to return;
2. *Also confirms* that all those displaced have the right to adequate housing and property restitution or, should this not be possible, appropriate compensation or another form of just reparation, and the particular importance of these rights for displaced persons wishing to return to their original homes or places of habitual residence or to settle voluntarily elsewhere;
3. *Urges* all parties to peace agreements and voluntary repatriation agreements to include the right to return in safety and dignity, as well as housing and property restitution rights, consistent with the requirements of international law, in all such agreements;
4. *Reminds* States of the right of all displaced persons to participate in the return and restitution process and in the development of the procedures and mechanisms put in place to protect these rights;

5. *Urges* all States to guarantee the free and fair exercise of the right to return to one's home or place of habitual residence by all displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right; to restore full national protection of returning displaced persons, States are also urged to establish an enabling legal, administrative and social framework, in particular to put in place effective mechanisms designed to resolve outstanding housing and property problems, including the re-establishment of housing and property registration records where such records were existent;

6. *Reaffirms* the obligation of States to repeal any laws and regulations which are inconsistent with the right to return and the right to housing and property restitution, in particular discriminatory abandonment laws; persons affected have the right to challenge and to have quashed any application of such laws;

7. *Reminds* States of the need to ensure, in implementing the right to return, the effective implementation of the right of women to full equality with respect to housing and property restitution, in particular in terms of access and inheritance rights;

8. *Also reminds* all States that they have an obligation to inform displaced persons, and displaced persons have the right to be informed, of their rights under national and international law, including the rights referred to in the present resolution; to that end, displaced persons shall receive the necessary guidance and counselling as to the procedures to be followed, including access to fair and effective remedies;

9. *Confirms* that where displaced persons voluntarily settle elsewhere, this does not affect their right to return to their home or place of habitual residence, nor their right to property restitution or, should this not be possible, compensation or other form of just reparation;

10. *Urges* Governments and other actors involved to do everything possible in order to cease all practices of forced displacement, population transfer and "ethnic cleansing" in violation of international legal standards; to prevent the homelessness of secondary occupants, States are further urged to provide adequate alternative accommodation until displaced persons can return in safety and dignity or they can voluntarily settle elsewhere; where secondary occupants have no place to return to, States are encouraged to provide affordable social housing;

11. *Confirms* that displaced persons may choose voluntarily to exchange their property rights over their original homes or places of habitual residence for the same or similar rights over another property or undertake other possible transactions, on condition that such decisions are freely taken, as confirmed by an independent and impartial observer;

12. *Also confirms* that the exercise of the right to return is voluntary and not conditional upon permission or approval; if documentation of any sort is necessary, the returnees are entitled to it as of right and free of cost;

13. *Further confirms* that the obligation of the State to assist the right of return includes an obligation to make good any damage for which the authorities are responsible, including the obligation to restore the infrastructure, *inter alia* water, electricity, gas, roads and land, where it has been damaged or destroyed, without which the right to return cannot be fulfilled; in particular, States shall not charge returning displaced persons with the costs for services consumed by those who were temporarily accommodated in the displaced persons' homes;

14. *Reminds* States that the obligation to secure the protection of human rights includes the obligation to create an effective and independent mechanism to which complainants have effective access to determine in which cases destruction of and damage to their homes and property was carried out by forces for which the State is responsible and, where that is established, to provide full compensation for past and continuing resultant losses; the right to appeal such decisions shall be ensured;

15. *Also reminds* States that the obligation to secure the protection of human rights includes the obligation to carry out a thorough and effective investigation into any claim of unlawful destruction of homes and property or unlawful occupation, which investigation must be capable of leading to the identification and punishment of those responsible and must include effective access for victims to the investigatory procedure;

16. *Further reminds* States that they have an obligation to ensure the implementation of any decisions made by impartial and independent judicial bodies concerning restitution;

17. *Encourages* States to seek through appropriate means to cooperate with the Office of the United Nations High Commissioner for Refugees with regard to matters concerning refugees and, where appropriate, internally displaced persons and with all other humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, and to ensure rapid and unimpeded access to displaced persons to assist in their return or resettlement and reintegration;

18. *Decides* to continue its consideration of the question of the right to return of displaced persons in the context of freedom of movement under the same agenda item at its fifty-fourth session;

19. *Recommends* that the Commission on Human Rights adopt the text of the present resolution.



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COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 August 2004, at 10 a.m.

Chairperson: Mr. SORABJEE

later: Ms. HAMPSON (Vice-Chairperson)

CONTENTS

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF
INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES
(continued)

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Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.10 a.m.

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(agenda item 5) (continued) (E/CN.4/Sub.2/2004/29 and Add.1; E/CN.4/Sub.2/2004/30 and Add.1; E/CN.4/Sub.2/2004/31, 32 and 45; E/CN.4/Sub.2/2004/NGO/1, 11, 16, 17, 18, 24 and 25)

General debate on the prevention of discrimination (continued)

29. Ms. ARIF (Liberation), drawing the Sub-Commission's attention to the plight of the people of the Chagos Islands, said that between 1966 and 1973, under a secret agreement between the United Kingdom and the United States facilitating the construction of a United States "communications facility" on the island of Diego Garcia, the entire population had been removed to Mauritius and the Seychelles, where they continued to survive in abject poverty. The compensation received was pitiful given the injury sustained and, on 10 June 2004, the British Government had adopted two orders that prevented the population from exercising its legitimate right to return home. His organization called on the Sub-Commission to investigate the matter. The Draft National Policy on Tribals and the 2002 Biological Diversity Act of the Government of India failed to reflect the interests of indigenous peoples, and his organization called on the Indian authorities to recognize the collective rights of indigenous and tribal peoples to their traditional knowledge; to ensure the promotion and preservation of traditional knowledge; to establish a system for sharing the benefits derived from such knowledge; and to adopt legislation on the intellectual property rights of indigenous and tribal peoples.



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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 August 2004, at 3 p.m.

Chairperson: Mr. SORABJEE

CONTENTS

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES
(continued)

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Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.04-15645 (E) 050804 100804

The meeting was called to order at 3.05 p.m.

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(agenda item 5) (continued) (E/CN.4/Sub.2/2004/29 and Add.1, 30 and Add.1, 31, 32 and 45; E/CN.4/Sub.2/2004/NGO/1, 11, 16, 17, 18, 20, 24 and 25)

63. Ms. PERTAUB (Observer for Mauritius), speaking in exercise of the right of reply, said that she wished to clarify some of the issues raised at the previous meeting by the NGO, Liberation. According to the Constitution of Mauritius, the Chagos Archipelago, including Diego Garcia, was an integral part of the national territory and the Chagossians were fully-fledged citizens of the Republic of Mauritius. There were no indigenous peoples living in the Chagos Archipelago: all its inhabitants had originally come from the main island of Mauritius. The Government of Mauritius had consistently expressed concern about the way in which the Chagossians had been displaced from the Archipelago. It had taken numerous initiatives to safeguard the welfare of the Chagossians and supported their right of return to the islands. It would pursue its efforts to exercise sovereignty over the islands.

The meeting rose at 5.50 p.m.



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COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 19th MEETING
Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 2004, at 10 a.m.

Chairperson: Mr. SORABJEE

later: Ms. RAKOTOARISOA
(Vice-Chairperson)

CONTENTS

SPECIFIC HUMAN RIGHTS ISSUES

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) NEW PRIORITIES, IN PARTICULAR TERRORISM AND
COUNTER-TERRORISM (continued)

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.04-15760 (E) 210705 270905

The meeting was called to order at 10.05 p.m.

SPECIFIC HUMAN RIGHTS ISSUES

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) NEW PRIORITIES, IN PARTICULAR TERRORISM AND COUNTER-TERRORISM

(agenda item 6) (continued) (E/CN.4/Sub.2/2004/33-35, 36 and Corr.1, 37 and Add.1, 38-43 and 45; E/CN.4/Sub.2/2004/CRP.3; E/CN.4/Sub.2/2004/NGO/7, 15, 19, 21, 22, 25, 27, and 30; E/CN.4/2003/101)

Statements made in exercise of the right of reply

76. Mr. DIXON (Observer for the United Kingdom of Great Britain and Northern Ireland), speaking in reply to a statement made by the delegation of Mauritius on 2 August 2004, said that the British Indian Ocean Territory was under British sovereignty. The British Government had undertaken to cede the territory to Mauritius once it was no longer required for defence purposes and, when that time came, to engage in discussions with the Government of Mauritius regarding the necessary arrangements in conformity with international law. The British Government valued the close and constructive cooperation with the Government of Mauritius and looked forward to its continuation.



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COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 43rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 April 2005, at 3 p.m.

Chairperson: Mr. WIBISONO (Indonesia)

later: Mr. VASSYLENKO (Ukraine)

CONTENTS

INDIGENOUS ISSUES (continued)

RIGHTS OF THE CHILD (continued)

SPECIFIC GROUPS AND INDIVIDUALS:

- (a) MIGRANT WORKERS
- (b) MINORITIES
- (c) MASS EXODUSES AND DISPLACED PERSONS
- (d) OTHER VULNERABLE GROUPS AND INDIVIDUALS

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.10 p.m.

INDIGENOUS ISSUES (agenda item 15) (continued) (E/CN.4/2005/63, 87, 88 and Add.1-2, Add.3 and Corr.1 and Add.4, 89 and Add.1-2, and 133; E/CN.4/2005/G/24; E/CN.4/2005/NGO/14, 23, 103-104, 123, 137, 144-145, 177, 202, 209, 212, 214, 235, 246, 252, 271, 313, 341 and 351; E/CN.4/Sub.2/2004/28 and 30 and Add.1)

15. Mr. SUTTON (National Association of Criminal Defense Lawyers), speaking also on behalf of the Chagos Refugee Group and the University of Central England Justice Project, said that between 1965 and 1973, the Government of the United Kingdom had systematically displaced the indigenous inhabitants of the Chagos Islands in order to lease the islands to the United States for military purposes. Despite successful legal challenges against the United Kingdom, the Chagossians had never received adequate compensation and had been abandoned to a life of poverty and marginalization on Mauritius and Seychelles. Furthermore, they had reportedly been denied access to the justice system and had been subjected to arbitrary arrests and detention without due process of law.

16. The United Kingdom Government claimed that the islands were not suitable for resettlement and that the British Indian Ocean Territory was not covered by the International Covenant on Civil and Political Rights. That semantic convenience left the United Kingdom with a pocket of colonialism shielded from the scrutiny of international human rights bodies. The United Kingdom was thus selectively dismissing international human rights law.

17. His organization therefore requested the Commission to seek assurances from the Governments of the United Kingdom, Mauritius and Seychelles that the protection of the Covenant would be extended to Chagossians and he also asked that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people be instructed to investigate the issues just raised.

43. Ms. BRASIER (Liberation) said that the British Government was denying the people of the Chagos Islands their civil and political rights. The Chagossians, who 30 years previously had been removed from their island homes to make way for an American military base, had been denied justice and self-determination. Two Orders in Council had been issued in 2004, which had undermined a High Court ruling granting the Chagossians the right to return to the islands they considered their home. The British Government must be held accountable and should not be allowed to act above the law. The Commission must ensure that the United Kingdom recognized the applicability of the International Covenant on Civil and Political Rights in all its territories. Thousands of Chagossians were currently living a marginalized existence in Mauritius, in conditions of abject poverty, and their situation should be examined by the Special Rapporteur on indigenous people.

Statements in exercise of the right of reply

51. Mr. LATONA (Observer for Mauritius), responding to issues raised by the National Association of Criminal Defense Lawyers and Liberation, said that the Chagossians were full-fledged citizens of Mauritius. The Chagos Archipelago, including Diego Garcia, had always been an integral part of the territory of Mauritius. He further reaffirmed that there were no “indigenous” peoples on the Chagos Archipelago and that all those who had gone to the Chagos Archipelago to live and work had come from Mauritius. Mauritius had always expressed concern at the manner in which they had been displaced from the Archipelago. The Government had taken numerous initiatives to safeguard their welfare and support their right of return to the Archipelago. It would continue to do everything in its power to exercise its sovereignty over the Chagos Islands.



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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-first session
Agenda item 7

HUMAN RIGHTS OF INDIGENOUS PEOPLES

Report of the Working Group on Indigenous Populations
on its seventeenth session
(Geneva, 26-30 July 1999)

Chairperson-Rapporteur: Ms. Erica-Irene A. Daes

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Introduction

Mandate

1. The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982, and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commission to establish annually a working group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions and recommendations to the Sub-Commission, bearing in mind inter alia the conclusions and recommendations contained in the report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4);

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking into account both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

2. Due to its comprehensive terms of reference, in addition to the review of developments and the evolution of standards, which are separate items on the Working Group's agenda, the Working Group has over the years considered a number of other substantial issues relating to indigenous peoples. In the light of the recommendation made by the Working Group at its sixteenth session (E/CN.4/Sub.2/1998/16, para. 164), the following items were added and included in the provisional agenda for the seventeenth session: "Indigenous peoples and their relationship to land"; "Indigenous peoples and health"; "Final report of the Special Rapporteur of the Sub-Commission on treaties, agreements and other constructive arrangements between States and indigenous populations"; "Permanent forum for indigenous people"; "International Decade of the World's Indigenous People"; "World Conference to Combat Racism and Racial Discrimination"; "Other matters".

3. In its resolution 1998/23, the Sub-Commission requested the Secretary-General to prepare an annotated agenda for the seventeenth session of the Working Group.

I. ORGANIZATION OF THE WORK OF THE SESSION

A. Attendance

4. In its decision 1998/109, the Sub-Commission decided on the following composition of the Working Group at its seventeenth session:

Mr. Miguel Alfonso Martínez, Mr. Volodymyr Boutkevitch, Ms. Erica-Irene Daes, Mr. El-Hadji Guissé and Mr. Ribot Hatano. The session was attended by Mr. Alfonso Martínez, Ms. Daes, Mr. Guissé, and Mr. Hatano. Mr. Boutkevitch was unable to attend.

5. Ms. Erica-Irene A. Daes was elected Chairperson-Rapporteur of the seventeenth session by acclamation.

6. The following 45 States Members of the United Nations were represented by observers: Algeria, Argentina, Australia, Austria, Bangladesh, Bolivia, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, India, Indonesia, Italy, Japan, Libyan Arab Jamahiriya, Malaysia, Mauritius, Mexico, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Norway, Paraguay, Peru, Philippines, Russian Federation, South Africa, Spain, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

7. The observer Governments of Australia and Canada were represented by high-level governmental delegates. Senator John Herron, Minister for Aboriginal and Torres Strait Islander Affairs of Australia and Mr. Robert Watts, Assistant Deputy Minister, Department of Indian and Northern Affairs of Canada, attended the meetings and made statements.

8. The following non-member States were represented by observers: Holy See, Switzerland.

9. The following United Nations bodies and specialized agencies were also represented by observers: Department of Public Information, United Nations Economic Commission for Africa, United Nations Development Programme, United Nations Population Fund, Sub-Commission on the Promotion and Protection of Human Rights, International Labour Office, World Health Organization - UNAIDS, World Intellectual Property Organization, World Bank.

10. The following intergovernmental organizations was represented by an observer delegation: European Commission.

11. The following 30 non-governmental organizations in consultative status with the Economic and Social Council were represented by observers:

(a) Organizations of indigenous peoples

Aboriginal and Torres Strait Islander Commission, Consejo Indio de Sud América, Indian Law Resource Centre, Indian Movement "Tupaj Amaru", Indigenous World Association, International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Service Secretariat, Napguana Association, Saami Council, Treaty Four.

(b) Other organizations

Academic Council on the United Nations System, Baha'i International Community, Centre UNESCO de Catalunya, Canadian Friends Service Committee, Centre International des Droits de la Personne et du Développement Economique,

Commission of the Churches on International Affairs of the World Council of Churches, Education International, International League for the Rights and Liberation of Peoples, International Movement against all Forms of Discrimination and Racism, International Service for Human Rights, International Work Group for Indigenous Affairs, Médecins sans Frontières, Minority Rights Group, Nord-Sud XXI, Shimin Gaikou Centre, Society for Threatened Peoples, Susila Dharma International Association, World University Service.

II. REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS OF INDIGENOUS PEOPLES: GENERAL STATEMENTS

63. An indigenous representative from Chagos Island informed the Working Group about the removal of his people to Mauritius during the cold war and expressed the hope that they could return to their home islands. His organization was ready for a constructive dialogue with the Government of the United Kingdom in that regard.

III. INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

99. The observer for Mauritius stated that members of the Comité social des chagossiens were, first and foremost, citizens of the Republic of Mauritius and derived their status from the Constitution itself. She recalled that at the United Nations General Assembly last year, the Prime Minister of Mauritius had drawn attention to the plight of some 1,500 inhabitants, referred to as Chagossiens or Illois, and had stressed need for the former colonial Power to enter into a constructive bilateral dialogue with the Government of Mauritius, as the legal representative of all its people, for the early and unconditional restoration of the Chagos Archipelago, including Diego Garcia, to the sovereignty of Mauritius.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-third session
Agenda item 5 (b)

PREVENTION OF DISCRIMINATION**Prevention of discrimination and protection of indigenous peoples****Report of the Working Group on Indigenous Populations
on its nineteenth session**

Chairperson-Rapporteur: Ms. Erica-Irene Daes

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Introduction

Mandate

1. The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982, and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commission to establish annually a Working Group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions and recommendations to the Sub-Commission, bearing in mind *inter alia* the conclusions and recommendations contained in the report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-5);

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking into account both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

2. Due to its comprehensive terms of reference, in addition to the review of developments and the evolution of standards, which are separate items on the Working Group's agenda, the Working Group has over the years considered a number of other substantial issues relating to indigenous peoples. In the light of the recommendation made by the Working Group at its seventeenth session (E/CN.4/Sub.2/1999/19, para. 194), the following items were added and included in the provisional agenda for the nineteenth session: Review of developments - general statements, including land issues, education and health; standard-setting activities, including a review of indigenous peoples' relationship with natural resource, energy and mining companies; International Decade of the World's Indigenous People; World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance; and Other matters. The principal theme of the nineteenth session was: "Indigenous peoples and their right to development, including their right to participate in development affecting them".

3. In its resolution 2000/14, the Sub-Commission requested the Secretary-General to prepare an annotated agenda for the nineteenth session of the Working Group.

**II. REVIEW OF DEVELOPMENTS PERTAINING TO THE
PROMOTION AND PROTECTION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS OF INDIGENOUS
PEOPLES: INDIGENOUS PEOPLES AND THEIR RIGHT
TO DEVELOPMENT, INCLUDING THEIR RIGHT TO
PARTICIPATE IN DEVELOPMENT AFFECTING THEM**

Human rights and the right to development

29. A representative of the Comité Suisse de Soutien aux Chagossiens discussed the link between the right to identity and development. She pointed out that the right to development was a fundamental right that allowed each people to progress in the way it saw fit. The right to development could therefore not be exercised without the recognition of the right to identity. Like the colonial Powers had done before, the Government of Mauritius claimed that no indigenous peoples inhabited the Chagos Islands and that there existed only “Mauritians”, thereby denying the Chagos people the right to choose their manner of development. The representative of Mauritius confirmed that in the view of his Government, there were no indigenous peoples in Mauritius but the Government had always been supportive of its Illois-Chagossien minority.

**III. REVIEW OF RECENT DEVELOPMENTS PERTAINING TO THE
PROMOTION AND PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLES:
GENERAL STATEMENTS, INCLUDING LAND ISSUES,
EDUCATION AND HEALTH**

121. The representative of Mauritius referred to a statement by the Chagos inhabitants. She clarified the position of the Government in regard to sovereignty of the archipelago, and said that the Government had never given permission to Great Britain to move people in or out of the territory or to relinquish their claim over the territory.

Annex I

ATTENDANCE

The following 33 States Members of the United Nations were represented by observers: Algeria, Argentina, Australia, Austria, Brazil, Canada, Chile, China, Cyprus, Denmark, Democratic Republic of the Congo, Ecuador, Estonia, Finland, France, Greece, India, Indonesia, Japan, Malaysia, Mauritius, Mexico, Morocco, New Zealand, Philippines, Russian Federation, Spain, Suriname, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America.

The following non-member States were represented by observers: Holy See, Switzerland.



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Fifty-sixth session
Agenda item 5 (b)

PREVENTION OF DISCRIMINATION

**PREVENTION OF DISCRIMINATION AND PROTECTION
OF INDIGENOUS PEOPLES**

**Report of the Working Group on Indigenous Populations
on its twenty-second session***

Chairperson-Rapporteur: Mr. Miguel Alfonso Martínez

* The annexes are being circulated as received, in the language of submission only.

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Introduction

1. The Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982 and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In its resolution the Council authorized the Sub-Commission to establish annually a working group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions and recommendations to the Sub-Commission, bearing in mind, inter alia, the conclusions and recommendations contained in the report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4);

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking into account both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

I. ORGANIZATION OF THE SESSION

A. Attendance

2. The twenty-second session of the Working Group was held in Geneva from 19 to 23 July 2004. The composition of the Working Group at its twenty-second session was as follows: Mr. Miguel Alfonso Martínez, Mr. El Hadji Guissé, Ms. Françoise Hampson, Ms. Iulia-Antoanella Motoc and Mr. Yozo Yokota. The session was attended by all of the members of the Working Group.

3. The Working Group was attended by representatives of Member States, a non-member State, United Nations bodies and specialized agencies and a large number of indigenous and non-governmental organizations, who participated as observers. A total of 651 participants were accredited. Two members of the Permanent Forum on Indigenous Issues, Mr. Aiytegan Kouevi and Mr. Wilton Littlechild, also attended the session. The list of participants is at annex I.

B. Documentation

4. A number of documents were made available for the twenty-second session of the Working Group (see annex II).

C. Opening of the session

5. Ms. Louise Arbour, United Nations High Commissioner for Human Rights, opened the twenty-second session of the Working Group. In welcoming the participants, she made

particular mention of the valuable assistance given by the United Nations Voluntary Fund for Indigenous Populations in providing grants to indigenous people to participate in the proceedings of the Working Group and expressed appreciation to Governments for their support for the Fund and its activities. As the new High Commissioner, she welcomed her first formal contact with indigenous peoples and the States that were active in this important area of justice and rights. She had a strong belief in the role of normative frameworks as a tool for resolving problems, and expressed concern about the slow progress with respect to the adoption of the draft declaration on the rights of indigenous peoples. Only two articles had been adopted so far at first reading, even though the General Assembly had called for its adoption before the end of the International Decade of the World's Indigenous People in December 2004. She appealed to all parties to accelerate the process and finalize the declaration as soon as possible. The High Commissioner referred to the achievements of the Decade, notably the enhanced international cooperation and the establishment of new arrangements such as the Permanent Forum on Indigenous Issues and the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. She noted that the Working Group, the Sub-Commission and the Permanent Forum had all called for a second Decade.¹ She proposed that the Working Group, as the "think tank" on indigenous issues, should elaborate its own substantive proposals concerning the Decade. With regard to the review of all existing mechanisms concerning indigenous issues that was to be conducted by the Economic and Social Council, she noted that the Council had before it a report by the Secretary-General to which her Office had contributed by highlighting the vital achievements of the Working Group and the outcome of two seminars on the administration of justice, and on treaties between indigenous peoples and States. She concluded by stating that she considered the promotion and protection of the rights of indigenous peoples as one of the priorities of the human rights programme and of the United Nations as a whole.

D. Election of officers

6. At the first meeting of the twenty-second session, Mr. Alfonso Martínez was elected Chairperson-Rapporteur by acclamation.

7. In his opening statement, the Chairperson-Rapporteur stressed that progress had been achieved in strengthening cooperation among the various bodies addressing indigenous peoples' issues. He advocated the continuation of the Working Group, the proclamation of a second Decade, as well as the adoption as soon as possible of a declaration on the rights of indigenous peoples.

¹ It should be noted that the Economic and Social Council decided, at its substantive session of 2004, to transmit to the General Assembly the recommendation contained in draft decision V contained in the report of the Permanent Forum on Indigenous Issues on its third session (see E/C.19/2004/23-E/2004/43) in which the latter requested the proclamation of a second International Decade of the World's Indigenous People, to begin in January 2005.

E. Adoption of the agenda

8. At its first meeting, the Working Group considered its programme of work on the basis of the provisional agenda (E/CN.4/Sub.2/AC.4/2004/1).
9. Mr. Guissé proposed the inclusion of an additional item relating to the adoption of the report. The agenda as adopted is contained in annex III.
10. The Working Group held 10 public meetings during its twenty-second session.

F. Organization of work

11. In organizing its work, the Working Group decided to form an open, separate group on the main theme, "Indigenous peoples and conflict resolution", at the end of the general debate on item 4 (b), under the guidance of the Chair, in order to foster an interactive and action-oriented dialogue between the experts and participants. The results of the group's deliberation would be integrated into the recommendations section of the present report.

G. Adoption of the report

12. The Working Group adopted the report of its twenty-second session on 2 August 2004.

II. MAJOR ISSUES RAISED BY PARTICIPANTS

13. The Working Group, owing to the limit placed on the length of documents, organized the substantive part of its report to highlight the main issues raised under each agenda item by participants and to emphasize the recommendations proposed.

A. Review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples (item 4)

1. General debate (item 4 (a))

23. The observer for Mauritius stated that Mauritius had never relinquished its sovereignty over the Chagos Archipelago, that there were no “indigenous” peoples on the Archipelago and that all who went to live and work on the Archipelago came from Mauritius.

2. Principal theme: “Indigenous peoples and conflict resolution” (item 4 (b))

34. Indigenous participants and the observer for Mauritius expressed their serious concern over two recent Orders in Council made by the Government of the United Kingdom on 10 June 2004 which prohibited Chagossians from returning to and residing in the islands of the Chagos Archipelago. This was a violation of the human rights of the persons concerned. The observer for the United Kingdom indicated that the territory in question would be ceded to Mauritius when the Government considered that it was no longer required for defence purposes. Indigenous participants indicated their intention to take the case to the European Court of Human Rights.

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Working Group on Minorities
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Item 3 (b) of the provisional agenda

**EXAMINING POSSIBLE SOLUTIONS TO PROBLEMS INVOLVING
MINORITIES, INCLUDING THE PROMOTION OF MUTUAL
UNDERSTANDING BETWEEN AND AMONG MINORITIES
AND GOVERNMENTS**

Report on the visit by the Working Group to Mauritius

(7-10 September 2001)

Introduction

1. At the invitation of the Government of Mauritius, the United Nations Working Group on Minorities of the Sub-Commission for the Protection and Promotion of Human Rights conducted its first-ever country visit, to Mauritius, from 7 to 10 September 2001. Members of the Working Group - Asbjørn Eide (Chairperson), José Bengoa, Vladimir Kartashkin, Yeung Kam Yeung Sik Yuen - were accompanied by Deepika Udagama, alternate member of the Working Group.

2. The objectives of the visit were to draw lessons from the experiences of Mauritius with regard to good practices of group accommodation in a multicultural society, as well as to explore integrative and autonomous approaches and practices with respect to minority protection in that country. The Working Group visited in the main island of Mauritius (8-10 September) as well as Rodrigues Island (7 September).

3. The Working Group was received by the President of the Republic, H.E. Mr. Cassam Uteem, the Prime Minister, Mr. Anerood Jugnauth, the Minister of Justice and Human Rights, Mr. Emmanuel Leung Shing, and the Minister for Foreign Affairs, Mr. Anil Gayan. Members of the Working Group also met with representatives of minority communities, journalists, government officials and representatives of non-governmental organizations, and leaders of political parties.

4. The Working Group wishes to thank the Mauritian authorities for their invitation which permitted the first mission by the Working Group since its establishment in 1995. It also extends its appreciation to the various representatives of civil society with whom it met during the visit, including those from minority communities.

5. Two primary issues during the visit were the constructive accommodation of the various ethnic groups on the main island of Mauritius, and plans for the autonomy of Rodrigues Island. With regard to the first issue, attention focused on the legislation and its implementation in practice, including the representation of different communities in political and social life, and on the issues of languages and education. Concerning the second, the Working Group held discussions with representatives of the local population of Rodrigues Island.

I. BACKGROUND¹

A. General history and ethnic composition of Mauritius

6. Mauritius is situated in the Indian Ocean, approximately 2,400 km off the south-east coast of Africa. The main island, which is of volcanic origin, covers an area of 1,865 km². Coral reefs surround most of the coast except the south. Its outlying territories are

¹ The statistics used in this section are from two main sources: *Invest in Children: Securing Rights in a Changing Society, an updated situation analysis of children and women in the Republic of Mauritius*, UNICEF, 1998 and the web site of the Government of Mauritius. The historical data are from Vijayalakhmi Teelock, *Mauritian History, from its Beginnings to Modern Times*, Mauritius, Mahatma Gandhi Institute Press, 2001, 434 p.

Rodrigues Island, lying about 600 km eastward, the Cargodos Carajos Shoals, and the Agalega Islands. There is an ongoing dispute between the State of Mauritius concerning the sovereignty of a few islands with the United Kingdom over the Chagos Islands of Diego Garcia, Peros Banhos and Solomon; and with France over the island of Tromelin. At the end of 1996, the population was estimated at 1,142,513. Four main ethnic groups are recognized by the Constitution: Indo-Mauritians (68 per cent of the population), Creole (mostly Afro descendants) (27 per cent), Sino-Mauritians (3 per cent) and Franco-Mauritians (2 per cent). The religious composition of the population is diverse: 52 per cent Hindu, 28.3 per cent Christian (Roman Catholic 26 per cent, Protestant 2.3 per cent), 16.6 per cent Muslim and 3.1 per cent other belief systems.

7. Mauritius was uninhabited until the early sixteenth century, when the Dutch landed. The island became a French possession in 1715 and in 1810 came under British authority. During the period of French colonialism, slaves were imported from Africa, particularly from Senegal, Guinea, Mozambique and Madagascar, to work in the sugar-cane plantations. Mauritian Creole, now in quasi-common use throughout Mauritius and Rodrigues Island, has become the lingua franca of a large part of the population.

8. The rule of the British was essentially administrative. The French colonists were permitted to stay; they retained their plantations and French continued to be spoken. Slavery in the sugar plantations continued until its abolition by Great Britain in the 1840s. Freed slaves left sugar plantations to settle in coastal areas or on marginal agricultural land. To address the consequent labour shortage on the plantations, the British brought indentured labourers from India (mainly Bihar, Uttar Pradesh, Tamil Nadu, Andhra Pradesh, Maharashtra and Gujarat) to the island. Within a few decades, people of Indian origin were a majority in the island. The early twentieth century also saw the arrival of Hakka and Cantonese settlers from China, who were traders.

9. By the early 1990s, traditional dependence on sugar had been reduced and the economic base of Mauritius had diversified. Today, the main sectors of the Mauritian economy are sugar production, tourism, financial services, Freeport and the export processing zone which concentrates on textile and garment production.

10. While Mauritius does not have an official poverty line, studies carried out in 1994 showed that the minimum income for a household of four persons would be around 5,000 rupees a month. Another study in 1996 revealed that more than half of the households investigated lived with an income of less than R 8,000 and 8.3 per cent of households had less than R 3,000. These figures may indicate a problem of social exclusion, which has an ethnic overtone: most of the poorer households belong to the Creole population who are mostly descendants of the Africans brought to Mauritius as slaves. The reasons for their present situation of poverty are complex, and include historical and socio-political factors. The marginalization of this group, economically, socially and politically, continued after the abolition of slavery.

B. Group accommodation

1. Constitutional provisions

11. The Council of Government was established in 1825 under British rule and until the 1950s constitutional conferences were held to consider the introduction of a ministerial system of government and general elections based on universal suffrage, which were first held in 1959. After the general election in 1967, Mauritius adopted a new constitution and independence was proclaimed in 1968. Mauritius achieved the status of a republic in 1992.

12. Chapter III of the Constitution (Citizenship) prohibits discrimination among the citizens of Mauritius on the basis of race, caste, place of origin, political opinion, colour, creed or sex. The Constitution specifies that all citizens of Mauritius are equal and entitled to fundamental rights and establishes clearly the separation of powers between the legislative, executive and judicial branches.

2. Parliament and the electoral system

13. The National Assembly is the supreme legislative body through which members vote laws, discuss the affairs of the nation and control the use of public funds. The members of the National Assembly are chosen in general elections, which take place every five years on the basis of universal adult suffrage and secret ballot. The right to vote is granted at 18 years of age. The Head of State is the President of the Republic and is elected by the National Assembly. The President appoints as Prime Minister the member of the Assembly who appears to be best able to command the support of the majority of the members of Assembly.

14. The National Assembly comprises 70 members, of whom 62 are elected by majority vote. An additional eight seats are allocated to “best losers”, a system established to achieve communal balance, given the composition of the ethnic and linguistic groups of the country. For electoral purposes the Mauritian territory is divided into 21 constituencies, the island of Mauritius having 20 constituencies with 3 members each, and the island of Rodrigues, which returns 2 members.

3. Languages

15. The Constitution provides that “English is the official language of Mauritius but any members of the Parliament or governmental officials may address the chair in French”.

16. The languages most commonly spoken are French and Creole, but Hindi, Urdu and Mandarin are also spoken, some of them by large numbers of the population. The majority of newspapers and most broadcasts in the media are in French. There are some television and radio channels broadcasting in Hindi, and a few in Creole.

17. English and French are the two main languages taught in the education system from primary to higher education. Some teaching of Asian languages including Hindi, Urdu and Mandarin is provided in primary and secondary schools. Under the current educational system,

skills in Asian languages do not provide students with extra credits in entering secondary school. The Creole language, which has no recognized script, does not form part of school curricula as such. It is, however, the most spoken language although only 27 per cent of the population speak it.

4. Education

18. Mauritius is committed to the principle of equality in education. Education is free for primary and secondary levels. Nevertheless, some concerns remain, such as a lack of skilled teachers of Creole origin and that equal opportunities in education have not been attained for the Creole population.

19. The Working Group was informed that the drop-out rate of Creole children was higher than for other communities. The highly competitive educational system considerably hampers children from disadvantaged groups gaining entrance to the most sought-after schools. The only university in Mauritius, which was established in 1971, cannot meet the needs for higher education of the whole country, and students must score extremely high marks at the end of the secondary school examinations (Higher School Certificate) to secure scholarships granted by the Governments of the United Kingdom, France, Australia and India to study in those countries.

5. The Creole community

20. The Working Group focused on the issue of equal opportunity in the domains of education and social and political life. Several NGOs and community representatives informed the Working Group that the Creole community was socially, economically and politically marginalized in Mauritius. Many of the Creole people live in poorer areas. According to the survey undertaken by UNICEF in cooperation with the University of Mauritius, studies on the Creole community demonstrate discrimination and exclusion through higher infant mortality, lower literacy, a single-parent family structure, unemployment, and a higher drop-out rate in primary school than other communities.

21. In February 1999, following the death in police custody of a popular Creole singer, inter-group tensions were evident as some Creoles turned against the majority Hindu community. In May 1999, several buildings were set alight and seven people died. The importance of carrying out effective investigations into these occurrences was noted.

22. As previously mentioned, the low success rate in primary and secondary education has resulted in a very low number of Creole students enrolled in institutions of higher education in Mauritius or abroad.

II. INTEGRATIVE AND AUTONOMOUS APPROACHES

A. Rodrigues Island

23. Rodrigues Island is located nearly 600 km from the main island of Mauritius. Ninety-eight per cent of the population of approximately 35,000 are ethnically Creole and adhere to the Christian religion (mostly Roman Catholics). This ethnic homogeneity differentiates the island population from that of the main island.

24. The members of the Working Group were informed that in the 1967 referendum on independence, nearly 98 per cent of the population of both islands voted in favour. In Rodrigues, however, more than 50 per cent of the population voted against independence while on the main island, 56 per cent voted for independence. This result was said to demonstrate a fear on the part of the inhabitants of losing their identity in the new republic. After independence, and taking into account the specificity and geographical distance of the island, the Government of Mauritius set up the Ministry of Rodrigues in 1976, but until 1992, all ministers holding that portfolio were from Mauritius.

25. The socio-economic and cultural developments of Rodrigues and Mauritius have been very different. To some extent, this is due to the physical differences of the two islands. Rodrigues is hilly while Mauritius is flat. Sugar is virtually impossible to cultivate. Consequently, none of the indentured labourers from the Indian subcontinent settled there. Mixed farming systems, fishing and livestock-rearing, partly for subsistence and partly for the Mauritian market, have remained the main forms of agricultural activity in Rodrigues. The lack of job opportunities has led to the mass migration of young people to the main island.

26. The small area of Rodrigues has created pressures on fishing resources and land. These pressures have led to deforestation, overgrazing, soil erosion, droughts and overfishing. The Working Group was informed that 90 per cent of the land is under State ownership and that the State has authority over decisions relating to the leasing of land. In addition, it was explained that it usually takes two years or more to obtain a private business license from the central Government in Mauritius, which has considerably discouraged investment and the setting up of small and middle-sized businesses. Another element which is of significance for future policy-making is that, according to UNICEF, around 50 per cent of the total population are children below 18, as compared with 30 per cent in Mauritius. This situation is due mainly to the massive migration of young people for the main island for more job opportunities.

27. The judicial system is centralized in the main island. The local population felt that it had limited access to the justice system. By way of example, they referred to the failure to post a permanent magistrate in Rodrigues.

28. Over the last few years, there has been an increasing demand for autonomy status for Rodrigues. Joint efforts and expressions of political will by the national Government, local political parties, non-governmental organizations and public opinion led to serious consideration being given to this question. A Rodrigues Regional Assembly Bill has been drawn up and was expected to be presented to the National Assembly for adoption during its session of November 2001.

29. The Rodrigues Regional Assembly Bill proposes extensive autonomy to Rodrigues Island by establishing a regional assembly to replace the current Ministry of Rodrigues. Autonomy will provide to the people of Rodrigues broad internal self-governance, enabling them to decide and manage their own internal affairs. The right of the local population to determine the priorities of their socio-economical development and the use of their natural resources (land and sea), and to handle matters relating to regional or international cooperation for development, investment and trade, will be recognized.

30. Some of the relevant aspects of autonomy for Rodrigues as foreseen in the Bill are the following:

(a) Autonomous status under the sovereignty of the State of Mauritius, while foreign affairs and defence would remain under the control of the central Government;

(b) Establishment of the regional assembly to represent the people of Rodrigues in preparing the budget for submission to the National Assembly. The Regional Assembly will be composed of 18 members, 12 of whom are to be elected under the simple majority system or first-past-the-post system in six different local regions, whilst the 6 others are to be allocated seats under a simple form of proportional representation applicable on an Island-wide basis to the registered parties having received a minimum of 10 per cent of the votes cast. The Regional Assembly would elect from among its members the Chief Commissioner and the Deputy Chief Commissioner as the executive of the Assembly;

(c) Although the Bill does not provide details on the manner of tax collecting and sharing, it stipulates that the funds allotted to or collected by the Regional Assembly may be placed in a Rodrigues Capital Fund in addition to funds provided from the national budget and local revenues;

(d) Power is conferred on the Regional Assembly to obtain any grant, aid or technical assistance from foreign and international donors, provided there is no particular objection from the central Government; and

(e) The island community would be able to negotiate directly for subregional, regional and international development cooperation relating to the island.

31. While in Rodrigues the Working Group undertook substantive discussions with representatives of NGOs, governmental officials and representatives of the two main political parties of the island. There was a generally positive reaction towards the coming autonomy status and arrangements for the island. Expectations were high as regards the benefits to be obtained from autonomous approaches to the design and implementation of development plans and programmes and negotiating for international cooperation. At the same time, there was concern that future benefits from autonomy might be concentrated in the hands of a few rather than the majority of the population.

32. As mentioned above, although primary and secondary education is free there are still de facto inequalities, especially in Rodrigues. One of the major problems is the low primary school completion rate. In addition, there is a serious lack of locally trained teachers as well as an inadequate educational infrastructure and material resources.

33. The Creole population strongly expressed the wish to have the history and culture of Creole people included in primary and secondary education curricula in order for the young generation to become familiar with this history and to reinforce the longer-term preservation of cultural identity within the communities. The preference was expressed for the Creole language to be used as the medium of instruction. Other elements of the curricula were said to be inappropriate to the realities of the majority of the population of Rodrigues Island; education in Rodrigues should be adapted to the needs of the Rodrigues population and the realities they faced.

34. The priority concern was to advance the economic development of Rodrigues with a view to reducing poverty and the dependence on subsistence farming. Local people expressed the preference for the local government to be able to design and implement development programmes, in close consultation with the community. Special hopes were placed in the development of tourism and in subregional and regional cooperation.

35. Another demand by the representatives of the Rodrigues civil society was to have a more accessible system of justice with a more decentralized system of justice in the future framework for autonomy. In this respect, it was pointed out that the institutions of the administration of justice were at present concentrated in the main island of Mauritius.

B. The Chagos Archipelago

36. The Chagos Archipelago, which during the colonial period was administered as part of Mauritius, comprises Diego Garcia, Peros Banhos, Salomon and other islands. The traditional inhabitants are called Chagossians or Ilois. Many have lived in these islands for several generations, having originally mainly come from the main island of Mauritius. While independence was being negotiated in London during the 1960s, thousands of Chagossians/Ilois were forced to evacuate their homes and move to the main island. This was due to the United Kingdom's decision to lease the islands to the United States for a military base on a 50-year lease, renewable for another 20 years. The Chagossian/Ilois people have had difficulties in adapting to the conditions in Mauritius. They had been accustomed to making their living in an ocean environment. It is estimated that many of the estimated 8,000 Chagossians/Ilois people live in poverty.

37. While most Chagossian/Ilois have been granted a United Kingdom Dependant Territories passport by the United Kingdom Government, they have continued to demand the right to return to Chagos Island. The Government of Mauritius has sought to reclaim the islands and their return to the sovereignty of Mauritius and requested the United Kingdom Government to guarantee the rights of return of about 4,000 islanders. In 1973, the United Kingdom Government paid to the Chagossians/Ilois compensation of £650,000 through the Government of Mauritius and a trust fund to hold these funds was set up in 1982, but the agreement included a "no return" clause which, it is claimed, many illiterate Ilois did not understand. In

November 2000, the High Court in London heard the case of a group of Chagos islanders, led by Mr. Olivier Bancoult, who claimed their right of return to live in their native island. The Court ruled in favour of the Chagos islanders, holding that they had been unlawfully evicted from the island 30 years ago to make way for the United States military air base. The United States has not left Diego Garcia. The question of the return of the Chagossian people is still pending.

38. The Working Group heard the explanations of both Chagos community representatives and Mauritian government officials. It expressed its concern about the socio-economic situation of the Chagossians/Ilois while awaiting return.

III. CONCLUSION AND RECOMMENDATIONS

39. The Working Group focused on the group accommodation practices and the process of autonomy arrangements for Rodrigues Island. The members of the Working Group have analysed the Constitution with regard to the electoral legislation on the equal representation of communities, and heard the feelings and expectations of the local population of Rodrigues on the island's future autonomy.

A. Positive aspects

40. The Working Group observed the importance placed on promoting and maintaining a spirit of tolerance and respect between and among various ethnic communities in Mauritius and the peaceful coexistence of all communities in Mauritian society. The vibrancy of civil society in Mauritius was noted.

41. The Working Group noted with interest the electoral system of Mauritius which provides for a system of "best losers", according to which the Electoral Commission nominates members of the National Assembly from among the best losers in the various communities.

42. There is in place a comprehensive legislative framework for the protection from discrimination of all citizens. It provides that no person shall be treated in a discriminatory manner in the performance of the functions of any public office or any public authority on the ground of race, caste, place of origin, political opinion, colour, religion or sex.

43. The Working Group noted with appreciation the establishment and activities of the National Commission on Human Rights.

44. The Working Group welcomed the proposal by the Government of the Rodrigues Regional Assembly Bill which would guarantee autonomous status to the island, thereby ensuring that the islander community made their own decisions on matters affecting them.

B. Subjects of concerns

45. The Working Group took note of the debate in Mauritius on whether the "best loser" system, which was a useful tool for constructive group accommodation in the early years of independence, had outlived its usefulness and should be scrapped. The lack of statistical data on

the participation of various ethnic communities in economic and social life is of some concern, but that is not to say that proportional representation in jobs, schools and universities is the solution.

46. The Working Group was seriously concerned at the low level of educational attainment among the Creole community, in particular the poor performance at primary and secondary education, resulting in the limited access of Creole-origin students to higher education. Concern in relation to the limited/marginalized use of the Creole language as a medium of instruction in the educational system and the dearth of educational material on Creole culture was also highlighted.

47. With regard to the Chagossian/Ilois community, the Working Group expressed concern with regard to the social and economic difficulties which this community faced while awaiting and campaigning for their return to the Chagos Island.

C. Suggestions and recommendations

48. The Working Group stressed the important aspect of participation by all communities in political, social and economic life in the multi-ethnic society of Mauritius. In this regard, the Working Group recommends that disaggregated data and information on disadvantaged communities be collected in order to design future policy on the promotion and protection of the rights of minorities.

49. The Working Group believes that continuing efforts should be made to encourage and consolidate mutual understanding between different communities and existing group accommodation. The authorities could plan to take an active and important role in increasing awareness of the historical and cultural richness and diversity of all communities. In this regard, the Working Group is firmly convinced that progress could be achieved through education, especially through the inclusion of the history and cultural information relating to all communities in school curricula and textbooks.

50. The Working Group believes that further measures are needed to improve the facilities at the primary school level in marginalized regions, many of which are inhabited by people of Creole origin, and ensure that people of Creole origin effectively enjoy equality of access to secondary and tertiary education.

51. Regarding the development of Rodrigues Island within the future framework of autonomy, the Working Group invites the future local government to exercise caution in promoting tourism and other development projects involving the exploitation of natural resources so as to preserve the ecosystem of the island and respect and develop the island community's cultural identity. Furthermore, the Working Group invites the authorities to consider the inclusion of Creole history and culture in the school curricula of the island in order for future generations to have opportunity to learn the history of their community.

52. The National Commission on Human Rights should be further strengthened in dealing with individual complaints, establishing a system of early warning of problems and conflicts, investigating and monitoring human rights issues and analysing the implementation of legislation, the electoral system and the educational system.

54. Appropriate training in the field of minority rights should be further strengthened for personnel in the areas of adjudication, law enforcement, and the public administration in general.

55. The National Commission on Human Rights might invite representatives of the media to discuss ways to further improve tolerance and the protection of minorities.

Annex

SELECTED LIST OF PERSONS MET BY THE WORKING GROUP

A. Mauritius

Individuals and NGOs

Mr. Fernand Mandarin, Head of a Chigossian group
Mr. Olivier Bancoult, Head of a Chagossian social committee
Service volontaire international
Prévention information et lutte contre le SIDA
Mr. Rada Tivassen, Amnesty International, Mauritius Section
Institut de l'Océan indien pour le droit de l'homme
Caritas
Shelter for Women and Children
Society for Aid to Children Inoperable in Mauritius
Mauritius Scout Association
Organisation pour l'unité
Action familiale
Human Service Trust
Physically Handicapped Welfare
Mouvement pour le progrès de Roche Bois
Hindu Educational, Social and Cultural Organization
Mouvement socio-culturel créole
Bahai National Council
Old Age Pensioners Association
Me Hervé Lassémillante
Me Dick Bn Sui Wa
Me D. Jeremy Kwan Tat

Media

Le Quotidien
Le Défi Plus
Week-end

B. Rodrigues

Individuals and NGOs

Mr. Joseph Roberson, Rodrigues Council of Social Service
Ms. Antoinette Prudence, Centre Carrefour
Mr. Jowetson Casimir, Organisation des pêcheurs professionnels de Rodrigues
Mr. Margeot Roussety, Rodrigues Scouts
Father de St Pern
Mr. Simon Emitier, sports coordinator
Mr. Florence François, Comité des droits de l'enfant
Mrs. Colette Potage, Rodrigues Association for the Disabled
Mr. Paul Draper, Craft Aid
Mr. B. Moutien, Northern Credit Union
Mr. Alain Land Pierre Louis, Red Cross Society
Mr. Jean Noël Samoisy, Trust Fund for the Integration of Vulnerable Groups
Mr. J. Milazar, Rodrigues Public Service Workers Union
Mr. Michel Prudence, Government Service Association
Mr. E.K. Gentil, Government Teachers Union
Chief Editor, *La Voix du Peuple*

Representatives of the two main political parties

Mr. C. Leopold, Mouvement des Rodrigues
Mr. L.S. Clair and Mr. A. Nancy, Organisation du peuple de Rodrigues


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 IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties
under articles 16 and 17 of the Covenant
Addendum

MAURITIUS

[24 August 1994]

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I. GENERAL PROVISIONS OF THE COVENANT

Article 1

In what manner has the right to self-determination been implemented?

1. Mauritius was a British colony from 1810 to 1968. On 12 March 1968, it became an independent, sovereign State within the Commonwealth with the Queen of the United Kingdom of Great Britain and Northern Ireland, Head of the Commonwealth, as Head of State. On 12 March 1992, Mauritius acceded to the status of a Republic, with a Mauritian President as Head of State.
2. When Mauritius achieved independence in 1968 its territory comprised the Island of Rodrigues, Agelega Island and the Cargados Carajos Islands, mainly St. Brandon.
3. It should be recalled that at the Constitutional Conference held in London in 1965 between the Colonial Office and political representatives of Mauritius, the Chagos Archipelago, including Diego Garcia, was excised from the territory of Mauritius.
4. For record purposes, it should also be noted that in United Nations General Assembly resolution 2066 (XX), adopted on 16 December 1965, the administering Power was, inter alia, invited to take no action that would dismember the Territory of Mauritius and violate its territorial integrity. Mauritius has consistently claimed its sovereignty over the Chagos Archipelago.
5. Mauritius has since some time now established an ongoing and meaningful dialogue with the United Kingdom on the issue of Diego Garcia which, it is hoped, will lead to an early and satisfactory settlement of the matter. A number of confidence-building measures have been undertaken in this respect, amongst which was the establishment of the British-Mauritian Fisheries Commission, which aims at promoting, facilitating and coordinating conservation and scientific research in Chagos waters. It also underscores the commitment of both sides to keep the inland and marine environment of the Chagos Archipelago in pristine condition when it is handed back to Mauritius. Another confidence-building measure was the visit to Diego Garcia in May 1994 by a delegation led by the Minister of External Affairs of Mauritius.
6. The Constitution of Mauritius is the supreme law of the country. It recognizes that there should exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the right of others and for the public interest, the right to life, liberty, security of the person and to protection under the law, freedom of conscience, of expression, of assembly, and association and freedom to establish schools, the right to individual protection for the privacy of one's home, and other property and from the deprivation of property without compensation.

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**IMPLEMENTATION OF THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Fifth periodic reports submitted by States parties under
articles 16 and 17 of the Covenant**

**UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND**

[7 August 2007]

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List of abbreviations

***BME* = Black and Minority Ethnic**

***CDs* = Crown Dependencies**

***CEHR* = Commission for Equality and Human Rights**

***CRE* = Commission for Racial Equality**

***DRC* = Disability Rights Commission**

***ECHR* = Convention for the Protection of Human Rights and Fundamental Freedoms
(European Convention on Human Rights)**

***ECtHR* = European Court of Human Rights**

***EOC* = Equal Opportunities Commission**

***HRA* = Human Rights Act 1998**

***ICCPR* = International Covenant on Civil and Political Rights**

***ICESCR* = International Covenant on Economic, Social and Cultural Rights**

***OTs* = British Overseas Territories**

***UK* = United Kingdom**

Foreword

The structure of this fifth periodic report reflects the current United Nations reporting guidance on the International Covenant on Economic, Social and Cultural Rights¹, in particular:

- The “General Information” section has been updated to reflect the most recent statistics and constitutional changes;
- The reports from the Overseas Territories and the Crown Dependencies are included in the Annexes.

¹ Office of the High Commissioner for Human Rights et al., *Manual on human rights reporting under six major international human rights instruments*, Geneva, 1997 (http://www.unhchr.ch/pdf/manual_hrr.pdf). Office of the High Commissioner for Human Rights, *Compilation of guidelines on the form and content of reports submitted by States Parties to the international human rights treaties*, HRI/GEN/2/Rev.3, 8 May 2006 ([http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/975dd3fb10e75b83c12571850050edda/\\$FILE/G0641857.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/975dd3fb10e75b83c12571850050edda/$FILE/G0641857.pdf)).

I. GENERAL INFORMATION

The British Overseas Territories

11. The OTs are: Anguilla, Bermuda, the British Antarctic Territory, the British Indian Ocean Territory, the British Sovereign Base Areas on Cyprus, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha), South Georgia and South Sandwich Islands, and the Turks and Caicos Islands.

12. The OTs retain a special constitutional status and have a considerable measure of devolved government. However, the Governor, the personal representative of the monarch, retains direct responsibility for all matters not specifically allocated to the local government (particularly defence and external affairs).

C. General legal framework within which human rights are protected

International instruments

13. The UK has ratified all the major international human rights instruments. See below a summary table (with the territorial extension of each instrument).

Instrument (with date of adoption)	Territorial Extension		
	UK	Crown Dependencies	Overseas Territories
United Nations system			
1. International Convention on the Abolition of Slavery and the Slave Trade (1926). 2. Protocol amending the Convention on Slavery (1953)	1. Yes	1. Yes	1. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and Ascension, Turks and Caicos Islands, South Georgia & South Sandwich Islands, Pitcairn 2. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands, South Georgia & South Sandwich Islands, Pitcairn.

Instrument (with date of adoption)	Territorial Extension		
	UK	Crown Dependencies	Overseas Territories
Convention on Prevention and Punishment of Genocide (1948)	Yes	Yes	Bermuda, British Virgin Islands, Falkland Islands, Gibraltar, Pitcairn Islands, St Helena and its dependencies, Turks and Caicos Islands, South Georgia & South Sandwich Islands, Pitcairn.
1. Convention on the Status of Refugees (1951). 2. Protocol on the status of refugees (1967)	Yes	1. Yes 2. Bailiwick of Jersey	1. Cayman Islands, Falkland Islands, St Helena and Turks and Caicos Islands, Montserrat. 2. Cayman Islands, Falkland Islands, Montserrat, St Helena and Dependencies, Turks and Caicos Islands.
Convention on Political Rights of Women (1953)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and its dependencies, Turks and Caicos Islands, South Georgia & South Sandwich Islands.
Convention on the Status of Stateless Persons (1954)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, St Helena and its dependencies, Turks and Caicos Islands.
1. Agreement on refugee seamen (1957) 2. Protocol on refugee seamen (1973)	1. Yes 2. Yes	1. Yes 2. Yes	1. Anguilla, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, St Helena and Turks and Caicos Islands. 2. British Virgin Islands, Falkland Islands, Montserrat and St Helena.
UNESCO Convention against Discrimination in Education (1960)	Yes	No	Anguilla, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena, Turks and Caicos Islands.
Convention on the Reduction of Statelessness (1962)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands.
Convention on Consent to Marriage, Minimum Age and Registration (1963)	Yes	No	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and its dependencies, Turks and Caicos Islands, South Georgia & South Sandwich.
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1966)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and its dependencies, Turks and Caicos Islands, S Georgia & S Sandwich.
1. International Covenant on Civil and Political Rights (ICCPR) (1966). 2. ICCPR (Second) Optional Protocol on the abolition of the death penalty (1989)	Yes	Yes	1. Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, South Georgia and South Sandwich Islands, St Helena and its dependencies, Turks and Caicos Islands. 2. No

Instrument (with date of adoption)	Territorial Extension		
	UK	Crown Dependencies	Overseas Territories
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	Yes	Yes	Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, South Georgia and South Sandwich Islands, St Helena and its dependencies, Turks and Caicos Islands.
1. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1980). 2. CEDAW Optional Protocol (1999)	Yes	1. Isle of Man. 2. Isle of Man	1. British Virgin Islands, Falkland Islands, South Georgia and South Sandwich Islands, Turks and Caicos Islands. 2. Falkland Islands.
1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1985). 2. CAT Optional Protocol (2002)	1. Yes 2. Yes	1. Yes 2. No	1. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and its dependencies, Turks and Caicos Islands. 2. No.
1. United Nations Convention on the Rights of the Child (CRC) (1989). 2. CRC Optional Protocol on the involvement of children in armed conflicts (2000)	1. Yes 2. Yes	1. Isle of Man. 2. No	1. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, Pitcairn Islands, St Helena and its dependencies, Turks and Caicos Islands, S Georgia & S Sandwich. 2. No.
International Labour Organization			
ILO Convention 29 on forced labour (1930)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands.
ILO Convention 81 on labour inspection (1947)	Yes	Yes	Cayman Islands, Gibraltar, Turks and Caicos Islands.
ILO Convention 87 on freedom of association and rights to organise (1948)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands.
ILO Convention 97 on migration for employment (1949)	Yes	No	Anguilla*, Bermuda, British Virgin Islands*, Montserrat* *But not Annexes I and III.
ILO Convention 98 on right to organise and collective bargaining (1949)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands.
ILO Convention 100 on equal remuneration (1951)	Yes	No	Gibraltar.

Instrument (with date of adoption)	Territorial Extension		
	UK	Crown Dependencies	Overseas Territories
ILO Convention 102 on social security (minimum standards) (1952)	Yes	Isle of Man	No
ILO Convention 105 on abolition of forced labour (1957)	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands.
ILO Convention 111 on discrimination in respect of employment and occupation (1958)	Yes	No	No
ILO Convention 122 concerning employment policy (1964)	Yes	Bailiwick of Guernsey, Isle of Man.	No
ILO Convention 135 on workers' representative (1971)	Yes	No	Gibraltar
ILO Convention 138 on minimum age (1973)	Yes	No	No
ILO Convention 151 on labour relations (public service) (1978)	Yes	Bailiwick of Guernsey.	Gibraltar and St Helena.
ILO Convention 182 on worst forms of child labour (1999)	Yes	No	No
Humanitarian Law			
Geneva Conventions I, II, III, IV	Yes	Yes	Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and its dependencies, Turks and Caicos Islands, S Georgia & S Sandwich.
Europe			
1. ECHR (1950). 2. ECHR Protocol 1 (1952). 3. ECHR Protocol 2 (1963). 4. ECHR Protocol 3 (1963). 5. ECHR Protocol 5 (1966). 6. ECHR Protocol 6 (1983). 7. ECHR Protocol 8 (1985). 8. ECHR Protocol 10 (1992). 9. ECHR Protocol 11 (1994). 10. ECHR Protocol 13 (2002). 11. ECHR Protocol 14 (2004).	1. Yes 2. Yes 3. Yes 4. Yes 5. Yes 6. Yes 7. Yes 8. Yes 9. Yes 10. Yes 11. Yes	1. Yes 2. Yes 3. No 4. No 5. No 6. Yes 7. Yes 8. Yes 9. Yes 10. Yes 11. Yes	1. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands, S Georgia & S Sandwich Islands, Sovereign Base Areas. 2. Anguilla, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, St Helena and its dependencies, Turks and Caicos Islands. 3. No. 4. No. 5. No. 6. No. 7. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat,

Instrument (with date of adoption)	Territorial Extension		
	UK	Crown Dependencies	Overseas Territories
			<p>St Helena and Ascension, Turks and Caicos Islands, South Georgia & South Sandwich Islands.</p> <p>8. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and Ascension, Turks and Caicos Islands, South Georgia & South Sandwich Islands.</p> <p>9. No.</p> <p>10. Anguilla, Bermuda, Falkland Islands, Gibraltar, Montserrat, St Helena and Dependencies, Turks and Caicos Islands, S Georgia & S Sandwich Islands, Sovereign Base Areas.</p> <p>11. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and Ascension, Turks and Caicos Islands, South Georgia & South Sandwich Islands, Sovereign Base Areas</p>
European Agreement on the abolition of visas for refugees (1959)	Yes	Yes	No
European Social Charter (1961)	Yes	Isle of Man	No
European Agreement on transfer of responsibility for refugees (1980)	Yes	Yes	No
<p>1. European Convention on the prevention of torture and inhuman or degrading treatment or punishment (ECPT) (1987).</p> <p>2. ECPT Protocol 1 (1993).</p> <p>3. ECPT Protocol 2 (1993)</p>	Yes	<p>1. Yes</p> <p>2. Yes</p> <p>3. Yes</p>	<p>1. Gibraltar.</p> <p>2. Gibraltar.</p> <p>3. Gibraltar.</p>
European Charter for regional or minority languages (1992)	Yes	Isle of Man	No
Framework Convention for the protection of national minorities (1995)	Yes	No	No

E. Legal status and specific implementation of the Covenant

Legal status of the ICESCR

49. The ICESCR applies to the UK, the CDs and the OTs (with the exception of Anguilla, the British Antarctic Territory, the British Indian Ocean Territory and the British Sovereign Base Areas on Cyprus).

50. Parliamentary sovereignty and autonomy is a fundamental constitutional principle of the UK. This means that, under UK law, international instruments ratified by the UK are not directly enforceable by domestic courts unless they have been specifically incorporated into domestic law by an Act of Parliament. However, it is British Government policy not to ratify treaties unless confident that domestic law and practice is consistent with them. Moreover there is a well-established principle that courts will interpret domestic statutes, passed after the date of a treaty, as intended to carry out the treaty obligations and not to be inconsistent with them. In addition if development of the common law is called for, the courts will decide cases in harmony with the UK international obligations.

51. The ICESCR has not been and is not expected to be incorporated into domestic law. This means that the rights contained in the Covenant are not directly enforceable by domestic courts. Nevertheless, courts may refer to the obligations arising from the Covenant when interpreting or enforcing relevant domestic legislation.

52. As Section 8 of this report (“Progress since the fourth report on each of the articles in parts I, II and III of the Covenant”) will explain in detail, the rights contained in the Covenant receive protection and are progressively being realised under domestic legislation or other measures. Additional human rights protection is also ensured by the other international human rights instruments ratified by the UK (see table under Section 3 of the report “General legal framework within which human rights are protected”).

Declarations and reservation to the ICESCR

53. With regard to the status of the declarations and reservations to the Covenant, the Committee should note the following:

Declarations

- The declaration on Article 1(3) is maintained;
- The declaration on Article 2(3) is maintained (but is void for the Gilbert Islands and Tuvalu as the UK is no longer responsible for these territories).

Reservations

- The reservation on Article 6 is maintained;
- The reservation on Article 7(a)(i) is maintained (but is void for Hong Kong and the Solomon Islands as the UK is no longer responsible for these territories);
- The reservation on Article 8(1)(b) is void as the UK is no longer responsible for Hong Kong;
- The reservation on Article 9 is maintained;
- The reservation on Article 10(1) and 10(2) is maintained (but is void for the Solomon Islands as the UK is no longer responsible for these territories);
- The reservation on Article 13(2)(a) and Article 14 is void as the UK is no longer responsible for the Gilbert Islands, the Solomon Islands and Tuvalu;
- The general reservation on behalf of Southern Rhodesia is void as the UK is no longer responsible for this territory.

54. The tables in the following pages summarise the status of the declarations and reservations placed by the UK since the ratification of the ICESCR.

DECLARATIONS

Article of the ICESCR	Declarations	Status	Note
<p>Article 1(3) – “The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”</p>	<p>In the event of any conflict between UK’s obligations under Article 1 and the UK’s obligations under the Charter, the obligations under the Charter shall prevail.</p>	<p>Maintained.</p>	<p>The Government considers that it remains necessary to clarify that Article 1 of the Covenant is not to be interpreted as imposing on an administering power greater obligations in respect of its overseas territories than the UN Charter itself.</p>
<p>Article 2(3) – “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.”</p>	<p>The Government of the United Kingdom declare that for the purposes of Article 2(3) the British Virgin Islands, the Cayman Islands, the Gilbert Islands, the Pitcairn Islands Group, St. Helena and Dependencies, the Turks and Caicos Islands and Tuvalu are developing countries.</p>	<p>Maintained (void for the Gilbert Islands and Tuvalu).</p>	<p>The Gilbert Islands and Tuvalu are now independent States.</p>

RESERVATIONS

Article of the ICESCR	Reservations	Status	Note
<p>Article 6 – “1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”</p>	<p>The Government of the United Kingdom reserve the right to interpret Article 6 as not precluding the imposition of restrictions, based on place of birth or residence qualifications, on the taking of employment in any particular region or territory for the purpose of safeguarding the employment opportunities of workers in that region or territory.</p>	<p>Maintained.</p>	

Article of the ICESCR	Reservations	Status	Note
<p>Article 7(a)(i) – “The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:</p> <p>(a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”</p>	<p>The Government of the United Kingdom reserve the right to postpone the application of sub-paragraph (i) of paragraph (a) of article 7, in so far as it concerns the provision of equal pay to men and women for equal work in the private sector in Jersey, Guernsey, the Isle of Man, Bermuda, Hong Kong and the Solomon Islands.</p>	<p>Maintained (void for Hong Kong and the Solomon Islands).</p>	<p>The UK is no longer responsible for Hong Kong and the Solomon Islands.</p>
<p>Article 8(1)(b) – “1. The States Parties to the present Covenant undertake to ensure: [...] (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations.”</p>	<p>The Government of the United Kingdom reserve the right not to apply sub-paragraph 1(b) of article 8 in Hong Kong.</p>	<p>Void.</p>	<p>The UK is no longer responsible for Hong Kong.</p>
<p>Article 9 – “The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.”</p>	<p>The Government of the United Kingdom while recognising the right of everyone to social security in accordance with article 9 reserve the right to postpone implementation of the right in the Cayman Islands and the Falkland Islands because of shortage of resources in these territories.</p>	<p>Maintained.</p>	
<p>Article 10(1) and (2) – “The States Parties to the present Covenant recognise that:</p> <p>1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.</p>	<p>The Government of the United Kingdom reserve the right to postpone the application of paragraph 1 of article 10 in regard to a small number of customary marriages in the Solomon Islands and the application of paragraph 2 of article 10 in so far as it concerns paid maternity leave in Bermuda and the Falkland Islands.</p>	<p>Maintained (void for the Solomon Islands).</p>	<p>The Solomon Islands is an independent State.</p>

Article of the ICESCR	Reservations	Status	Note
<p>2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”</p>			
<p>Article 13(2)(a) – “The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right: (a) Primary education shall be compulsory and available free to all. Article 14 – Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”</p>	<p>The Government of the United Kingdom maintain the right to postpone the application of sub-paragraph (a) of paragraph 2 of article 13, and article 14, in so far as they require compulsory primary education, in the Gilbert Islands, the Solomon Islands and Tuvalu.</p>	<p>Void.</p>	<p>The Gilbert Islands, the Solomon Islands and Tuvalu are now independent States.</p>
<p>All Articles</p>	<p>The Government of the United Kingdom declare that the provisions of the Covenant shall not apply to Southern Rhodesia unless and until they inform the Secretary-General of the United Nations that they are in a position to ensure that the obligations imposed by the Covenant in respect of that territory can be fully implemented.</p>	<p>Void.</p>	<p>Southern Rhodesia is now an independent State (Zimbabwe).</p>

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**IMPLEMENTATION OF THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS****Fourth periodic reports submitted by States parties under
articles 16 and 17 of the Covenant****MAURITIUS***

[3 March 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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LIST OF ABBREVIATIONS

CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIB	Complaints Investigation Bureau
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
HR	Human Rights
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
LRC	Law Reform Commission
MIE	Mauritius Institute of Education
NHRC	National Human Rights Commission
PAS	Principal Assistant Secretary
PS	Permanent Secretary

Introduction

1. The Government of the Republic of Mauritius has the honour to report to the Committee on Economic, Social and Cultural Rights on measures giving effect to its undertakings under the International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. The Committee on Economic, Social and Cultural Rights considered the initial report of Mauritius at its 40th, 41st and 43rd meetings on 27 and 28 November 1995.
3. The present combined report comprises of the second, third and fourth periodic reports of Mauritius.
4. This combined periodic report is presently submitted in accordance with articles 16 and 17 of the ICESCR and is in line with the General Guidelines regarding the form and contents of periodic reports to be submitted by States parties (HRI/GEN/2/Rev.4).
5. The present report has been prepared by the Attorney-General's Office and Ministry of Justice and Human Rights with the contribution of various ministerial bodies and following consultation with non- Governmental organisations and the National Human Rights Commission.
6. Except where it has been stated otherwise, the report covers the period starting 1996 to December 2007.
7. The Government of the Republic of Mauritius seizes this opportunity to reiterate its firm commitment to honouring its obligations under the Covenant and reaffirms that it is only if the appropriate conditions are created that everyone may enjoy his economic, social and cultural rights as well as his civil and political rights and that the individual will be able and free to enjoy freedom from fear and want.

II. TREATY SPECIFIC DOCUMENT

A. General provisions of the Covenant

Article 1. Right to self-determination

The Chagos Archipelago

147. Ever since the unlawful excision of the Chagos Archipelago, including the island of Diego Garcia from the Mauritian territory in 1965, the Republic of Mauritius has been insisting with the Government of Britain and the international community that the sovereignty of Mauritius be restored over what is now referred to by the United Kingdom as the British Indian Ocean Territory (which Mauritius does not recognise).

148. The United Kingdom Government has given an undertaking to the effect that the Chagos Archipelago would be “returned” to Mauritius when it is no longer required for defence purposes.

149. A member of the Chagossian community first instituted legal proceedings before the English courts in the mid 1970’s but the case was withdrawn following an agreement between the parties. A sum of GBP 4 million was paid for the benefit of the Chagossian community in Mauritius. In 1998 another member of that community challenged the validity of the British Indian Ocean Territory Immigration Ordinance of 1971 prohibiting the entry of any person into the territory without a permit.

150. The Ordinance was held invalid in a High Court ruling **R v. Secretary of State for the Foreign Commonwealth Office, ex parte Bancoult [2000 ICHRL 81]**. The immigration law was in consequence amended to allow Chagossians to return and reside in any part of the territory (except on Diego Garcia for defence reasons).

151. In 2002 the Chagos Refugee Group, a Mauritius-based group of Chagos islanders applied to the UK courts for further compensation, but the High Court ruled however in favour of the British Government on all claims brought.

152. The High Court of England and Wales held in their judgment delivered on 11 May 2006 [2006] EWHC 1048 (Admin) that the Chagossian people have the right to return to their homeland i.e. the Chagos Archipelago excluding Diego Garcia, thereby rendering nugatory the Order in Council issued by Her Majesty in Council namely the British Indian Ocean Territory (Constitution) Order 2004 which declared that no person has the right of abode in BIOT nor the right without authorisation to enter and remain there.

153. The Government appealed against that decision and on 23 May 2007 the Court of Appeal (Civil Division) ruled once again in favour of the Chagossians. The Court did not grant the Government leave to appeal; however, it ruled that the Government seek permission from the House of Lords for permission to appeal the decision. The Government applied to the House of Lords for permission to appeal in June 2007. The House of Lords has to date not made a decision.


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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Forty-second session

SUMMARY RECORD (PARTIAL)* OF THE 16th MEETING

 Held at the Palais Wilson, Geneva,
on Wednesday, 13 May 2009, at 3 p.m.

Chairperson: Ms. BRAS GOMES (Vice-Chairperson)

CONTENTS

CONSIDERATION OF REPORTS

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH
ARTICLES 16 AND 17 OF THE COVENANT (continued)

Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland
(continued)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

In the absence of Mr. Marchán Romero, Ms. Bras Gomes,
Vice-Chairperson, took the chair.

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH
ARTICLES 16 AND 17 OF THE COVENANT (continued)

Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland
(continued) (E/C.12/GBR/5 and Add.1 and 2; E/C.12/GBR/Q/5 and Add.1;
HRI/CORE/1/Add.62/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of the United Kingdom resumed their places at the Committee table.
2. The CHAIRPERSON invited the delegation of the United Kingdom to continue its exchange of views with the Committee.

66. Ms. NELTHORP (United Kingdom) said that, in the early 1970s, £650,000 had been paid to the Mauritian Government for the benefit of the Chagos Islanders and in 1982, £4 million had been paid into a trust fund as full and final settlement. The Chagos Islanders had been granted full United Kingdom citizenship in 2002.



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12 May 2010

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Committee on Economic, Social and Cultural Rights Forty-fourth session

Summary record of the 9th meeting

Held at the Palais Wilson, Geneva, on Friday, 7 May 2010 at 10 a.m.

Chairperson: Mr. Marchán Romero

Contents

Consideration of reports

- (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Second to fourth periodic reports of Mauritius

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.10 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Second to fourth periodic reports of Mauritius (E/C.12/MUS/4; E/C.12/MUS/Q/4 and Add.1; HRI/CORE/MUS/2008)

1. *At the invitation of the Chairperson, the delegation of Mauritius took places at the Committee table.*

30. **Ms. Narain** (Mauritius) said that it was correct that economic, social and cultural rights were not incorporated in the country's domestic law or Constitution, but not because they were held in low regard. She recalled that the Constitution had been introduced in 1968 and since then Mauritius had passed through difficult economic times. Moreover, to change the Constitution, the votes of three quarters of the National Assembly were required. She was, however, glad to inform the Committee that a significant event had taken place in January 2010, when the Law Reform Commission had approved the preparation of a report, with draft legislation, on the reform of the Constitution, in which it would recommend, in the light of the experience of other Commonwealth countries, such as India, South Africa and Trinidad and Tobago, that economic, social and cultural rights should be guaranteed under the Constitution. The Commission was currently examining how the right to education, to language and culture, to housing, to basic amenities and to a healthy and sustainable environment could be incorporated in the Constitution. She added that almost all recommendations by the Commission had been enacted in the past.

Moreover, there was currently considerable political momentum, with the outgoing Government — which had been voted back into office — having talked of reviewing the Constitution and establishing a Second Republic. There was therefore a possibility of major reform. She hoped that it might thus also be possible for Mauritius to accede to the Optional Protocol to the Covenant, because, following reforms, the domestic remedies that complainants would need to have exhausted would exist. Another possibility was that the National Human Rights Commission could issue direct rulings. The Commission had interpreted its mandate to hear petitions, but it had been unable to rule on breaches of economic, social or cultural rights for lack of jurisdiction. The law governing the Commission might be changed in order to clarify its mandate. As for the right to life, there was not yet any jurisprudence in that regard, but the Commission interpreted its mandate as being to combat extreme poverty and ensure that the poorest Mauritians were afforded a decent standard of living.

31. She confirmed that there was an exclusive economic zone, in accordance with the United Nations Convention on the Law of the Sea and Mauritius' own law, the Maritime Zones Act, around all the islands of Mauritius, including Rodrigues, Agalega, the Cargados Carajos, the Chagos Archipelago and Tromelin, which had always been under the sovereignty of Mauritius, even though the Government was currently unable to exercise its sovereignty. The Government of the United Kingdom of Great Britain and Northern Ireland had unilaterally declared the area round the Chagos Archipelago, which it called British Indian Ocean territory, to be a marine protected area. Mauritius had rejected that declaration, since it had been engaged in bilateral negotiations with the United Kingdom on the joint management of the Archipelago, and was currently seeking redress. The State party was also negotiating a joint management plan with France for the maritime zone around the French-administered island of Tromelin. The plan would include shared management of its resources, in particular fish stocks. The talks did not alter Mauritius' claim to sovereignty over the island. Delimitation agreements had been signed with Seychelles and Réunion in accordance with the United Nations Convention on the Law of the Sea. Mauritius patrolled its coastline with vessels and helicopters. Persons caught fishing illegally in the territorial waters of Mauritius were prosecuted and received hefty fines.