



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Fifth periodic reports of States parties due in 2010**

**Mauritius\***

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## Introduction

1. The Treaty-Specific Document of the International Covenant on Civil and Political Rights which covers the period March 2005 to December 2015 focuses on the progress made in the implementation of the different provisions of the Covenant since the country was last reviewed in 2004. It includes action taken by the State to enhance, promote and protect the civil and political rights of the people, and to implement the Concluding Observations of the Human Rights Committee following the last participative dialogue.

### Article 1 – Right to self- determination

2. Mauritius became a sovereign State upon obtaining independence in 1968 and achieved a republican status in 1992. Section 1 of the Constitution recognizes this sovereign status. The State of Mauritius holds free and fair national and local elections at regular intervals. The conduct of these elections is supervised by an independent Electoral Supervisory Commission.

3. The Republic of Mauritius includes the Islands of Mauritius, Rodrigues, Agalega, Tromelin, CargadosCarajos and the Chagos Archipelago, including Diego Garcia and any other island comprised in the State of Mauritius.

### The Chagos Archipelago

4. The Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of Mauritius under both Mauritian law and international law. Although Mauritius has sovereignty over the Chagos Archipelago, it is being prevented from exercising its rights over the Chagos Archipelago because of the de facto and unlawful control of the United Kingdom over the Archipelago.

5. The Government of Mauritius does not recognise the so-called “British Indian Ocean Territory” which the United Kingdom purported to create by illegally excising the Chagos Archipelago from the territory of Mauritius prior to its accession to independence. This excision was carried out in violation of international law and of United Nations General Assembly Resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

6. Since this illegal excision, Mauritius has consistently and persistently pressed the United Kingdom Government in both bilateral and multilateral fora for the early and unconditional return of the Chagos Archipelago to the effective control of Mauritius. In this context, Mauritius has continuously received the support of the African Union and the Non-Aligned Movement which have constantly recognized the sovereignty of Mauritius over the Chagos Archipelago.

7. On 20 December 2010, Mauritius initiated proceedings against the United Kingdom under Article 287 of, and Annex VII to, the United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the “marine protected area” (“MPA”) purportedly established by the United Kingdom around the Chagos Archipelago. The Arbitral Tribunal constituted under Annex VII to UNCLOS, to hear the dispute delivered its Award on 18 March 2015 and unanimously held that the “MPA” violates international law. It ruled that in establishing the “MPA”, the United Kingdom breached its obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS. Moreover, two of the members of the Tribunal confirmed that Mauritius has sovereignty over the Chagos Archipelago. No contrary view was expressed by the other three arbitrators who held that they did not have jurisdiction to address that issue.

8. The excision of the Chagos Archipelago from the territory of Mauritius also involved the shameful eviction by the British authorities of the Mauritians who were residing at the time in the Archipelago (“Chagossians”) in total disregard of their human rights in order to pave the way for the establishment of a US military base in Diego Garcia. Most of the Chagossians were removed to Mauritius.

9. Chagossians, being fully-fledged citizens of Mauritius, enjoy the same rights as other Mauritian citizens. However, with a view to improving the well-being of the Chagossians, the Government of Mauritius has taken special measures in their favour. These measures include the donation of land for the construction of houses and the setting up of the Chagossian Welfare Fund. In 2012, the Chagossian Welfare Fund Act was amended to provide for children of members of the Chagossian community to be eligible to stand as candidates and to vote at elections for members of the Board of the Fund.

10. The Government of Mauritius recognises the legitimate right and claim of the former inhabitants of the Chagos Archipelago, as Mauritian citizens, to be resettled in the Archipelago. The Government of Mauritius will continue to press for the early and unconditional return of the Chagos Archipelago to the effective control of Mauritius, whilst firmly supporting the right of return of the Chagossians and other Mauritians to the Archipelago.

#### **Island of Tromelin**

11. Mauritius has always maintained that the Island of Tromelin forms an integral part of its territory and has consistently asserted its sovereignty over the island, including its maritime zones. There exists, however, a dispute between Mauritius and France over Tromelin as France claims sovereignty over the island.

12. On 07 June 2010, Mauritius signed with France a Framework Agreement on Economic, Scientific and Environmental Co-management relating to the Island of Tromelin and its Surrounding Maritime Areas as well as three Implementing Agreements relating to archaeological research, environmental protection and fisheries resources respectively. These Agreements which have been concluded without prejudice to the sovereignty of Mauritius over Tromelin have not yet entered into force.

### **Article 2 – Implementation of the Covenant under the Constitutional framework**

Chapter II of the Constitution guarantees the enjoyment of fundamental rights and freedoms which include the right to life, the right to personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection of the law, protection for privacy of home and other property, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and protection from discrimination.

### **Article 3 – Gender Equality**

13. In addition to the constitutional protection afforded to many of the relevant Covenants’ obligations, some of these obligations are implemented through statutes (for example the Equal Opportunities Act) or administrative measures. Moreover, in line with the provisions of the ILO Convention No. 100 and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Section 20 of the Employment Rights Act 2008 was amended in June 2013 to read as follows: -

“(1) Every employer shall ensure that the remuneration of any worker shall not be less favourable than that of another worker performing work of equal value.

(2) Where an employer has recourse to the services of a job contractor, the job contractor shall ensure that the remuneration of any worker shall not be less favourable than that of another worker performing work of equal value.”

14. Section 30 of the Act was also amended in 2013 and contains a number of provisions protecting the rights of workers with family responsibilities as detailed below:-

(a) 12 weeks’ maternity leave on full pay, to a female worker who remains in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave, to be taken either before confinement or after confinement provided that at least 7 weeks’ leave is taken immediately after confinement. However, for those female workers reckoning less than 12 months’ continuous service, the leave is without pay;

(b) Where a female worker who has been in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave, gives birth to a still-born child, she shall, on production of a medical certificate, be entitled to 12 weeks’ leave on full pay;

(c) 2 weeks’ leave on full pay in case of miscarriage irrespective of the length of service of the female worker;

(d) That an employer shall not require a pregnant female worker to perform overtime, two months before her confinement;

(e) That a female worker shall not be required to perform duties necessitating continuous standing; or that may be detrimental to her health and that of her baby, provided that there is a recommendation to that effect from a medical practitioner;

(f) That an employer is prohibited from giving a notice of dismissal to an employee on maternity leave or giving such notice which will expire during her maternity leave except on grounds that relate to the economic, technological, structural or similar nature affecting the employer’s activities;

(g) That an agreement shall not be terminated by an employer by reason of a worker’s absence from work during maternity leave; and

(h) For a female worker, who is nursing her breastfed child, to be entitled to a daily break of one hour, or a break of half an hour twice daily with pay for the purpose of nursing the child; for a period of 6 months from the date of confinement or such longer period as may be recommended by a medical practitioner.

15. As announced in the Government Programme 2015-2019 and in line with the ILO Maternity Protection Convention 2000, the Employment Rights Act was further amended in April 2015 to extend the duration of maternity leave from 12 to 14 weeks so as to better support working mothers fulfilling their family obligations.

16. Section 31 of the Act provides that a male worker is entitled to 5 continuous working days’ paternity leave upon the production of a medical certificate certifying that his spouse has given birth to his child and a written statement from him that his spouse and himself are living under a common roof. This benefit is also extended on a pro-rata basis to part-time male employees. The leave is on full pay for a worker reckoning more than 12 months’ continuous employment. The application of this provision has been extended to all sectors of employment, including those covered by Remuneration Regulations. It is to be noted that under this section, “spouse” is defined as a person with whom the worker has contracted a civil or religious marriage.

17. Regarding the participation of women in the national decision-making process, Mauritius is committed to the decision taken by South African Development Community (SADC) to increase women's participation in politics and decision-making by 30%. For the three last general elections held in July 2005, May 2010 and December 2014, the main political parties honoured their pledge to increase women representation in National Assembly and there was a marked increase in the number of women candidates. With regard to the National Assembly Elections 2014, on Nomination Day, 739 candidates deposited their nomination papers in the 21 constituencies whereby 128 were women candidates. 8 women candidates were elected as Members of the National Assembly.

18. Following the enactment of the New Local Government Act in 2012 which stipulates that at least 1 out of 3 candidates to be fielded for elections at local/Municipal level should be of the opposite sex, there has been a significant leap in the number of women participating in Municipal and Village Council elections. At Municipal level, there has been an increase from 12.5% in 2005 to 28.2% in 2012. At Village Council level, the increase has been from 5 % in 2005 to 30.3% in 2012. In 2015, Government further amended Section 11(6) of the Local Government Act and replaced it by Sections 11(6)(a) and 11(6)(b). Section 11(6)(a) reads as follows :-

“Every group presenting more than 2 candidates at an election of a Municipal City Council or Municipal Town Council shall ensure that not more than two thirds of the group's candidates for election to that Council are of the same sex.”

19. Section 11(6)(b) of the Local Government Act catered for the common situation that a group may form part of an alliance and thus provided:-

“Where the group forms part of an alliance, it shall be sufficient for the alliance to comply with paragraph (a) without each group forming part of the alliance necessarily complying with that paragraph.”

20. As regard women's representation in decision-making bodies, same is illustrated in table below:-

<i>Grade</i>	<i>Number</i>	<i>Percentage</i>	<i>Remarks</i>
Ministers	3 out of 25	12	
Members of Parliament	8 out of 70	11.4	
Ambassadors	5 out of 22	22.7	
Senior Chief Executives	3 out of 6	50	
Permanent Secretaries	10 out of 34	29.4	Figures as at November 2015 from Prime Minister's Office website
Deputy Permanent Secretaries	31 out of 73	42.5	
Assistant Permanent Secretaries	67 out of 126	53.2	
Judges	9 out of 22	40.9	Survey of employment as at 31 March 2015
Magistrates	27 out of 40	67.5	

## **Article 5 – Limitation of Covenant rights**

21. With respect to Covenant rights which are constitutionally guaranteed in Chapter II of the Mauritian Constitution, specific derogations are provided for under the specific section providing for that particular right.

## **Article 6 – Right to Life**

22. The Geneva Conventions of 1949 have been incorporated into our law by virtue of the Geneva Conventions Act which makes it an offence to commit a grave breach of any of the four Geneva Conventions. The International Criminal Court Act which was passed in 2011 provides for the effective implementation of the Rome Statute of the International Criminal Court in the laws of Mauritius. As a democratic State and as a State which upholds the protection and promotion of human rights and which adheres to the core principles including the rule of law, peace and justice and human dignity, Mauritius shares the view that the international community has to put an end to impunity for serious crimes against humanity.

### **Compensation to victims**

23. The District and Intermediate (Criminal Jurisdiction) Act grants the District Magistrate with the power to investigate, by means of a judicial enquiry, cases of suspicious death. The Supreme Court held in the recent case of *Ramdhony K &ors v. The Honourable Senior Magistrate, Mapou Court* (2014 SCJ4), that in both preliminary and judicial enquiries, the Director of Public Prosecutions is not bound by the conclusions and findings of the learned Magistrate. These conclusions do not constitute any final determination of anyone's rights, and therefore are not amenable to judicial review.

24. Following a civil case entered by the dependants of one Mr. R. Ramlogun against the State in 2006, an agreement was reached between the parties and the State paid an ex gratia amount of 7.5 million rupees in full and final satisfaction of the claim to the dependants. In this case the late Rajesh Ramlogun, civil servant, was called in as a witness in a murder case wherein the victims were two old ladies in Lallmatie. Mr. Ramlogun died while he was still in detention.

### **Rules and regulations in the use of force and use of firearms**

25. Section 12 of the Reform Institutions Act provides the parameters within which officers may resort to the use of force or firearms. This is primarily related to self-defence or to prevent detainees from escaping. Following the accession of Mauritius to the Arms Trade Treaty in July 2015, amendments to the Firearms Act 2006 are currently being considered with a view to domesticating the Treaty and at the same time strengthening the control on firearms in transit and in the country.

26. The Police Complaints Act proclaimed on 01 July 2013, provides for the setting up of a Police Complaints Division (PCD) within the National Human Rights Commission (NHRC) which empowers it to enquire into complaints against Police brutality. All complaints against Police Officers are now being enquired into by the PCD. From year 2005 up to 30 June 2013, 2059 cases of complaints against Police have been reported to the Commissioner of Police and since the proclamation of the Police Complaints Act, 130 cases of complaints against Police reported to the Police Authorities have been forwarded to the NHRC for investigation and determination. At the level of the NHRC (Police Complaints Division), 632 complaints have been reported from 18 June 2014 to 31 July 2015. Out of the 632 cases, 357 have been disposed of and 275 are still pending.

27. However, as stated in the Government Programme 2015-2019, Government will now establish an Independent Police Complaints Commission, separate from the National Human Rights Commission, and to be chaired by a former Judge of the Supreme Court. It is expected that the setting of this Commission will deal with complaints against the Police in a more expeditious manner.

28. The provisions of the Protection of Human Rights Act have been included in the curriculum of training of all newly recruited police officers. Moreover, with a view to teaching police officers human rights, lectures are regularly delivered by representatives of the NHRC to all ranks of the Police. New recruits as well as Police Sergeants and Inspectors are examined on Human Rights issues during their end-of-course assessments. Whenever recommendations are made by the National Human Rights Commission on police procedures and practices to counter police brutality, these are taken into consideration, and if need be, are incorporated in the procedures, through circular letters and daily lectures. Prisons Officers also receive training in human rights.

29. Training programmes conducted by the Mauritius Police Force cover important topics like the prohibition of inhuman or degrading punishment with particular emphasis on the Convention against Torture, the Code of Conduct for Law Enforcement Officials (Article 5), as well as domestic legal provisions on torture.

### **Unwanted pregnancies**

30. Amendments were made to the Criminal Code by Act 11 of 2012, with effect from 15 October 2012, to authorise the termination of pregnancy in specified circumstances, in accordance with subsection 235A(2) of the Criminal Code, in cases where-

- “(a) the continued pregnancy will endanger the pregnant person’s life;
- (b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person;
- (c) there is a substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus, as assessed by the appropriate specialists; and
- (d) the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with a female under the age of 16 or sexual intercourse with a specified person which has been reported to the police.”

31. Section 235A (1) of the Criminal Code provides that:-

“No person shall provide treatment to terminate a pregnancy unless he -

- (a) is a specialist in obstetrics and gynaecology who is registered as such under the Medical Council Act;
- (b) provides the treatment in a prescribed institution; and
- (c) complies with all the requirements of this section.”

32. The specialist referred to in subsection (1)(a) may only provide treatment to terminate a pregnancy where another specialist in obstetrics and gynaecology and another specialist in the relevant field share his opinion, formed in good faith, that at least one of the 4 conditions set out in set out in subsection 235A(2) of the Criminal Code is satisfied.

33. The Medical Council (Termination of Pregnancy) Regulations 2012 provides for a stringent regulatory framework for the termination of pregnancies. Such termination can only take place in institutions prescribed by the Permanent Secretary of the Ministry of Health and Quality of Life and there is a record provided with regard to specialists who

advise termination of pregnancies and with regard to the consent of the person who wishes to terminate a pregnancy.

34. Measures to prevent unwanted pregnancies include awareness raising campaigns in line with the National Sexual and Reproductive Health Strategy & Plan of Action 2009-2015; provision of skilled medical aid and universal access to medical services free of user cost; free distribution of condoms to female sex workers; and special care given to teenage mothers.

## Article 7 – Prohibition of torture

35. Section 7 prohibits the torture or inhuman or degrading punishment or other such treatment to any person. Mauritius strongly condemns the fact that Diego Garcia, which forms part of the territory of Mauritius, was used after September 2001 as a transit point for rendition of persons to countries where they risked being subjected to torture or ill-treatment. In February 2008, following the announcement by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs that Diego Garcia had been used on two occasions in 2002 for rendition flights by the United States, the Government of Mauritius urged the United Kingdom Government to refrain from acts which would violate the UN Convention against Torture and any other international human rights conventions in respect of the territory of Mauritius.

36. The National Human Rights Commission (NHRC) and, since June 2015, its National Preventive Mechanism (NPM) Division also investigates complaints which may be made by a detainee. Statistics on complaints from detainees received at the NHRC for years 2014/2015 are as follows:-

### Complaints From Detainees – 2014/2015

Year	No. of Complaints		Disposed of	
	2014	2015	2014	2015
Prisons	150	335	110	335
Police Cell	2	2	2	2
Total	152	337	112	337

Source: National Human Rights Commission.

### Corporal Punishment

37. Corporal punishment is prohibited in schools by virtue of Regulation 13 (4) of the Education Regulations 1957; Section 13 (1) of the Child Protection Act; and Section 230 of the Criminal Code. Circulars are sent to schools by the Ministry of Education and Human Resources, Tertiary Education and Scientific Research, at the beginning of every term reminding them of those regulations and teachers are required to acknowledge having taken cognizance of same. Section 13 of the Child Protection Act provides that:-

“(1) Any person who ill-treats a child or otherwise exposes a child to harm shall commit an offence.

(2) For the purposes of this section, any person who, in an advertisement, exploits a child by using him in such a way as is likely to cause in him or in any child watching him reactions which are contrary to morality or detrimental to psychological development shall be deemed to expose a child to harm.”



38. A Children's Bill is under preparation to incorporate the provisions of the Convention on the Rights of the Child. The objective of the Bill is to bring together the different pieces of legislation dealing with children under a single comprehensive legislation. Prohibition of corporal punishment in all settings is being considered in the draft Children's Bill.

### **Article 8 – Prohibition of slavery**

39. Slavery and forced labour are prohibited under Section 6 of the Constitution. The Employment Rights Act also provides that a child below the age of 16 cannot enter into an employment contract, and that an employer shall not keep in employment a young person where the work is of a such a nature, or the circumstances in which it is carried out, is likely to jeopardise the health, safety, physical, mental, moral or social development of the young person.

40. Under this Act, the normal day's work of a worker (other than a part-time worker or a watchperson) consists of 8 hours' actual work. A worker and an employer can agree that the worker works in excess of the stipulated hours without added remuneration, if the number of hours covered in a fortnight does not exceed 90 hours, or such lesser number of hours as may be specified in such agreement. A worker is entitled to a rest day of at least 24 consecutive hours in every period of 7 consecutive days. Every worker shall be entitled to a rest of not less than 11 consecutive hours in any day. Every employer is, unless otherwise agreed, entitled to a meal break of one hour not later than 4 consecutive hours of work and one tea break of at least 20 minutes or two tea breaks of at least 10 minutes each. A young person cannot be employed in an industrial undertaking between 10.00 p.m. and 05.00 a.m.

41. The Act also makes provision for equal remuneration for work of equal value. Every employer has a duty to ensure that the remuneration of any worker shall not be less favorable than that of another worker performing work of equal value. Every employer shall pay remuneration to a worker at monthly intervals, unless the parties agree to payment at shorter intervals.

### **Combating trafficking and all forms of servitude**

42. The objects of the Combating of Trafficking in Persons Act are to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons; prevent and combat trafficking in persons; and protect and assist victims of trafficking. The Act provides that any person who traffics another person or allows another person to be trafficked shall commit an offence and it shall not be a defence for that person so charged that inter alia the victim has consented to the act which was intended to constitute trafficking. Any person who knowingly leases a room, house, building or establishment or subleases or allows it to be used, for the purpose of harbouring a victim of trafficking; or advertises, publishes, prints, broadcasts, distributes, or causes the advertisement, publication, broadcast or distribution of, information which suggests or alludes to trafficking by any means, including the use of the internet or other information technology, shall also commit an offence under the Act.

43. Section 11 of the Act also provides that any person who knowingly benefits, financially or otherwise, from the services of a victim of trafficking or uses, or enables another person's usage of, the services of a victim of trafficking shall commit an offence and further imposes a duty on every internet service provider operating in Mauritius to report to the Police forthwith any site on its server which contains information in contravention of subsection (2)(b) (advertisement, publication etc. of information which suggests or alludes to trafficking by any means including use of internet or IT) of the Act.

Any person who is found guilty of an offence under section 11 shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

44. The Act also provides, *inter alia*, for the repatriation of victims of trafficking as well as the return of victims of trafficking to Mauritius. Appropriate compensation can also be ordered by the Court, to be paid to the victim(s) by the person convicted under Section 11, for namely:-

(a) Damage to, or loss or destruction of, property, including money;

(b) Physical, psychological or other injury; or

(c) Loss of income or support, resulting from the commission of the offence. It also imposes a duty on any person to report any case of trafficking to the police if the person believes that another person is a victim of trafficking.

45. It is to be noted that the identity of the person making such a report shall not be disclosed, unless a Judge in Chambers otherwise orders.

46. The setting up of centres for victims of human trafficking is provided for under the law. Such centres shall provide temporary accommodation suited for the needs of victims of trafficking admitted to them. Every Centre shall *inter alia* secure the safety of its inmates against any risk of retaliation; provide counselling and rehabilitation services to its inmates; facilitate the integration of its inmates into their families; and may offer facilities aimed at providing education, skills development and training.

47. From 2009 to 2015, the number of cases of trafficking in persons or having bearing on human trafficking that have been reported to the Police is as follows:-

<i>Trafficking in persons</i>	<i>Period</i>							<i>Total</i>
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	
Under the Combating of Trafficking in Persons Act	Nil	Nil	Nil	Nil	Nil	1	Nil	1
Child Trafficking under the Child Protection Act	4	5	4	3	3	5	5	29
Cases having a bearing on human trafficking	2	Nil	8	7	4	5	9	35
<b>Total</b>	<b>6</b>	<b>5</b>	<b>12</b>	<b>10</b>	<b>7</b>	<b>11</b>	<b>15</b>	<b>66</b>

48. The Mauritius Police Force (MPF) continues to strengthen its action to combat Trafficking in Persons (TIP) through a series of measures to prevent, identify, investigate and prosecute cases of TIP or related offences. In that endeavour, the MPF is carrying out a prevention/sensitisation campaign in Mauritius with a view to better informing the community and creating awareness on the dangers and consequences of TIP and Commercial Sexual Exploitation of Children (CSEC). Following the enactment of the Combating of Trafficking in Persons Act, Police Officers, Prosecutors, Senior Officers and other professionals have been trained locally and abroad as follows:-

<i>Year</i>	<i>Training disburse on Trafficking in Persons</i>
2013	77
2014	328
2015	98

49. In terms of victim support, there are Government funded NGO shelters and victim drop-in centre. The Courts Act provides for camera testimonies under specific circumstances. As far as advocacy and preventive measures are concerned, the Government, including the Police and the Ministry of Gender Equality, Child Development & Family Welfare conduct regular extensive public awareness campaigns on trafficking in persons, especially with regard to child abuse and child rights at schools engaging in or facilitating child prostitution. In addition the Ministry concerned is also working on a comprehensive policy and strategic plan for children and the Police Department is collaborating with international organisations such as INTERPOL to gather information and intelligence for offences, including those related to human trafficking having an international dimension

50. To ensure a proper coordination, an inter-Ministerial Committee has been set up under the chairmanship of the Attorney-General and comprising the Prime Minister's Office; the Ministry of Social Integration and Economic Empowerment; the Ministry of Gender Equality, Child Development and Family Welfare; the Ministry of Labour, Industrial Relations, Employment and Training; the Commissioner of Police; and the Director of Public Prosecution for a concerted response to issues related to Trafficking in Persons, including child trafficking and forced labour.

## **Article 9 – Right to liberty**

### **Arbitrary Detention and police custody**

51. Section 5 of the Constitution states that no person shall be deprived of his personal liberty save as may be authorised by law in a number of circumstances including where there is the need to ensure his appearance in Court. A person who is arrested or detained should be brought before a court of law without undue delay and if such a person is not tried within a reasonable time, he should be released with or without conditions without prejudice to the appropriate authority's power to bring fresh proceedings subsequently, including his right to be released on bail. The Bail Act sets out the grounds on which bail may be refused by the court as well as the conditions that may be imposed by the court for the release of the defendant or detainee.

52. Questioning of detainees should be in line with Judges' Rules. There are also Standing Orders of the Mauritius Police Force. In addition, the "Rights of Detainees in Police Custody" are posted in all Police Stations for the information of detainees and their families in three languages (English, French and Creole). A suspect can also avail himself of the procedure of *Habeas Corpus* if he claims that he has been illegally detained. The writ of *Habeas Corpus* is in effect a procedure to secure, as a matter of urgency, the release of a person who is illegally detained.

### **Pre-trial detention**

53. The Mauritius Police Force operates in a transparent, accountable, fair and responsible manner and pays due respect to human rights. Any person who is arrested is brought before Court within 24 hours. Since the Bail and Remand Court (BRC) is operational during weekends and public holidays, no person is detained unnecessarily. A person/detainee who is arrested on a Friday does not have to wait till Monday morning to be taken to Court as used to be the case in the past. Officers from the Office of the Director of Public Prosecutions are on standby duty to deal with bail motions, if need be. Furthermore, any person who is detained in a Police cell or detention centre is allowed to contact any of his family members or his lawyer or friend and to inform him/her of the place of detention so as to receive visits. For such purpose, the detainee is given the necessary facilities to communicate with his family member or friend.

54. Where a detainee complains that he is suffering or has been victim of an accident, he is immediately conveyed to hospital by the Police for medical examination/treatment before any interrogation starts or he is detained. Such medical examination also helps against allegation of Police abuse.

55. The Government Programme 2015-2019, presented on 27 January 2015 provides, *inter alia*, that Government will come up with a modern legal framework modelled on the UK Police and Criminal Evidence Act to address the abusiveness and arbitrariness of the present system of “provisional charges”. In this regard Government will review the policy underpinning the existing Bill and an international consultant has been approached to provide assistance in the drafting of the new Bill. The Government Programme further provides that Police Stations will be equipped with CCTV and audio recording systems and investigations will be conducted in a more professional manner with focus on scientific-led evidence rather than confession.

56. The draft Police and Criminal Evidence Bill, once enacted, shall aim at striking a full balance between the rights of the individual and the practice of their powers by the Police and those in authority. A policy decision will also soon be taken on the question of provisional charge. It is intended to bring the said Bill shortly to the National Assembly.

## **Article 10 – Treatment of persons deprived of liberty**

### **Legislation regarding the treatment of persons deprived of their liberty**

57. The existing legislations are the Reform Institutions Act, which is presently being reviewed, and the Transfer of Prisoners Act. The Juvenile Offenders Act is also presently being reviewed. The Government Programme 2015-2019 further provides that “Government will bring reform to the Prison Department to ensure that it is properly manned and equipped, and its officers adequately trained to guarantee a targeted and effective rehabilitation of offenders and their successful re-integration into the community.” To this effect the Ministry of Social Security, National Solidarity and Reform Institutions has, in July 2015, sought the assistance of the Australian Authorities to, *inter alia*: prepare a Strategic Plan for the Rehabilitation Youth Centre including capacity building; and set up a Juvenile Court and at the same time advise on amendments to the Juvenile Offenders Act (1935) and the Reforms Institutions Act (1988).

### **Effective application of rules regarding the treatment of persons deprived of their liberty**

58. As per the existing infrastructure, some cells are single while others are larger and can accommodate up to four detainees. In certain institutions, dormitories are also available. Detainees are allocated in cells or dormitories through assessment by Reception Boards taking into consideration their profile and security. The Petit Verger Prison, a Medium Security Prison and the Richelieu Open Prison, a Minimum Security Prison, also have dormitories, each catering for some twenty detainees. Each cell is fitted with air-vents on two sides in order to allow for cross ventilation. During the day, sunlight enters the cells through the outer air-vents and at night lights are switched off at 20:00 hours in the cells. Cells are redecorated at least once yearly and occupants are made to keep them clean. Each detainee is supplied with one mattress, two bed sheets, a pillow, a pillow cover, a blanket and a pair of night gown.

59. All detainees are unlocked as from 06:30 hours to the Association Yards where they remain up to 17:30 hours. Labour for detainees is between 07:30 hours and 10:30 hours and between 11:30 hours and 15:30 hours. Detainees have access to potable water round the clock in their respective Association Yard. In addition to bedding, all convicted detainees are issued with two pairs of Prison garb and one pair of working dress.

60. All detainees on admission to Prisons undergo an induction process. This comprises interview by:- (a) hospital medical staff, who screen the physical, psychological, mental and health profile of the detainees; (b) prisons staff, who inform the detainee of his rights and privileges, exposes him to the routine of the Prison, assess his vulnerability and risk that he may represent to other detainees and accordingly allocate him his location; and (c) the welfare staff, who gauges any social problem that may be affecting the detainees.

### **Juvenile offenders**

61. Accused juvenile offenders are separated from adults. Boys are placed in Correctional Youth Centres, whereas presently girls are sent to Rehabilitation Youth Centres falling under the aegis of the Ministry of Social Security, National Solidarity and Reform Institutions. A Committee has been set up at the level of the Prime Minister's Office to initiate procedures for the creation of a Correctional Youth Centre for girls. A draft Juvenile Justice Bill is being worked out by the Attorney General's Office in consultation with all stakeholders including a United Nations Office on Drugs and Crimes (UNODC) Expert in Prison matters.

### **Treatment of prisoners**

62. Other conditions related to the treatment of prisoners are: -

(a) Unconvicted detainees: Remand detainees are allowed to wear their civilian clothing;

(b) Food and Hygiene: Toilet and shower facilities are available. All detainees, including unconvicted detainees, receive three meals a day as well as tea which is served at mid-day. All detainees receive a balanced diet approved by a Nutritionist of the Ministry of Health and Quality of Life. Food is prepared as per a weekly menu sheet worked out by the catering officer and approved by the Officer in Charge, New Wing Prison. Medical diets are also prepared on the recommendation of the Medical Officers or Dieticians of the Ministry of Health and Quality of Life for sick detainees. Detainees living with HIV/AIDS receive antiretroviral drugs and an enhanced diet equivalent to a surplus of 20%;

(c) Medical care: All detainees receive free medical care on admission and throughout their sentence. Detainees are also referred for specialist care to public hospitals. Besides, visiting Specialists such as dermatologists, psychiatrists, orthopaedic surgeons, medical specialists, etc. regularly visit sick detainees at the Prison. The Prison also has a Hospital Ward where detainees are admitted for observation or on aftercare after hospitalisation. Two Medical Officers and Hospital Officers provide health care to the detainees on a twenty-four hour basis;

(d) Religion: Detainees are allowed to observe their respective religion. As such, they are allowed to pray on religious observance days and religious festivities. Ministers of religion regularly officiate prayers in respect of their respective religious group;

(e) Segregation and Protection Unit: Detainees fearing for their security are located in Segregation and Protection Units but are allowed to enjoy all their rights in prison;

(f) Rehabilitation and Reintegration: Detainees are provided with vocational training in such trades as shoemaker, tailor, cabinet making, masonry, housekeeping, cleaning, food production, etc.;

(g) Literacy: Numeracy and Literacy Programmes are also organised to those who are illiterate in order to teach them to read and write. Detainees can also attend courses offered by the Mauritius Institute of Training and Development (MITD) in welding and metal fabrication, vegetable production, food production and animal husbandry;

(h) Earnings: All convicted detainees are paid weekly earnings which allow them to buy additional food stuff, soft drinks, toilet requisites, pay fines and costs or even send their earnings to their relatives;

(i) Contact with the outside world: Detainees are allowed to receive visits of 30 minutes, once fortnightly, from their relatives. They are also permitted to phone their relatives once weekly. All detainees are allowed to write letters to their relatives and friends;

(j) Recreational activities: All detainees have access to television and radio which are fitted in all Association Yards. In the evening, they are also allowed to listen to the radio up to 20:00 hours daily. They are also issued with newspapers in their Association Yards. In addition, they have access to the Prison Library; they can also purchase their own books, magazines, newspapers or receive them on visit from their relatives and friends. All detainees are allowed to participate in indoor and outdoor game activities.

63. Prisons Officers are trained to treat detainees in a manner which is decent, humane and just; to ensure safety of detainees; to ensure good order and control is maintained; to provide detainees with the opportunity to use their time in prison positively so that they will be able to resettle into society when they are released.

#### **Infrastructure development**

64. On the average, 5.5 square metres are available for 3 detainees who are confined in the same cell. In dormitories, 3 to 4.2 square metres are provided to detainees whether they are convicted or are on remand. Accommodation has been increased with the assistance of the Works Section of the Prison Department at Beau-Bassin and the Women's Prison.

65. A new High Security Prison is operational since early 2014, at Melrose. The new prison which is constructed on a plot of land of 37 acres with a total built area of 34 450 square metres can accommodate 780 detainees. With the operationalisation of Melrose High Security Prison, a new method of addressing criminal behaviour has been developed with the assistance of the Department of Correctional Services of Australia. A Team of Senior Officers have been exposed to this new method which includes: Unit Management System, Sentence Planning, Individual Management Plan for detainees, Payback to Society, involvement of the Correctional Services with the Civil Society in addressing criminal behaviour and providing support to victims.

66. A new Open Prison for women has been constructed and is operational since December 2015. It is being operated on a different management style giving selected detainees more autonomy.

#### **Overcrowding in prisons**

67. A Ten-year Strategic Plan has been developed with the assistance of a Consultant from the UN Office on Drugs and Crime, to address the problem of overcrowding through the use of alternative and non-custodial measures, reducing pre-trial detention methods and reducing the rate of recidivism. Also with the Melrose Prison becoming operational since March 2014, 560 detainees from different institutions have been transferred thereat. As at 10 August 2015, there were a total of 2,093 detainees in our prisons and with the operationalisation of the new prison which has a maximum capacity of 1000 to accommodate detainees, the issue of prison overcrowding in the prisons has been addressed.

### **Education and Human Development for detainees**

68. The Ministry of Education and Human Resources is working towards increasing access to education without discrimination. In 2014, the success rate of male detainees sitting for the Certificate of Primary Education examination was 69%. However, the success rate for male detainees in Gas Welding and Metal Fabrics Course, Wood Trade Course and for female detainees in Garment Making Course and Pastry Course was 100%. Two inmates have been identified following a selection exercise and offered a course leading to a degree in Business Management through the Open Distance Learning mode. The Prison Service is set to modernise its rehabilitation programme for detainees. To that end, the Melrose Prison will have units of textile and woodwork production.

### **Article 11 – Non-punishment on contractual obligations**

69. The Imprisonment for Civil Debt (Abolition) Act makes provision for a defendant in a civil case not to be imprisoned on account of a civil debt. The Borrower Protection Act makes provision for a Commissioner for the Protection of Borrowers, who has amongst his responsibilities, to ensure that proper and adequate information is given to borrowers. The Commissioner has the power to deal with complaints received from borrowers and can cause investigations to be conducted.

### **Article 12 – Right to movement**

70. Section 15 of the Constitution provides, *inter alia*, that no person shall be deprived of his freedom of movement, and freedom includes the right to move freely throughout Mauritius, the right to reside in any part of Mauritius, the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

71. Entry and exit visas are issued by the Passport and Immigration Office to foreigners entering the country. Those staying for a longer period must apply for a residence permit. Those persons who are lawfully within the territory have the freedom of movement and to choose their residence.

72. There is no requirement for the registration of persons as a resident in a particular area. No control or restriction of access is imposed on travelling persons to certain areas or limiting the movements of persons within the community, except in respect of areas declared as security zones.

73. Restriction on the right to leave Mauritius may be imposed:-

- (a) By a Court of Law where the person is subject of a Court case;
- (b) The Mauritius Revenue Authority may also raise an objection to departure against a person who is indebted to the Authority;
- (c) A Police Officer, not below the rank of Assistant Superintendent of Police, may require the Passport and Immigration Officer to prohibit the departure of a detainee. Such prohibition against departure will lapse after 72 hours (Section 13 of Bail Act – Interim Prohibition against Departure); and
- (d) According to Section 53(1)(a) of the Prevention of Corruption Act 2002, the Independent Commission against Corruption may arrest any person who may assist in its investigation and who is about to leave Mauritius.

### Conditions for the issuance of travel documents

74. Travel documents are issued in the following circumstances:-

- (a) Any citizen of Mauritius who has lost his passport abroad and has to travel back to Mauritius;
- (b) Any Commonwealth Citizen who has lost his passport and has to travel back to his country of residence or has to travel to a specific destination and return to Mauritius; and
- (c) A Citizen of Mauritius whose passport has been sent abroad for visa purposes and has to travel to another country in the meantime.

75. All citizens of Mauritius are entitled to a travel document. However, a Court of Law may impose restriction on the use of such travel documents. Statistic on the number of Travel Documents and Passports issued from years 2007 up to 2015 are as follows:-

<i>Year</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
No of Travel Documents issued	817	636	458	460	504	227	280	312	409
No of Passports issued	63,430	56,126	45,914	48,776	51,853	50,912	55,299	62,673	63,738
Total	64,247	56,762	46,372	49,236	52,357	51,139	55,579	62,985	64,147

76. A person travelling to Mauritius without the required travel documents may be returned back to his country of origin or residence, by the international carrier, which brought him/her. All expenses in connection therewith, including hotel accommodation, medical care and court costs, if any, are borne by the carrier.

### Requirements for the admission of Non-Citizens

77. A non-citizen should hold a valid residence permit, except those who are exempt persons under the Passports Regulations and/or the Immigration Act, subject to the person:-

- (a) Holding valid passport;
- (b) Possessing valid return passage ticket;
- (c) Having adequate fund; and
- (d) Being eligible to re-enter country of origin/residence.

## Article 13 – Aliens

### Asylum seekers

78. Mauritius, being a small and densely-populated island with limited resources, has not yet adopted a policy or law to grant refugee status to foreigners. Although Mauritius has not yet signed the 1951 Convention relating to the Status of Refugees and its 1967 Protocol Convention, it does however, attempt to treat applications for refugee status or political asylum on a humanitarian, case-to-case basis by facilitating their settlement in a friendly country willing to receive them.



## Deportation

79. A Deportation Order under the Deportation Act is required to make a non-citizen leave and remain out of Mauritius. The Deportation Act sets the procedures for a deportation order in respect of a convicted person, an undesirable person, a destitute person or a prohibited immigrant under the Immigration Act. The Deportation Act also provides, inter alia, for detention in custody pending decision; how deportation orders are to be executed; deportation orders in respect of persons undergoing a sentence of imprisonment; and expenses of or incidental to deportation of a person to be met by the State.

## Extradition

80. The Extradition Act provides, with regard to extradition crimes, namely in its section 7, that an offender shall not be surrendered to a foreign State where the offence in respect of which the request for his surrender is one of a political character or where the Minister has reasonable grounds for believing that the request for surrender is being made for the purpose of prosecuting or punishing the offender on account of his race, caste, place of origin, nationality, political opinions, colour or creed or where the Minister is satisfied that it would be unjust, oppressive or too severe a punishment to surrender the offender, amongst others.

81. Part II of the Extradition Act deals with extradition to a foreign State. Under section 8 of the Extradition Act, every request for the surrender of an offender who is in Mauritius is made to the Minister responsible for the subject of external affairs for transmission to the Attorney General, through the diplomatic channel or by such other means as may be specified in the extradition treaty or in the case of a Commonwealth country, as may be agreed upon.

82. Pursuant to Section 8 of the Act once the request for extradition is transmitted to the Attorney General's Office, the latter will process the extradition request in accordance with the relevant provisions of the Extradition Act and/or the relevant Extradition Treaty (between Mauritius and the Requesting State). The Attorney General may authorise, in writing, a Magistrate to issue a warrant for the arrest of the offender as provided for under section 9 of the Extradition Act.

Section 13 of the Extradition Act provides that:-

“Where a person who, under this Part (Part II), has been committed to prison, or otherwise ordered to be held in custody, is in custody in Mauritius at the expiration of 2 months-

- (a) after the date of committal or order; or
- (b) where a writ of habeas corpus is issued, after the Supreme Court has decided on the return of the writ, whichever is the later, the Supreme Court shall, on application and on proof that reasonable notice of the intention to make the application has been given to the Attorney-General, order that the offender be released, unless sufficient cause is shown against the release.”

83. The principles relating to the law of extradition have been clearly set out in the cases of *Danche D. v. The Commissioner of Police & ORS* (2002) SCJ 171 and *Ramankhan M F. v. The Commissioner of Prisons* (2002) SCJ 140, and both cases are still good law.

84. In the first case the applicant, a French National moved the court for the issue of a writ of habeas corpus so that his release be ordered. A warrant for arrest of the applicant had been issued under the Extradition Act since the latter had been accused of having committed in the United States of America (USA) the offences of mail fraud, interstate transportation of stolen property and wire fraud. The argument put forward by the applicant was that there was no extradition treaty between Mauritius and U.S.A. It was held by the

court that the extradition treaty signed between the United Kingdom and the U.S.A, under the United Kingdom Extradition Acts 1870–1935 was succeeded to by Mauritius after its independence and it was open to Mauritius from 1968 onwards to give notice of termination of the treaty. Since neither Mauritius nor U.S.A had given notice of termination of the treaty, the court held that the treaty was still binding on both countries and the application was set aside.

85. In the case of *Ramankhan M F v. the Commissioner of Prisons* (2002) SCJ 140, the applicant moved the court for the issue of a writ of habeas corpus so that his release be ordered. A warrant of arrest had been issued against applicant on the basis that the applicant had in England the offence of indecent assault on a female child under the age of 16. The grounds on which applicant have relied at the hearing are as follows:-

- (a) There is no extradition treaty between Mauritius and England;
- (b) There was no prima facie evidence established against the applicant in respect of the charge on indecent assault;
- (c) His extradition is required for the purposes of a police enquiry. Consequently, he is only a suspect and not an accused party under the Act; (d) he will not be afforded a fair hearing in England in that: (i) his right to silence will be undermined; (ii) he will be amenable to a penalty which is more severe in England than in Mauritius for the offence with which he has been charged; and (iii) he will be denied the protection of stricter legal rules in Mauritius governing the evidence of child witnesses; and
- (d) There is a discrepancy between the charge laid against the applicant in the document that was put before the magistrate.

86. It was held by the Court that: -

- (a) There was no need for extradition treaty between England and a Commonwealth Country like Mauritius;
- (b) There was sufficient evidence for the committal; and
- (c) The applicant was an “accused” for an extradition crime namely indecent assault in England which is comparable to the Mauritian offence of attempt upon chastity.

87. The Court found no merit in the other arguments put forward by the applicant and the application was set aside.

88. In the case of *Auger R v. The Commissioner of Police & Ors* (2010) SCJ 127, the detainee, a Canadian citizen applied for a writ of habeas corpus following a warrant of commitment pending his surrender to the Canadian authorities, issued by the District Magistrate of Port Louis issued, under Section 11(5)(c) of the Extradition Act. The Court held that there was “not the least indication that there has been a failure to comply with the legal requirements under the Act which is of such a nature that would render the decision of the Magistrate irregular or illegal”. The Court declined the application and ordered that the applicant be not discharged from custody pending the decision of the Attorney-General to surrender him to the Canadian authorities.

89. The status for extradition/deportation requests in Mauritius as at November 2015 is as follows:-

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*S.N Extradition Requests Extradition Authorised or Refused*

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1. Hungary	One Hungarian National- Under consideration by the State Law Office
2. Belgium	One Belgian National- Under consideration by the State Law Office
3. India	One Indian National- deportation executed on 14 November 2015

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*Source:* Ministry of Foreign Affairs, Regional Integration and International Trade.

## Article 14 – Fair administration of justice

90. Section 10 of the Constitution reflects the rights in Article 14 of the Covenant. This section lays down provisions to secure the protection of the law amongst which are the presumption of innocence, the right to be informed as soon as reasonably practicable of the nature of the offence and in a language that the accused understands, the right to be given adequate time and facilities for the preparation of one's defence, the right to defend oneself in person or by a legal representative of one's own choice or by a legal representative provided at the public expense, the right to the assistance of an interpreter if one cannot understand the language used at the trial. If a person cannot afford to retain the services of a legal representative, there is the possibility to apply for legal aid under the Legal Aid Act and Legal Assistance Act.

### Improving the judicial system

91. The Government Programme 2015-2019 provide that reforms will be brought to the judiciary to expedite determination of court cases and improve services to the public and that a new Independent Court of Appeal will be set up in line with the MacKay Report of 1997. Government also proposes to introduce legislation to set up a separate Court of Appeal Section and a separate High Court Section of the Supreme Court. In this context Government intends to:-

- Renovate the Supreme Court Historical Building to accommodate the proposed Court of Appeal.
- Build a dedicated state of the art Court Building for the Supreme Court and all its Divisions.
- Improve the required support services for a full-fledged Family Division.
- Review and upgrade the premises of all District Court to ensure better services to all stakeholders since the bulk of court cases are dealt with at this level.
- Review and update the *Code de Procédure Civile* which dates back to 1808.
- Reinforce Special witness schemes to enable the Courts to provide certain facilities to special categories of witnesses.
- Upgrade the digital and audio recording systems to ensure accurate record keeping and speedier delivery of justice.
- Review legal aid fees to attorneys and barristers to ensure adequate legal representation during pre-trial and trial stages to all pauper litigants.
- Update the Criminal Code to provide for new criminal offences, including those related to "Ponzi Schemes", financial crime as well as offences related to use of technology.
- Empower the Law Reform Commission and bring further amendments to the Criminal Code and other laws to ensure that they meet the needs of contemporary Mauritius.
- Review the evidential laws and rules with a view to codifying them in line with recent developments in the Commonwealth.
- Make better provision for the rights and interests of victims and, in particular, provide in the law for representations by or on behalf of a victim to be taken into account at sentencing stage.

- Amend the Criminal Code to provide for a better legal framework for dealing with sexual offences and enhance the procedural context in which such cases are dealt with.
- Introduce a Juvenile Justice Bill to provide for a more modern juvenile justice system.
- Amend the Curatelle Act with a view to making further and better provision for the administration of vacant estates.

### **Article 15 – Retroactive applications of laws**

92. Under Section 45(1) of the Constitution, Parliament in Mauritius is vested with the power to make laws subject to the Constitution. The Courts are not expected to examine the merits or demerits of a policy laid down in an enactment by the legislature. The only test is the Constitutional yardstick. The exercise by Parliament of its legislative power to make laws is subject to Section 2 of the Constitution which provides the following: “The Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void”. A law enacted by Parliament can thus only be struck down to the extent that it infringes any of the provisions of the Constitution, including fundamental rights, or otherwise goes against any restriction or limitation imposed by the Constitution.

93. Parliament however, is expressly empowered by Section 46(4) of the Constitution to make laws which may be enforceable not only prospectively but also with retrospective effect. Section 46(4) reads as follows: “ No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.” There is a Constitutional limitation to this exercise of legislative power with retrospective effect. Parliament, cannot validly enact retrospective criminal or penal legislation (nullum crimen sine lege).

94. Section 10(4) of the Constitution which mirrors the provisions of Article 15 (1) of the Covenant prohibits the enactment of any new criminal offence or any increase in penalty with retrospective effect and read as follows: “No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed”.

95. Whilst retrospective criminal or penal legislation is forbidden by Section 10(4), and would be struck down as being unconstitutional, there is no similar constitutional restriction to the enacting of retrospective tax legislation except for penalties arising in respect of non-payment of tax which would fall within the scope of the prohibition applicable to retrospective penal legislation. The case of *D’Unienville R & Anor v. Mauritius Commercial Bank* [2013 SCJ 404] refers to the above provisions of the law and clearly explains the principles in respect thereof. The Supreme Court held in this case that: “It must be pointed out that although the Courts, as a matter of interpretation or construction, presume that a statute is not intended to be given retrospective effect unless the intention is made clear by express words or by necessary implication, this remains only a canon of interpretation and is not a Constitutional principle. It is within the ambit of the law making power of Parliament to legislate, within the framework of the Constitution, with prospective or retrospective effect. Parliament was thus fully empowered in the exercise of its law-making powers to change the law as it did. Whatever be the extent or nature of any right acquired and claimed by the plaintiffs by virtue of Section 17(3)(c) of the Interpretation and General Clauses Act, it would not survive in the face of the new legislation which clearly and

unambiguously cancelled the exemption from tax to which the plaintiffs were previously entitled in respect of the interest on deposits under item (3)(d). The plaintiffs' chargeable income for the computation of their tax liability for the income years subsequent to 01 July 2006 could only be determined on the basis of the income tax legislation in force for each particular income year subsequent to 01 July 2006."

## **Article 16 – Equality before the law**

### **Registration at birth**

96. Sections 12 and 13 of the Civil Status Act require that all births be declared within 45 days of occurrence. Declarants are required to provide all related information such as names, sex, date, time and place of birth of the new born. The law also provides for procedures for the late declaration of birth beyond the 45 days.

### **Legal identity**

97. The National Identity Card (NIC) was introduced in Mauritius in 1986 as a means of identification of Mauritian citizens. Section 4 of the National Identity Card Act provides for every person who is a citizen of Mauritius to register for an Identity Card within 6 months of attaining the adult age of 18.

### **Introduction of the Biometric Identity Card**

98. With a view to better facilitating the identification and authentication of individuals so as to prevent impersonation and fraudulent use of identity cards, Mauritius has, in 2013, introduced the new Biometric Identity Card with enhanced security features. The card contains the name of the person, his date of birth, gender, photograph, signature or thumbprint and the National Identity Number of the card holder, fingerprint minutiae, amongst others. However, the legality of the Biometric Identity Card is being challenged before the Supreme Court – Case *R. Mahadewoo v. The State* 2015 SCJ 417, 2015 SCJ 177.

## **Article 17 – Right to privacy**

99. The Data Protection Act was enacted in 2004. Its purpose is to protect the rights of privacy of individuals in view of the development of techniques used to capture, transmit, manipulate and record or store data relating to individuals. Section 33 of the Act makes provision for the Data Protection Commissioner to keep and maintain a register of data controllers and data processors who keep or process data or sensitive personal data. The data controllers and the data processors are required to register themselves annually with the Data Protection Commissioner. Section 39 of the Data Protection Act provides as follows: "any data controllers or data processors who, without reasonable excuse or lawful authority, keeps or processes any personal data or sensitive personal data, without registering himself or renewing his registration, shall commit an offence". Any person committing an offence under the Act is liable to a fine not exceeding Rs 200,000 and to imprisonment for a term not exceeding 5 years.

100. Legislative provisions implementing the National Identity Card Scheme provided for the storage and retention of biometric information (including fingerprints) on a centralized database. However, the Supreme Court of Mauritius, has in the case of *R. Mahadewoo v. The State* 2015 SCJ 417, 2015 SCJ 177, held that the storage of biometric information on the centralised database was not necessary in a democratic society and was in breach of section 9 of the Constitution of Mauritius. Following the Court judgment, the biometric information stored was destroyed by decision of the Government.

## **Article 18 – Freedom of thought, conscience and religion**

101. The freedom of thought, conscience and religion is entrenched in Section 11 of the Constitution which provides that no person shall be hindered in the enjoyment of his freedom of conscience, including the freedom of thought and religion. In order to enable the citizens to practice their religion indiscriminately, the Government provides religious subsidies to religious bodies, and infrastructural facilities during all religious festivals celebrated in Mauritius.

### **Subsidies to religious bodies**

102. Every year the National Assembly votes budgetary provision for “Subsidy to Religious Bodies”. There are two categories of religious associations benefiting from financial subsidies, namely, (i) Religious bodies affiliated to Federations, which receive an amount of subsidy based on the number of adherents as provided by Statistics Mauritius; and (ii) Religious bodies not affiliated to any Federation but which operate as branches of international religious organizations. They are paid a fixed grant. The objectives of the subsidies are meant to meet the following:-

- (a) The salaries of priests ( including their travelling expenses);
- (b) Expenses on construction and maintenance of places of worship; and
- (c) Expenses incurred on training of priests.

103. In the case of *Shiv Parivar Mandir & Anor v. The Mauritius Sanathan Dharma Temples Federation* 2008 SCJ 286, the applicants complained that the respondent was illegally and unlawfully, without any right, title or capacity suspending the payment of the applicants’ respective grants. The Court held that the applicants were entitled to seek the jurisdiction of the Judge in Chambers as a matter of urgency to prevent the respondent from adversely affecting the applicants’ financial situation and bringing to a standstill its activities by withholding the payment of the subsidy, a substantial part of which is to be used to meet the salary of the priests. The Court ordered the respondent to pay to the applicants their respective subsidy and to also pay for the costs of the application.

## **Article 19 – Freedom of expression**

104. Section 12 of the Constitution provides for freedom of expression, that is freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence. Freedom of the press is guaranteed and is an essential component of the right to freedom of expression provided for under section 12 of the Constitution. In the Government Programme 2015-2019, it is stated that a Freedom of Information Act will be enacted to promote transparency and accountability in public administration in contract allocations. Given that the nature and scope of such legislation is an evolving one, Government is presently doing the necessary ground work for the preparation of a legislation which will adopt innovative processes to improve access to information. Once this initial process is completed drafting instructions will be given to the Attorney-General’s Office to proceed with the preparation of the Bill.

## **Article 20 – Prohibition of propaganda advocating war or national, racial or religious hatred**

105. Please refer to the part on non-discrimination in the Common Core Document of the report.

## **Article 21 – Right to peaceful assembly**

106. Section 13 of the Constitution ensures that the right to freedom of peaceful assembly can be enjoyed whilst striking the right balance with the need to maintain public order and safety. The Public Gatherings Act regulates the manner in which public gatherings shall be held or organised. Not less than 7 clear days' written notice of the public gathering should be given to the Commissioner of Police. The latter may impose any condition on the holding of the gathering and gives due consideration to matters of defence, public safety and public order.

## **Article 22 – Freedom of association**

107. Section 13(1) of the Constitution guarantees, *inter alia*, the protection of freedom of association. It provides that except with his own consent, no person shall be hindered in the enjoyment of his freedom of association, that is to say, his right to associate with other persons and, in particular, to form or belong to trade unions or other associations for the protection of his interests.

108. Section 13(2) of the Constitution provides that laws can be made which restrict the freedom of association to the extent that the laws in question makes provision in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights or freedoms of other persons; or for the imposition of restrictions upon public officers. However, these laws will not stand the test of constitutionality if it is shown that they are not reasonably justifiable in a democratic society.

109. In conformity with Section 13 of the Constitution, Section 21 of the Equal Opportunities Act states that no person shall discriminate against another one when the latter is invited to join him in the setting up of a company, partnership, "société" or registered association. Furthermore, a company, partnership, "société" or registered association, or an officer shall not discriminate against a member of the body by denying that member access, or limiting his access, to a benefit, facility or service arising from membership; by expelling that member; or by placing that member at a disadvantage in any other manner.

## **Employment Rights Act and Employment Relations Act**

110. In order to reform the industrial relations framework, promote effective tripartism and strengthen dialogue with social partners, the Employment Relations Act was passed in August 2008. The Act focuses on, *inter alia*, the protection and enhancement of the democratic rights of workers and trade unions; the promotion of collective bargaining; the promotion of voluntary settlement and peaceful resolution of disputes; the strengthening of the disputes and conflicts resolution procedures and institutions to ensure speedy and effective settlement; the right to strike, as a last resort, after conciliation and mediation have failed; and the building of a productive employment relationship.

111. The Employment Rights Act which was also passed in August 2008, aims at achieving the flexibility needed for creating demand for labour, together with security needed to protect the worker as he or she switches between jobs. The object of the Act is to revise and consolidate the law relating to employment, contracts of employment or service the minimum age for employment, hours of work, payment of remuneration and other basic terms and conditions of employment with a view to ensuring appropriate protection of workers.

## Article 23- Protection of the family

112. The amendments brought to the Protection from Domestic Violence Act in 2007 have already entered in force. The Act was amended with a view to providing better services to victims of domestic violence and strengthening the enforcement mechanism of the Act as follows:-

- The Court may hear an application for a Protection Order in such manner as it thinks fit subject to such rules as may be made by the Chief Justice.
- The Court which has made the Protection, Tenancy or Occupancy Order, may make an ancillary as to alimony.
- Magistrates have been given the power to make an order as regards payment of alimony in respect of the aggrieved spouse and any child of the parties at the same time as an order for Protection is made on such terms and conditions as the Court thinks fit.

113. The Act was further amended in 2011 for rules to be made by the Chief Justice and for applications for Protection Orders to be heard in such manner as the Court thinks fit.

114. However despite the above amendments, the number of cases of domestic violence has been increasing as illustrated in the disaggregated table as reply to question 21, and following the tragic deaths of women victims of domestic violence in early 2014, an Advisory Committee was set up under the aegis of the Ministry of Gender Equality, Child Development and Family Welfare, in March 2014, to make recommendations on measures to reinforce the framework for the protection of women against domestic violence. The Committee in its report published in October 2014 observed that the Act as it stands still have several lacunas and weaknesses such as a narrow definition of domestic violence, not all acts of domestic violence are criminalized, and the weak support given to victim's needs. In light of the report, Government intends to further amend the Act so as to introduce, among others, psychological and sexual abuses as well as economic deprivation within the definition of domestic violence.

115. The Ministry of Gender Equality, Child Development and Family Welfare is considering amending the Criminal Code to make marital rape an offence. Furthermore, Article 242 of the Criminal Code will be also amended to remove from the Code that "Manslaughter committed by any person on his spouse, as well as on his accomplice, at the very moment he finds them in the act of adultery is excusable".

116. As spelt out in the Government Programme 2015-2019, Government has set up a National Coalition against Domestic Violence Committee under the aegis of the Prime Minister's Office. The said Committee will liaise with the Ministry of Gender Equality, Child Development and Family Welfare and the Ministry of Social Security, National Solidarity and Reform Institutions to ensure that victims of domestic violence are given immediate shelter in a Government institution and provided with a job and a house within a reasonable time frame to lead a normal life anew. The Committee has already examined measures that could be quickly implemented and, among others, has decided that all reported cases of domestic violence would be treated as an aggravated offence and that legislations would be amended in due course to that effect.

117. However, not all cases of gender based violence are reported to the relevant Ministry or the Police. The Ministry concerned, conducts regular sensitisation programmes to encourage persons who are victims of domestic violence to come forward and seek assistance.



118. Amendments were brought to the Code Civil Mauricien in 2011 to provide for a new procedure for divorce, which is by way of mutual consent. This procedure enables married couples to go through the divorce in a much simpler and quicker procedure/way as compared to the other types of divorce such as the “divorce pour faute” or “divorce pour rupture de la vie commune” for instance. Only parties who have been married for a period of more than 24 months are allowed to enter a divorce petition by way of mutual consent.

119. They may, if they so qualify, retain the services of only one Attorney instead of one for each party. Another precondition to the divorce by way of mutual consent is that both parties need to agree on the breakdown of the marriage and on the arising effects. Parties need further to reach and submit an “agreement” for “ratification” by the Judge, which takes care of all the consequences of the divorce.

120. Marriage Enrichment Programmes delivered by the Family Welfare and Protection Unit of the Ministry of Gender Equality, Child Development and Family Welfare are targeted at married couples. The following modules are covered under these programmes:-

- Fundamental concepts of marriage;
- Conflict Resolution and Enhancing Communication;
- Sexuality in marriage;
- Family Budget and Common Decision Making;
- Reviewing commitments and understanding each other; and
- Family Values and Improving Interpersonal Relationships, amongst others.

121. Pre-Marital Counselling Programmes by the Family Welfare and Protection Unit of the Ministry are also available for married couples. The modules covered are:-

- Enhancing Communication and Common Decision Making;
- Role Expectations Understanding each other;
- Basic ingredients for a successful marriage;
- Anger Management and Conflict Resolution;
- Planning a Family Budget;
- Love and Sexuality; and
- Legal Aspects of Marriage, amongst others.

## **Article 24 – Rights of the Child**

### **Rights to be registered at birth**

122. Refer to information under Article 16

### **Rules governing juvenile justice**

123. The issues relating to juvenile justice are being dealt with more comprehensively in the draft Juvenile Justice Bill which is under preparation. For example, the Probation and Aftercare Service rehabilitates offenders in the community (probationers and offenders subjected to Community Service Order) and in semi-open institutions (Hostel and Home) and not in closed institutions. Under the Juvenile Justice Bill the functions of the Probation and Aftercare Service will be extended.

124. The draft Children's Bill envisages to repeal section 18 of the Juvenile Offenders Act, and to deal with this category of children as persons who are in need of care and protection. Consideration is being given to establish a procedure for a finding of irreconcilable difference between a person who has custody of the child and the child, where the difference is of such a nature as to seriously disrupt the care and control of the child. The issue of minimum age of criminal responsibility is being addressed in the draft Children's Bill.

### **Measures taken by the State to ensure that children are protected**

#### *Ratification of International Instruments*

125. Following the visit of the Special Rapporteur, Mauritius ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on 14 June 2011. On 13 August 2012, Mauritius signed the Optional Protocol to the Convention on the Rights of the Child on Communications Procedure.

#### *The Children's Bill*

126. Upon the recommendation of the Committee on the Rights of the Child, a Children's Bill is being prepared and is at the stage of finalisation. The Bill is expected to incorporate the provisions of the Convention on the Rights of the Child. The objective of the Bill is to bring together the different pieces of legislation dealing with children under a single comprehensive legislation. Prohibition of Corporal Punishment in all settings is being considered in the draft Children's Bill. The Bill will provide for severe penalties for offences against children with disabilities.

#### *The Ombudsperson for Children's Office*

127. Section 5 of the Ombudsperson for Children Act provides that "The Ombudsperson for Children shall:-

- (a) Ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and association of individuals;
- (b) Promote the rights and best interests of children; and
- (c) Promote compliance with the Convention on the Rights of the Child."

128. The main duties of the Ombudsperson for Children are to investigate cases of violation of the rights of the child and make proposals to the relevant authorities, including Ministers, on legislations, policies and practices. 224 cases of violation of the rights of the child have been reported in 2014 and 261 in 2015. The Ombudsperson for Children Office has sensitised 2000 children and the public at large in 2014 and 2693 in 2015 on the Convention on the Rights of the Child.

129. However, there are still several challenges which are being faced by the Office of the Ombudsperson for children which has reported, *inter alia*, that the roles and functions of the Office have been found not to be very clear by some institutions and that many children are unaware of the existence of the Office and the means to contact it. These challenges are being addressed through sensitisation campaigns with a view to, among others, increasing the awareness of the society, more particularly the younger population and children, on the roles and functions of the Office.

*National Child Protection Strategy*

130. Action has been initiated for the preparation of a National Child Protection Strategy with a view to consolidating and strengthening on-going efforts and measures to respond to child protection issues and to ensuring protection of children from any form of abuse and violence.

- **Measures of protection against child trafficking**

131. The Police has set up a Police Family Protection Unit (PFPU) with the special mandate to provide specific services within society. Awareness/sensitisation campaigns have been conducted by the PFPU as follows:-

**Education/Awareness/Sensitisation Campaigns of Police Family Protection Unit for years 2013-2015**

Year	<i>No. of sessions in Primary Schools</i>		<i>No. of sessions in Secondary Schools</i>		<i>No. of session in Social Welfare centre etc.</i>	
	<i>No. of Attendees</i>	<i>No. of Attendees</i>	<i>No. of attendees</i>	<i>No. of attendees</i>	<i>No. of Attendees</i>	<i>No. of Attendees</i>
2013	296	12104	28	923	82	2920
2014	281	9949	13	950	131	5110
2015	335	11048	40	2161	88	3157
Total	912	33101	81	4034	301	11187

*Source:* Statistics from the Mauritius Police Force.

132. The Mauritius Police Force has, at the request of the Ministry of Gender Equality, Child Development & Family Welfare, set up a new unit styled “Brigade pour la Protection des Mineurs” in May 2004. One of the priorities of the Brigade is to act as a watchdog against all forms of exploitation and abuse against children. The Brigade is providing a meaningful and sound customer care service aimed at optimizing the protection of children and helping to alleviate the anxiety of parents whose children have been subjected to such abuses. The “Brigade pour la Protection des Mineurs” will continue its work with the Ministry of Gender Equality, Child Development and Family Welfare, on the protection of the child from all forms of abuse including commercial sexual exploitation of children.

133. Since January 2008, crackdown operations have been conducted island wise at regular intervals by Officers of the Ministry of Gender Equality, Child Development and Family Welfare, National Children’s Council, Brigade des Mineurs (Police Department), in collaboration with NGOs to ensure that young persons and students are attending schools during normal school hours. Such operations are seen to contribute in an efficient way to prevent young persons from engaging in truancy and loitering and getting involved in illicit activities. Campaigns conducted are as follows:-

**Education/Awareness/Sensitisation Campaigns of Brigade Pour la Protection des Mineurs for the year 2013-2015**

Year	<i>No. of sessions</i>	<i>No. of Attendees (Minors/Adults)</i>
2013	390	28558
2014	337	25071
2015	436	32744
Total	1163	86373

*Source:* Statistics from the Mauritius Police Force.

134. The Police, in collaboration with the Social Workers of the Ministry of Education and Human Resources and the Child Development Unit of the Ministry of Gender Equality, Child Development and Family Welfare also redirect children who drop out of school back to the education system. Police Officers refer children who have been abused, to the Child Development Unit for psychotherapy and placement to shelters. In addition, the Police provide the following services:-

- A 24-hour hotline service (Tel: 999).
- At divisional level, an Operations Room is open on a 24-hour basis.
- Likewise, at Line Barracks the Operations and Information Room is open on a 24-hour basis.
- A protocol of assistance to child victims ranging from protection to counselling exists, whereby all Police Officers serving in any part of the country, deal with reported cases of child abuse.

135. A Residential Care Drop-in-Centre for victims of Commercial Sexual Exploitation of Children has been constructed. Its purpose is to assist children victims of sexual abuse and exploitation and to help them to re-integrate society. A Hotline (113) is available to public for referral of cases of victims of child prostitution.

136. With a view to promoting Mauritius as a safe family destination, the Ministry of Tourism and Leisure has embarked on a sensitization campaign on the impact of the commercial sexual exploitation of children. A pamphlet on “Zero Tolerance to Child Exploitation” has been prepared.

137. However, Government is aware that there is still room for improvement in the management of shelters by non-governmental organisations (NGOs). Government is therefore working in close collaboration with the relevant NGOs with a view to improving the general conditions of shelters which are under the management of the latter. It is also being considered in the National Child Protection Strategy for these shelters to cater for children with disabilities; provide closer psychological care to children victims of abuse; further facilitate their access to the mainstream education system; and to ensure better planning of the development needs of these children.

#### **Measures to eliminate child labour**

138. To refer to Article 8. Moreover officers of the Inspection and Enforcement Section of the Ministry of Labour, Industrial Relations and Employment effect systematic visits at undertakings and all places of work, thus covering both the formal and informal sectors of employment to detect and sanction cases of child labour. Whenever a child is found in illegal employment, the employer is required to discontinue such employment forthwith and criminal action is taken against the employer accordingly.

#### **Article 25 – Voting Rights and elections**

139. The Local Government Act was amended in 2011 to repeal and replace the Local Government Act and the Local Government Act 2003 so as to reform the law relating to local government. The Act makes further and better provision for:- (a) the establishment of democratically elected local authorities with sufficient autonomy to manage the local affairs of their area; (b) local authorities to provide services and facilities which will ensure the economic and social well-being of their local communities in an ecologically sustainable manner so as to meet the present and future needs of their communities; (c) an effective, efficient, inclusive and accountable system of local government; (d) the management and

governance of local authorities; (e) the duties of Councillors and officers of local authorities; (f) the accountability of local authorities; and (g) related matters.

140. In 2015, in addition to the amendments to increase the participation of women in local elections, the First Schedule to the Local Government Act was amended to provide for the number of Councillors for the Municipal City Council of Port-Louis. This was raised from 24 to 32. The Second Schedule to the Local Government Act was also amended to provide for the number of Councillors for Municipal Town Councils. The figures are 24 for the towns of Beau-Bassin-Rose Hill and Vacoas-Phoenix and 20 for the Town Councils of Curepipe and Quatre-Bornes.

141. The Municipal City and Municipal Town Council Elections Regulations 2012 were also amended in 2015 to give effect that that political parties should register as a “group” and where they contest an election alongside another group or groups, as the case may be, they should register as an alliance for the purposes of Municipal and Town Council Regulations.

142. At national level the National Assembly consists of 70 members of whom 62 are elected in accordance with the first-past-the-post system and the remaining 8 are allocated seats from among the best losers at general elections on a communal and party basis. In order to be able to implement the Best Loser System which ensures a fair and adequate representation of each community, the First Schedule to the Constitution of Mauritius requires that, at any general election, candidates have to declare the community to which they belong. The community of the candidate appears on the nomination paper which is published but does not appear on the ballot paper. A person who, by his way of life does not appear to belong to the Hindu, Muslim or Sino-Mauritian Community, is regarded as belonging to the residual category known as the “General Population”.

143. However, some time before the General Elections of 2014, a group of persons belonging to a political party named “Rezistansek Alternativ” challenged the above requirement for a candidate to declare to which community he belongs to, under the communications procedure laid down in the First Optional Protocol to the International Covenant on Civil and Political Rights. The Applicants alleged breaches of Articles 18, 25 and 26 of the Covenant and highlighted the vagueness of the criteria which determines which community they belong to.

144. The Human Rights Committee in its finding of 2012 stated that Article 25 of the Covenant had been violated. An extract of the Human Rights Committee’s findings reads as follows: -

“The Committee therefore finds, taking into account the State party’s (Government of Mauritius) failure to provide adequate justification in this regard and without expressing a view as to the appropriate form of the State party’s or any other electoral system, that the continued maintenance of the requirement of mandatory classification of a candidate for general elections without the corresponding updated figures of the community affiliation of the population in general, would appear arbitrary and therefore violates Article 25 of the Covenant”.

145. With a view to complying with the findings of the Human Rights Committee, Parliament has, in July 2014, passed the Constitution (Declaration of Community) (Temporary Provisions) Act whereby it is no longer mandatory for a candidate to declare the community to which he belongs. Section 4 of the Act provides that notwithstanding paragraph 3 of the First Schedule to the Constitution, a candidate at the next general election may elect not to declare the community to which he belongs. In the event that a candidate at that election has not declared his community, he shall be deemed to have opted not to be considered for the purpose of the allocation of additional seats and no additional seat shall be allocated to him.

146. Where a candidate has not declared his community and is returned as member, the Electoral Supervisory Commission shall, for the sole purposes of determining the appropriate community and allocating additional seats, proceed on the basis of the average number of returned members belonging to each community at all general elections held since 1976. In the event that no candidate belonging to a community has been returned as member to represent a constituency and the allocation of additional seats as pursuant to the above paragraph, will result in no additional seat being allocated to any available unreturned candidate belonging to that community, the first additional seat required to be allocated shall be allocated to the most successful unreturned candidate belonging to that community and belonging to a party and finally where all candidates who are returned as members have declared their community, the allocation of additional seats shall be effected under paragraph 5 of the First Schedule to the Constitution.

147. In light of findings of the UN Human Rights Committee, Government is pursuing its discussions and consultations to work towards an electoral reform that will suit the long-term interest of the country and that will have five criteria as follows:-

- Stability
- Fairness
- Inclusiveness to ensure representation of all components of the Mauritian rainbow nation
- Gender representation and
- Transparency and accountability

148. Government stands committed to reform the electoral system so as to introduce a dose of proportional representation in the National Assembly and guarantee better women's representation. The issue of mandatory declaration of community will be addressed in the wider context of the electoral reform. In this context a Ministerial Committee has been set up to examine the various implications of the proposed changes and make recommendations. Thereafter, appropriate consultations will be held with all the stakeholders prior to implementation.

### **Article 27 – Rights of minorities**

149. Apart from providing subsidies/grants to religious bodies, Government has, in line with its objective to promote racial harmony and unity in diversity for the preservation of our rich cultural heritage and promotion of languages, set up Trust Funds, Cultural Centres, Speaking Unions and Heritage Funds. These are expected to allow Mauritians of all cultural backgrounds the opportunity to participate in religious and cultural activities of their choice and to foster harmony and mutual respect. It must, however, be stressed that it is very difficult to distinguish clearly between religion and culture, in the local context, as the two are inextricably linked and therefore often, in practice, the rights ensuring the protection of one's culture may be extended to the protection of freedom of religion and vice versa. In this respect, students as from primary level are taught oriental languages (according to their personal liking or cultural/religious background, they may choose between Hindi, Mandarin, Tamil, Urdu, Arabic).

150. An annual Government grant in the bracket of Rs 1m to Rs 4m, meant for their activities and administrative expenses, is provided to each of the bodies which have been set up to promote languages and cultures in Mauritius. A list of the bodies is listed below:-

- National Heritage Fund
- AapravasiGhat Trust Fund

- Le Morne Heritage Trust Fund
- Islamic Cultural Centre Trust Fund
- Nelson Mandela Centre for African Culture Trust Fund
- Mauritian Cultural Centre Trust
- Malcom de Chazal Trust Fund
- Mauritius Council of Registered Librarians
- Mauritius Museums Council
- Rights Management Society
- National Library
- Prof.BasdeoBissoondoyal Trust Fund
- President's Fund for Creative Writing
- Ramayana Centre
- Conservatoire National de Musique François Mitterrand
- Mauritius Film Development Corporation
- Mauritius Telegu Cultural Centre Trust
- Hindi Speaking Union
- Arabic Speaking Union
- Bhojpuri Speaking Union
- Chinese Speaking Union
- Creole Speaking Union
- English Speaking Union
- Marathi Speaking Union
- Sanskrit Speaking Union
- Tamil Speaking Union
- Telegu Speaking Union
- Urdu Speaking Union

## Annex

### **Implementation of concluding observations following the fourth periodic review by the human rights committee in march 2005**

1. The Human Rights Committee considered the fourth periodic report of Mauritius at its 2261<sup>st</sup> and 2262<sup>nd</sup> meetings held on 17 and 18 March 2005, and adopted concluding observations at its 2278<sup>th</sup> meeting held on 31 March 2005. Measures taken to implement the Concluding Observations, since then are given hereunder.

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

**[Please refer to information under Article 1 on rights to Self-Determination]**

2. The Republic of Mauritius includes the Islands of Mauritius, Rodrigues, Agalega, Tromelin, CargadosCarajos and the Chagos Archipelago, including Diego Garcia and any other island comprised in the State of Mauritius.

#### **The Chagos Archipelago**

3. The Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of Mauritius under both Mauritian law and international law. Mauritius is, however, being prevented from effectively exercising its sovereignty over the Chagos Archipelago because of the unlawful control of the United Kingdom over the Archipelago. The United Kingdom illegally excised the Chagos Archipelago from the territory of Mauritius prior to its accession to independence, in violation of international law and United Nations resolutions.

4. The illegal excision of the Chagos Archipelago also involved the shameful eviction by the United Kingdom of the Mauritians who were residing at the time in the Archipelago (“Chagossians”) in total disregard of their human rights, in order to pave the way for the establishment of a US military base in Diego Garcia. Most of the Chagossians were removed to Mauritius.

5. Chagossians, being fully-fledged citizens of Mauritius, enjoy the same rights as other Mauritian citizens, including the fundamental rights and freedoms guaranteed under Chapter II of the Constitution of Mauritius.

6. Actions are being taken at the national level by the Government of Mauritius to promote and protect human rights, including through the national human rights institutions, the dissemination of human rights instruments, awareness campaigns and educational programmes. These actions are targeted at all Mauritian citizens, including those of Chagossian origin.

7. However, with a view to improving the well-being of the Chagossians, the Government of Mauritius has taken special measures in their favour. These measures include the donation of land for the construction of houses and the setting up of the Chagossian Welfare Fund. The objects of the Chagossian Welfare Fund are to, inter alia, advance and promote the welfare of the members of the Chagossian community and their descendants, and develop programmes and projects for their total integration into Mauritius.

8. The Government of Mauritius recognizes the legitimate right and claim of the former inhabitants of the Chagos Archipelago, as Mauritian citizens, to be resettled in the



Archipelago. The Government of Mauritius will continue to press for the early and unconditional return of the Chagos Archipelago to the effective control of Mauritius, whilst firmly supporting the right of return of the Chagossians and other Mauritians to the Archipelago.

### **Island of Tromelin**

9. Mauritius has always maintained that the Island of Tromelin forms an integral part of its territory and has consistently asserted its sovereignty over the island, including its maritime zones. There exists, however, a dispute between Mauritius and France over Tromelin as France claims sovereignty over the island.

10. On 07 June 2010, Mauritius signed with France a Framework Agreement on Economic, Scientific and Environmental Co-management relating to the Island of Tromelin and its Surrounding Maritime Areas as well as three Implementing Agreements relating to archaeological research, environmental protection and fisheries resources respectively. These Agreements which have been concluded without prejudice to the sovereignty of Mauritius over Tromelin have not yet entered into force.

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

11. Please refer to the Common Core Document – Paragraphs 39.0 (iii) on the proclamation of the Equal Opportunities Act and paragraphs 45.0 – 47.0 on other existing legislations regarding the prohibition of discrimination, in general.

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

12. The Human Rights Protection Act 1998 has been amended in 2012 and is now fully in line with the Paris Principles. Please refer to sub-paragraphs 39.0 (iv)–(vi) of the Common Core Document.

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

13. Please refer to information under Article 3 of the Treaty Specific Document on Gender Equality.

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

14. Please refer to information under Article 6 of the Treaty Specific Document on the Rights to Life – Unwanted pregnancies- paragraphs 30.0-33.0

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

15. Please refer to information under Article 23 of the Treaty Specific Document on measures taken to reduce cases of domestic violence and Article 24 on the protection of the child.

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

- **Measures of protection against child trafficking**

16. Please refer to information under Article 24, paragraphs 129.0-135.0 of the Treaty Specific Document on the measures of protection against child trafficking including statistics on awareness/sensitisation campaigns that have been conducted by the Police Family Protection Unit (PFPU).

**Measures to eliminate child labour**

17. Please refer to information under Article 24, paragraph 136.0 of the Treaty Specific Document

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

18. The Government of Mauritius has already enacted the undermentioned legislations to consolidate its fight against terrorism. All the new legislations and amendments thereof are human rights compliant as they are in line with international norms:

- Information Communication Telecommunication Act 2001
- Prevention of Terrorism Act 2002
- Financial Intelligence & Anti Money Laundering Act 2002
- The Convention for the Suppression of Financing of Terrorism Act 2003
- Data Protection Act 13/2004
- Firearm Act 2006
- Prevention of Terrorism (International Obligations) Act 11/2008
- Asset Forfeiture Act 2012

19. Mauritius has adopted a number of conventions and resolutions to address terrorists' threat in all its form and manifestations. Consequently, as a member of the United Nations, the Republic of Mauritius is a party to the following legal documents after having carefully considered that the documents are consistent with the provisions of international law:-

- United Nations Security Council Resolution 1373
- UN Conventions for the Suppression of Terrorist Bombing 2003
- (UN Convention Against Transnational Organised Crime 2003 and
- UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons 2003

20. Mauritius is also a signatory to the International Convention for the Suppression of Acts of Nuclear Terrorism 2005.

21. No person has been convicted in Mauritius under the Prevention of Terrorism Act 2002 and no complaint of non-observance of international standards has been reported.

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

22. The Police Complaints Act enacted in 2012 provides for the setting up, within the National Human Rights Commission, of a Police Complaints Division for the investigation of complaints made against members of the Police Force, and for other related matters. This legislation consolidates further measures already in place to prevent any abuse of authority including that of torture and cruel, inhuman or degrading treatment.

23. Since 2013 following the proclamation of the Police Complaints Act 2012, cases of violence perpetrated upon members of the public by Police, are referred to the Police Complaints Division of the National Human Rights Commission for investigation at their level.

24. The number of complaints related to Police brutality from January 2011 to September 2015, and outcome thereof are as follows:-

<i>Year</i>	<i>No. of Complaints</i>	<i>Disposed of</i>	<i>Pending</i>	<i>Referred to DPP</i>
2011	23	23	-	Nil
2012	34	34	-	Nil
2013	339(of which 229 were transferred from Complaints Investigation Bureau)	261	78	Nil
2014	168	56	110	2
2015 (as at 25120 September)		59	54	7
<b>Total</b>	<b>288</b>	<b>115</b>	<b>164</b>	<b>9</b>

*Source:* National Human Rights Commission

25. A person unlawfully arrested or detained by other any person, including a Public Official, if also tortured by that other person or Public Official, can be entitled to compensation, not on account of the torture, but on account of the unlawful arrest. To this effect 5 civil cases related to alleged arbitrary/unlawful arrest had been lodged against the Police from 2009 to 2014 and damages amounting to Rs 13.5M were claimed. In cases settlement has been reached between the two parties for a total amount of Rs 625 000 and in the remaining 3 cases the Court decided in favour of the plaintiffs and awarded damages amounting to a total of Rs 174 180.

26. Also following a civil case entered by the dependants of one Mr R. Ramlogun against the State in 2006, an agreement was reached between the parties and the State paid an ex gratia amount of 7.5 million rupees in full and final satisfaction of the claim to the dependants. Mr Ramlogun died while he was in police detention.

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

27. Please refer to information under Article 9, paragraphs 53.0 and 54.0 of the Treaty Specific Document, on the preparation of a new legal framework to address the abusiveness and arbitrariness of the present system.

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

28. Section 32 of the Dangerous Drugs Act contained a restriction of bail in certain classes of cases. It, *inter alia*, provided that notwithstanding any other enactment, where a person is arrested or detained for an offence under the Act, that person shall not be admitted to bail until the final determination of the proceedings brought against him where he has already been convicted of any drug offence or he is arrested or detained whilst on bail in relation to a drug offence. However, in the case *State v. Khoyratty Abdool Rachid* (2006 MR 210), the Judicial Committee of the Privy Council ruled as unconstitutional the aforesaid provision. Subsequently, section 32 of the Dangerous Drugs Act was repealed by Act No. 30 of 2008.

29. Section 31 of the Dangerous Drugs Act related to *Detention for Drug Smuggling* provides that in certain specific cases a person arrested be detained in Police custody for period not exceeding 36 hours from his arrest, not to have access to any person other than a Police Officer not below the rank of an Inspector or to a Government Medical Officer. However, since the enactment of the Act, the above provision has never been applied in view of the stringent conditions imposed as safeguards, to wit.

30. Government has also set up a Commission of Inquiry on 14 July 2015, to be chaired by a former Judge of the Supreme Court, to inquire and report on all aspects of Drug Trafficking in Mauritius. The Commission will, *inter alia*, look into the adequacy of existing legislation, the operational effectiveness of the various agencies involved in the fight against drug trafficking and the adequacy of the existing resources, including human expertise technology and equipment, to detect and counter any attempt to introduce drugs in Mauritius.

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

31. Please refer to information under Article 9 of the Treaty Specific Document on Right to liberty- pre-trial detention, paragraphs 51.0-52.0

32. Refer also information submitted under recommendation 14, above.

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

33. Please refer to information under Article 11 of the Treaty Specific Document on Non-punishment on contractual obligations at paragraph 67.0.

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

34. Please refer to information under Article 13 on Aliens- Extradition of the Treaty Specific Document – paragraphs 78.0 to 87.0.

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

35. Please refer to information under Article 22 on Freedom of Association of the Treaty Specific Document, paragraphs 105.0 to 107.0.

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

36. A consultative meeting on the draft Report with all relevant stakeholders was held on 10 December 2015. The final version of the Report has incorporated the views and comments of the stakeholders.

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