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## List of abbreviations

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

## **Introduction**

1. This document is in line with the General Guidelines regarding the form and contents of periodic reports to be submitted by States parties (HRI/GEN/2/Rev.4)

## **I. Core document**

### **A. General information**

#### **1. Demographic, economic, social and cultural characteristics**

2. Mauritius is an island of 720 square miles found in the south-west of the Indian Ocean and has a population of about 1.2 million.
3. The economy is mainly based on export-oriented manufacturing (mainly textiles), sugar, tourism and services.
4. In the context of the policy of Government to maintain the welfare State, free health services are available to the population. Private clinics also exist to cater for the needs of those who choose to pay for their treatment. Education is free up to the secondary level whilst primary and secondary education is compulsory by law for all children up to the age of 16.
5. There is no State religion and the Government does not interfere with or restrict worship by any religious denomination. Freedom of religion as propounded in the Constitution is of special importance in view of the social fabric of Mauritian society which comprises elements of all races, cultures and religions.

#### **2. Constitutional, political and legal structure**

6. The island obtained its independence from the British in 1968. Her Majesty the Queen of Great Britain was the Head of State until 1992 when Mauritius adopted a republican status. There exists a parliamentary democracy led by a Prime Minister, assisted by a Cabinet consisting also of a Deputy Prime Minister and 18 Ministers. The Head of State is the President who is elected by a majority of all members of the Assembly on a motion made by the Prime Minister and whose functions include upholding and defending the Constitution and ensuring that the institutions of democracy and the rule of law are protected and the fundamental rights of all are respected.
7. The State of Mauritius holds fair and free national and local elections at regular intervals. These elections are supervised by an independent Electoral Supervisory Commission. 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 the elections in accordance with the First Schedule to the Constitution.
8. The Constitution of Mauritius, a written document bequeathed by an Order-in-Council of the British Government at the time of independence in 1968, rests on two fundamental tenets: the rule of law and the doctrine of the separation of powers. It is provided under section 1 of the Constitution that the Republic of Mauritius shall be a "sovereign democratic State". Fundamental rights and freedoms are expressly guaranteed under Chapter II of the Constitution which was largely inspired from the European Convention on Human Rights.

9. The Constitution being the “supreme law of the land”, it is the duty of the Supreme Court not only to interpret, but also to ensure obedience to, its provisions. It is up to the Supreme Court to determine the validity of any statute which is alleged to be unconstitutional because no law which contravenes the Constitution can be suffered to survive.
10. The Court’s primary concern in any case where a contravention of the Constitution is established is to ensure that such contravention is redressed as conveniently and expeditiously as possible.
11. The Constitution itself makes provision under section 17 for redress for any individual whose rights have been, are being or are likely to be contravened under Chapter II which ensures the protection of fundamental rights and freedoms of the individual (hereinafter referred to as ‘Chapter II Rights’).
12. Even where the law makes provision for disciplinary offences to be dealt with by certain tribunals or Service Commissions (by bestowing upon them special jurisdiction to that effect), decisions taken by such bodies are ultimately reviewable by the Supreme Court.
13. In addition to the normal channels of complaint through the police authorities, citizens of the Republic of Mauritius may have recourse to the office of the Ombudsman. The Ombudsman may investigate any act of maladministration which is alleged to have caused injustice to a member of the public.
14. The National Human Rights Commission set up by the Protection of Human Rights Act 1998 may enquire into any violation of the Chapter II rights of a person or any complaint made against a police officer. It may also visit any police station or other place of detention to examine the inmates’ living conditions and treatment and may review the safeguard provided by or under any enactment for the protection of human rights.
15. The judicial system in Mauritius is largely inspired by the British adversarial system of litigation. It consists of the Supreme Court, the Intermediate Court and the District Courts which all have jurisdiction in civil and criminal matters, and the Industrial Court. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. Industrial disputes arising from employer-employee contractual relations may also be resolved through conciliation by the Industrial Relations Commission or through voluntary or compulsory arbitration by the PAT (Permanent Arbitration Tribunal). There are also numerous specialist tribunals to determine specific disputes (fiscal, environmental, professional negligence etc.).
16. The Supreme Court is the principal court of original criminal jurisdiction. Criminal trials before the Supreme Court are held before a Presiding Judge and a jury consisting of nine persons, and relate to very serious offences such as murder and manslaughter. Provision is also made for the prosecution of certain offences, including offences involving drug trafficking under the Dangerous Drugs Act, before a Judge of the Supreme Court without a jury. The death penalty was abolished in 1995. The Supreme Court may inflict sentences of penal servitude for life or sentences for terms not exceeding 60 years where the law so provides.
17. In addition, under section 82 of the Constitution, the Supreme Court has jurisdiction to supervise any civil or criminal proceedings before any subordinate court and make such orders as it considers necessary. The Supreme Court also has an appellate jurisdiction.
18. The decisions of the appellate division are in turn subject to appeal to the Judicial Committee of the Privy Council on matters of great general or public importance, subject to the other conditions laid down in the Constitution.

19. The Chief Justice presides over the Supreme Court with the assistance of a Senior Puisne Judge and nine Puisne Judges. The Intermediate Court and District Courts are presided over by Magistrates. They deal with most criminal matters while the jurisdiction of these courts in respect of civil matters is subject to monetary thresholds.

20. Defendants have the right to retain private counsel of their choice. However, in certain circumstances where there are genuine financial constraints, a party may be granted legal aid upon making an application to the Court.

21. Mauritius has a strong and healthy legal profession consisting of barristers, attorneys and notaries (who do mainly conveyancing and handle legal matters relating to the formation of companies). Barristers may read law in Britain, France or at the University of Mauritius and are called to the Bar at one of the Inns of Court in London or, after passing the vocational examinations of the Council of Legal Education, in Mauritius.

22. One of the fundamental principles of the Mauritian legal system is the separation of powers. Accordingly, the power to make laws has been vested into Parliament exclusively and the Courts are not entitled to encroach upon or usurp such powers. Whereas the Courts do have the power to interpret laws passed by Parliament, they do have to respect the established principles of statutory and constitutional interpretation in doing so.

23. The power to grant rights is thus vested in Parliament exclusively. While the Courts have the power to interpret the ambit of those rights, which have been granted by the Constitution or by Parliament, they cannot create rights which do not exist under domestic law.

## **B. General framework for the protection of human rights norms**

### **1. Acceptance of international human rights norms**

24. Mauritius has signed and ratified most of the international human rights conventions.

#### **Universal Declaration of Human Rights**

25. Mauritius is committed to the Universal Declaration of Human Rights through its support for UN resolutions dealing with Human Rights that have time and again unanimously affirmed and reaffirmed the Declaration.

#### **Major United Nations human rights conventions**

26. Mauritius has ratified the six major human rights conventions that have been adopted by the General Assembly of the United Nations and signed the Convention on the Rights of Persons with Disabilities.

#### *International Covenant on Civil and Political Rights (ICCPR)*

27. The Human Rights Committee considered the fourth periodic report of Mauritius held on the 17 and 18 March 2005. The concluding observations of the Committee appear in CCPR/CO/83/MUS.

#### *International Convention on the Elimination of All Forms of Racial Discrimination 1966 (CERD)*

28. The Committee set up under the Convention considered the 3<sup>rd</sup> and 4<sup>th</sup> periodic reports of Mauritius submitted as one document in August 2000. The concluding observations of the Committee appear in 01/05/2001CERD/C/304/Add.106.

*Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*

29. The Committee set up under CEDAW considered the combined third, fourth and fifth periodic reports of Mauritius in August 2006. The concluding observations of the Committee appear in CEDAW/C/MAR/CO/5.

*Convention Against Torture and other Cruel, Inhuman or Degrading Treatment [CAT]*

30. The outstanding periodic reports are being finalised and shall soon be submitted for presentation before the Committee against Torture. Mauritius had the privilege of being visited by the Subcommittee on the Prevention of Torture from 10 to 18 October 2007; in fact, Mauritius was chosen by a drawing of lots as the first country to be reviewed by the Subcommittee under the Optional Protocol to the Convention.

*Convention on the Rights of the Child (CRC)*

31. The Committee on the Rights of the Child considered the second periodic report of Mauritius in January 2006. The concluding observations of the Committee appear in CRC/C/MUS/CO/2.

*Convention on the Rights of Persons with Disabilities (CRPD)*

32. Mauritius signed the CRPD on 25<sup>th</sup> September 2007. This Convention endeavours to elaborate in detail the rights of persons with disabilities and set out a code of implementation. Countries that join in the Convention engage themselves to develop and carry out policies, laws and administrative measures for securing the rights recognized in the Convention and abolish laws, regulations, customs and practices that constitute discrimination. As a change of perceptions is essential to improve the situation of persons with disabilities, ratifying countries are to combat stereotypes and prejudices and promote awareness of the capabilities of persons with disabilities.

*The African Charter on Human and Peoples' Rights*

33. Mauritius has also ratified the African Charter on Human and Peoples' Rights and is in the process of finalising the national periodic report as required under Article 62 of the African Charter.

*Conventions under the aegis of the International Labour Organization (ILO)*

34. Thirty-five ILO Conventions have also been subscribed to by Mauritius, including Conventions No. 182 on the Worst Forms of Child Labour, No. 138 on Minimum Age, No. 182 on the Worst Forms of Child Labour, No. 100 on Equal Remuneration, No. 111 on Discrimination (Employment and Occupation), and No. 159 on Vocational Rehabilitation and Employment (Disabled Persons). A number of those Conventions have been incorporated in domestic labour laws.

*The Rome Statute*

35. The Rome Statute providing for the setting up of the International Criminal Court and the exercise for the first time in legal history of international criminal jurisdiction against individuals for the worst crimes against humanity, was ratified in 2002. Implementing legislation is being finalised.

*The African Charter on the Rights and Welfare of the Child*

36. The African Charter on the Rights and Welfare of the Child was ratified in 1992.

## 2. Legal framework for the protection of human rights at national level

37. The State of Mauritius is fully committed to the protection of human rights within its boundaries and in its dependant territories. There exist under national law several mechanisms, which aim at ensuring that the fundamental human rights of the individual are fully respected and at providing redress to any victim of the violation of any such right.

### **The Constitution of Mauritius**

38. The Mauritian Constitution, which is the supreme law of the land, sets out in its Chapter II, entitled “Protection of fundamental rights and freedoms of the individual” a series of fundamental rights and freedoms ranging from the right to life to the freedom of religion and of thought.

39. These rights and freedoms have existed and shall continue to exist in Mauritius without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest.

40. Any citizen who believes that any provision of Chapter II has been, is being or is likely to be breached with respect to him may apply to the Supreme Court for redress under section 17 of the Constitution. The proviso to Section 17[2], however, renders the constitutional remedy one of last resort.

41. Our courts of law have generally adopted a wide and purposive interpretation of the Constitution:

*“There is ample authority for saying that a written Constitution should not be looked upon as an Act of Parliament, but rather as a charter or covenant which must be given a purposive interpretation”,*

*Duval v Seetaram [1991]*

### **The Protection of Human Rights Act 1998**

42. The Protection of Human Rights Act (the “PHRA”) came into force on 23 February 1999. Its aim is “to provide for the setting up of a National Human Rights Commission, for the better protection of human rights, for the better investigation of complaints against members of the police force, and for matters connected therewith or incidental thereto”. The Act defines “human right” as “any right or freedom referred to in Chapter II of the Constitution”.

43. Although it is generally acknowledged that Chapter II of the Constitution refers to civil and political rights, some of its provisions are of utmost relevance to economic, social and cultural rights. Thus the freedom of conscience, freedom of opinion and expression, freedom to establish schools ensure the blossoming of multiculturalism in Mauritius and allow for social harmony. Freedom of association enables workers to assert their economic rights. Protection from deprivation of property reassures investors, especially foreign ones and helps the economy to thrive. Protection from discrimination in Section 16 guarantees the enjoyment of all rights without distinction. Furthermore the right to life has also been interpreted in some cases as a right to live in dignity which would encompass the right to food, the right to clean water and protection from absolute poverty.

44. The National Human Rights Commission has therefore taken the view that it can also oversee the enjoyment of economic, social and cultural rights in so far as they feature in Chapter II of the Constitution. Chapter II of the Annual Report of the Commission for the year 2006 thus deals with “Economic, Social and Cultural Rights in Mauritius”.



### **The Sex Discrimination Act 2002**

45. The **Sex Discrimination Act** came into force on 8 March 2003. Its aim is “to provide for the elimination of all forms of gender discrimination and sexual harassment in certain areas of public activity”.

46. A Sex Discrimination Division was set up within the NHRC in 2003 to enquire into complaints of sex discrimination and sexual harassment.

47. The Act lists out the particular fields where sex discrimination is likely to arise, such as employment, or in relation to professions, trades or occupations, education, in the provision of goods, services or facilities, in accommodation, with respect to the disposal of property, in companies, partnerships or associations and clubs.

48. The Act further provides in section 6 for a reasonableness test to assess whether it is reasonable to impose a condition, requirement or practice which causes a disadvantage to a person of the opposite sex.

### **The Child Protection Act 1994**

49. The Child Protection Act (the “CPA”) came into force on 4 April 1995. Its aim is “to make better provision for the protection of children”. It provides for measures such as emergency protection orders where it is believed that a child is suffering or likely to suffer significant harm, or committal orders to a place of safety where children are ill-treated, neglected, abandoned, destitute, or otherwise exposed to harm.

50. The Child Protection Act also provides for offences such as ill treatment of children or causing children to be sexually abused, to have access to brothels or to engage in prostitution.

### **The Protection from Domestic Violence Act**

51. The Protection from Domestic Violence Act came into force in 1998 and has since known a series of amendments as and when exigencies required. It adopts the widest definitions so as to provide for maximum protection. For instance, “domestic violence” is defined so as to encompass a whole range of situations from physical injury to intimidation and harassment to brutality and cruelty. “Child” includes any biological, adopted, step or foster child.

### **Case law**

52. The Supreme Court has consistently given as wide and purposive an interpretation as it can to fundamental human rights, so as to afford maximum protection where warranted.

53. Instances of the above are many. In the case of *Philibert & ors v State* (2007) SCJ 274, the Full Bench of the Supreme Court declared that Section 222[1] of the Criminal Code and Section 43[1] of the Dangerous Drugs Act 2000 as they read prior to the amendment effected by Act 6 of 2007 contravened Section 7[1] of the Constitution in as much as the mandatory imposition of a term of 45 years’ penal servitude contravened the principle of proportionality and amounted to “inhuman or degrading punishment or such other treatment” contrary to Section 7[1] of the Constitution. The Court went on to state that the said provisions could be read down to provide for the mandatory sentence laid down therein to be construed as a maximum sentence.

54. The Supreme Court in the case of *Wadud v State* [1999] SCJ 187 overruled a previous judgment of 1997 (vide *State v Coowar* [1997 MR 123].) in which the Court had held that the constitutional right of a detainee to be informed of his right to consult a lawyer

is absolute, even if the Police are admittedly under a legal obligation to inform him of his right to counsel. In the case of Wadud, reference was made to a Privy Council case and it was held that the right to be informed of the right to consult was not an absolute one. The nature of a particular constitutional guarantee and the nature of a particular breach should be borne in mind.

55. Therefore, case law can be considered a 'source' of human rights in Mauritius only inasmuch as it provides for an interpretation of the ambit of the rights, which have already been conferred, by the Constitution or other existing legislation. Any reform to the existing system of protection of human rights or any project to widen the ambit of the protection already afforded would therefore necessarily have to be undertaken by Parliament.

### **3. Framework within which human rights are promoted at the national level**

#### **The National Human Rights Commission (HRHC)**

56. The National Human Rights Commission set up under the Protection of Human Rights Act 1998 may enquire into any violation of the Chapter II rights of a person or any complaint made against a police officer. It may also visit any police station or other place of detention to examine the inmates' living conditions and treatment and may review the safeguard provided by or under any enactment for the protection of human right.

57. Its members are appointed by the President of the Republic on the advice of the Prime Minister. The Chairperson (who is a former Judge of the Supreme Court) sits with three members within the Commission and the same Chairperson sits with two other members within the Sex Discrimination Division. This Division deals with complaints of sex discrimination and sexual harassment in both public and private sectors.

#### **The Office of the Ombudsperson**

58. The Constitution creates the office of the Ombudsman which is a public one. The Ombudsman is vested with the power to investigate any action by such officers or authorities as Government departments, the Police Force and members thereof, the Mauritius Prisons Service, authorities responsible for determining the persons with whom contracts are to be entered into by Government, local authorities and their members in the exercise of their respective administrative functions, where a member of the public claims or appears to the Ombudsman to have sustained injustice in consequence of maladministration in connection with the said action.

#### **The Complaints Investigation Bureau (CIB)**

59. The Complaints Investigation Bureau (the "CIB") was set up in October 1999 to enquire into complaints made by members of the public against the police. It is the only organ of the Police Department vested with the authority and responsibility to enquire into complaints against the police force. Although the CIB operates under the supervision and in accordance with the directives of the National Human Rights Commission, it remains under the administrative control of the Commissioner of Police. Government is currently considering the setting up of an independent Police Complaints Commission in replacement of the CIB with a view to having a transparent and impartial approach to cases of complaints of police brutality.

#### **Ombudsperson for Children**

60. The Ombudsperson for Children Act (the "OCA") came into operation on 20 November 2003. It provides for the establishment of the office of Ombudsperson for Children to ensure that the rights, needs and interests of children are given full

consideration by public bodies, private authorities, individuals and associations of individuals, to promote the rights and interests of children, and to promote compliance with the Convention on the Rights of the Child. The Ombudsperson for Children also inter alia investigates complaints made by a child in relation to any breach of the rights of a child.

### **The Human Rights Centre**

61. The recently inaugurated Human Rights Centre [situated opposite the Supreme Court] which operates under the aegis of the Ministry of Human Rights aims at being the main forum for the promotion of Human Rights in Mauritius. The Centre will also act as a channel for information and aims at making the public aware of existing institutions and laws so that they may better enforce their human rights. (Further information on the Human Rights Centre is provided at paragraph 577).

### **The Law Reform Commission (LRC)**

62. The **Law Reform Commission Act 2005** which repeals and replaces the former Law Reform Commission Act came into operation on 10 January 2006. It establishes the Law Reform Commission ("the Commission") of which the main functions are to make recommendations – accompanied by a draft Bill whenever applicable and practicable - for the reform and development of the law and to advise the Attorney- General on the ways in which the laws of Mauritius can be made as accessible as is practicable. The Commission shall also prepare and submit to the Attorney- General, at least once a year, a programme for the review of specified aspects of the law of Mauritius with a view to their reform or development.

63. The Attorney-General may, at any time, request the Commission to examine any aspect of the law of Mauritius, and the Commission shall review that aspect of the law accordingly and report to the Attorney- General thereon with its recommendations.

## **4. Other related human rights information**

### **Right to development**

64. Though the Mauritian Constitution does not provide for a specific right to development, the following laws may be considered to be in line with the Millennium Development Goals and the Right to Development.

65. The **Planning and Development Act 2004** (not yet fully in force) which aims at modernising town and country planning and makes comprehensive provision with respect to land use planning and development in Mauritius.

66. The **Convention on Social Security Act** which provides for the Convention on Social Security, which was signed on 22 April 1981 between the Government of Mauritius and that of the UK, to have force of law in Mauritius.

67. The **Government Guarantees (Development Purposes) Act** where the Government provides guarantees for the repayment of any money borrowed by a Mauritian for development purposes i.e. promoting the economic development of Mauritius.

68. The **Government Social Welfare Centres Act** establishing the Social Welfare Committee to manage the Social Welfare Centres.

69. The **Human Resource Development Act** establishing the Human Resource Development Council to advise the Government, amongst others, on human resource development policies and strategies.

70. The Investment Promotion Act 2000 establishing the Board of Investment to stimulate the development of the Mauritian economy and promoting Mauritius as an international investment business and service centre and to formulate investment policies and the Act also provides the procedure for the application of investment certificates.
71. The Mauritius Industrial Development Authority Act establishing the Authority to develop and operate industrial sites and estates to promote the export of goods and services from Mauritius and to advise the Government on all matters relating to export promotion, amongst others.
72. The Mauritius Oceanography Institute Act establishing the Institute to foster interest in research and development in relation to oceanography and to advise Government on the formulation and implementation of policies and programmes, amongst others.
73. The Removal of Sand Act concerning the regulation of sand quarries.
74. The Mauritius Research Council Act establishing the Council to advise Government and to foster research and development in all spheres of scientific, technological, social and economic activities.
75. The Mauritius Sugar Industry Research Institute Act establishing the Institute to promote by means of research and investigation, the technical progress and efficiency of the sugar industry.
76. The **Mauritius Tourism Promotion Authority Act** establishing the Authority to promote Mauritius as a tourist destination.
77. The National Productivity and Competitiveness Council Act establishing the Council to stimulate and generate productivity and quality consciousness in all sectors of the economy.
78. The Road Development Authority Act establishing the Authority which shall be responsible for the construction, care, maintenance and improvement of motorways and main roads.
79. The Waste Water Management Authority Act establishing the Authority which shall be responsible for waste water management in Mauritius.
80. The **Wildlife and National Parks Act** establishing, inter alia, the Advisory Council to advise Government on any matter relating to wildlife, national parks and conservation generally.
81. The National Women Entrepreneur Council Act establishing the Council to promote entrepreneurial activities of women and the National Women's Council Act establishing the Council to assist in the implementation and evaluation of Government Policies relating to the needs of women.
82. The Noise Prevention Act which provides that an authority (i.e. a municipal or a district council) may make regulations against noise prevention.
83. The Outer Islands Development Corporation Act establishing the Corporation which shall be responsible for advising Government on the development of such activities as may lead to a more economic exploitation of the outer islands.
84. The Patents, Industrial Designs and Trademarks Act establishing the Industrial Property Office to investigate any allegation of an industrial property offence. The Copyright Act provides for protection of works.
85. The Protection against Unfair Practices (Industrial Property Rights) Act ensuring criminal and civil liability for unfair practices.

86. The **Fair Trading Act** criminalising prohibited consumer trade practices and providing for powers of inspection of any premises for the purpose of trade.

87. The **Computer Misuse and Cybercrime Act** regulating the unauthorised access to computer data and electronic fraud.

### **Right to a clean and decent environment**

#### *Legislative framework*

##### Environment Protection Act (EPA) 2002

88. The EPA 2002 is the main environmental legislation. The underlying principles of this legislation are the protection of the environment and human health. It provides for:

- (a) The protection and management of the environmental assets of Mauritius so that their capacity to sustain the society and its development remains unimpaired;
- (b) Ensuring harmony between quality of life, environmental protection and sustainable development for the present and future generations;
- (c) The legal framework and the mechanism to protect the natural environment;
- (d) Planning for environmental management and coordination of the inter-relations of environmental issues.

##### Environmental Stewardship

89. An important concept put forward by the EPA 2002 is Environmental Stewardship, which puts a duty on each and every citizen of Mauritius to preserve and enhance the quality of life by caring responsibly for the natural environment.

##### Environmental Impact Assessment

90. In order to mitigate environmental impacts resulting from developments taking place throughout the island, the EPA 2002 warrants an Environmental Impact Assessment (EIA) licence or a Preliminary Environmental Report approval for scheduled undertakings. These licences are granted after carefully evaluating all possible impacts and the means of mitigation. This mechanism is an important tool to ensure a sound and sustainable environment.

91. The EPA provides for an appellate mechanism; the Environment Appeal Tribunal hears and determines appeals made by persons aggrieved by the decision of the Minister.

##### Environment Protection Fee (EPF)

92. The EPA makes provision for a green tax based on the “Polluter Pays Principle” (PPP). The Environment Protection Fee is the first step in the phased introduction of the PPP and was introduced in 2000. The EPF is presently levied on hotels, boarding houses and the stone crushing industry and will be extended to other sectors in the future.

93. The EPA is presently in the process of being amended to make it more responsive to the challenges being posed by the new economic architecture and to ensure corporate environmental ethics.

##### Standards and regulations

94. The EPA also provides for the formulation of regulations and standards pertaining to protection of the environment. A series of regulations and standards have been made;

including standards for drinking water quality, noise, air and regulations for discharge of effluent. In 2005, regulations providing for the declaration of 41 other enactments or part of enactments as environmental laws were made to enable use of the enforcement mechanism under the EPA. A few examples of environmental laws are the Ground Water Act, the Fisheries and Marine Resources Act and the Noise Prevention Act.

#### Other laws

95. Apart from the EPA, there are other sectoral legislations, which deal with environmental issues, such as the Local Government Act for solid waste management, the Planning and Development Act for land use issues and the Public Health Act for environmental nuisances and sanitation.

#### Institutional set-up

96. The EPA provides for the setting up of the institutional framework and other organizational system for managing the environment. The Ministry of Environment, through its Technical Department of Environment, maintains the primary responsibility of ensuring environmental protection, planning, monitoring, coordination and awareness-raising.

97. The National Environment Commission is the supreme environmental body chaired by the Prime Minister and comprising of all the Ministers dealing with environmental protection. It is the highest policy-making body mandated to monitor and review the work of public departments dealing with environment and make recommendations accordingly.

98. The Environment Coordination Committee (ECC) is steered by the Ministry of Environment. Public departments and enforcing agencies dealing with environmental protection meet in this platform to ensure that environmental laws, including standards, and policies are being complied with. The committee also advises the Minister on matters relating to pollution control measures and codes of practice for environmental protection.

99. The Environmental Liaison Officers (ELO) meeting, provided for under the EPA, ensures coordination among Enforcing Agencies for enforcement of environmental laws.

100. The national network for sustainable development under the chairmanship of the Minister of Environment and comprising of representatives from the public sector, private sector, parastatal bodies, NGOs, academia, acts as a forum for discussions and consultations on environmental policies and plans, quality & state of the environment, integrated pollution prevention and control, built-up environment and visual pollution in order to protect the environment and to achieve sustainable development.

101. The National Environment Fund is one of the co-funding mechanisms established under the EPA 2002 to fund projects, promote environmental education and research, support environmental NGOs and encourage local initiatives amongst others for the benefit of environment.

#### Environmental policies

102. The present policies for environmental management are contained in several documents such as the National Environment Policy (NEP) of 1991, the National Environmental Strategies (NES) of 1999 and other sectoral plans. The NES, which is a 10-year planning framework for environmental management, was commissioned to meet the challenges of changing production and consumption patterns which result as a consequence of economic growth. The 1991 policy has been reviewed into the draft White Paper on new National Environment Policy. The NES is under review to include emerging environmental concerns and the implementation of multilateral environmental agreements.

103. The NEP of 1991 sets out the principle that the Government shall ensure that there exists an appropriate legislation, enforcement and judicial mechanism, which guarantees to the citizens protection from the risks associated with pollution. It also fosters the “Polluter Pays Principle” in that the polluter must pay for the cost of cleaning up the pollution.

104. The National Environment Policy is now being reviewed in order to have a consolidated comprehensive policy statement. The need for this new policy is driven foremost by the fact that Sustainable Development is recognised as the dominant development paradigm in the present global context. This environment policy framework, anchored in the concept of SD will incorporate the relevant recommendations of the various global conferences on environment [Rio Earth Summit (1992), Millennium Development Summit (2000), Johannesburg World Summit (2002) and Mauritius International Meeting on Small Island Developing States (2005)]. Emphasis is being laid on improving environmental governance:

1. Improved access to information (public information centre, raised level of awareness across all stakeholders groups, websites, early warning in case of disasters such as tsunami/oil spills).
2. Enhanced public participation in decision making (e.g. comments during EIA process and environmental standards/ policy/ strategy development/ ICZM Committee).
3. Strengthened enforcement (including decentralisation to local authorities, empowerment of enforcing agencies, recourse to Ombudsperson).
4. Innovative Enforcement mechanisms like fixed penalties.
5. E-Government Services (online environment complaints).
6. Access to justice (e.g. Redress in court).
7. Liability and compensation in case of spills and environmental emergencies.
8. Adaptation measures with regard to the impact of climate change in all spheres of economic and social activities.

## C. Information on non-discrimination and equality and effective remedies

### Convention on the Rights of Persons with Disabilities

105. Government is committed to upholding and applying the provisions of the UN Convention on the Rights of Persons with Disabilities. In this context, a Steering Committee under the aegis of the Ministry of Social Security and National Solidarity is looking into the implementation of the Convention and is organising activities to raise awareness on this issue, with a view to proceeding with ratification of the Convention at the earliest.

### The Constitution of Mauritius

106. **Section 3 of the Constitution entitled: “Fundamental rights and freedoms of the individual”** reads:-

*It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms:*

(a) *The right of the individual to life, liberty, security of the person and the protection of the law;*

(b) *Freedom of conscience, of expression, of assembly and association and freedom to establish schools; and*

(c) *The right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,*

*and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.*

107. **Section 16 of the Constitution entitled “Protection from discrimination” reads:**

(1) *Subject to subsections (4) (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.*

(2) *Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.*

(3) *Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.*

(4) *In this section, “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.*

(5) *Subsection (1) shall not apply to any law so far as that law makes provision:*

(a) *For the appropriation of revenues or other funds of Mauritius;*

(b) *With respect to persons who are not citizens of Mauritius; or*

(c) *For the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description.*

(6) *Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, caste, place of origin, political opinions, colour, creed or sex) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local authority or any office in a body corporate established directly by any law for public purposes.*

(7) *Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).*

(8) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question*



*makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13, 14 and 15, being such a restriction as is authorised by section 9(2), 11(5), 12(2), 13(2), 14(2) or 15(3), as the case may be.*

*(9) Subsection (2) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.*

## **The Sex Discrimination Act 2002**

108. The **Sex Discrimination Act 2002** came into force on 8 March 2003 and is designed “to provide for the elimination of all forms of gender discrimination and sexual harassment in certain areas of public activity”. The Act prohibits discrimination in employment: no employer is allowed, in relation to recruitment, selection or employment, to discriminate on the grounds of sex, marital status, pregnancy or family responsibility. Discrimination in education, in accommodation, in the disposal of property, in companies and partnerships, in clubs is strictly prohibited under the provisions of the Sex Discrimination Act.

109. In addition, the **Sex Discrimination Act 2002** in its Part IV also penalizes acts of sexual harassment (defined as unwelcome sexual advances, unwelcome requests for sexual favours, and unwelcome conduct of a sexual nature). In particular, no employer may sexually harass an employee or a job seeker, no employee may harass a fellow employee, no staff of an educational institution may sexually harass a colleague or a student.

110. The Sex Discrimination Division of the National Human Rights Commission is empowered to receive and enquire into any written complaint relating to alleged infringements of the Sex Discrimination Act. The functions of the Division also include promoting the understanding and application of the Act.

111. The Non-Citizens (Employment Restriction) Regulations have been made in 2001 regarding non-citizens married to Mauritians so that they are now exempted from the need to obtain a residence permit.

112. **Section 3 (1) of the Social Aid Act** provides that a person who, as a result of:

*Any physical or mental disability;*

*Any sickness or accident certified by an approved medical practitioner;*

*Abandonment by his spouse; or*

*Any sudden loss of employment which has lasted continuously for not less than 6 months, is temporarily or permanently incapable of earning adequately his livelihood and has insufficient means to support himself and his dependants,*

*Shall be qualified to claim social aid.*

113. **Section 4 of the Training and Employment of Disabled Persons Act** provides for a Board which shall prevent discrimination against disabled persons resulting from or arising out of their disability; amongst others. *Please refer to comments on article 15.*

114. **Section 3 of the Society for the Welfare of the Deaf Act** provides for the objects of the Society which shall aid, train and educate all deaf persons; assist deaf persons in obtaining medical treatment and suitable employment; grant deaf persons any material relief of which they may be in need; and erect, open and manage training centres, schools and hostels.

115. **Section 3 (1) of the Unemployment Hardship Relief Act** provides that every person under the age of 60, who is unemployed, has a wife or a child or who is a disabled

person, satisfies the prescribed conditions relating to residence; and whose resources are insufficient to meet his requirements, shall be qualified to claim hardship relief.

116. The Ministry of Social Security which is also responsible for the subject of national solidarity and senior citizens has undertaken a host of measures with regard to the protection and welfare of the elderly and disabled persons.

117. Moreover, persons aged 60 and above benefit from a pension from Government. Pensioners and disabled persons as well as students during school hours are also eligible for free bus transport.

118. **The Trust Fund for Soroptimist Day Care Centres for the Elderly Act** was enacted in 2004 to set up a Trust Fund to establish and operate day care centres to provide day care, nursing and other services to the elderly and promote the welfare of the elderly generally.

119. **The Protection of Elderly Persons Act** was passed in 2005; the object of the Act is to set up a legal and administrative framework to ensure that adequate protection and assistance are made available to elderly persons in Mauritius and Rodrigues. The Act makes provision for the creation of the following institutional mechanisms to, inter-alia, ensure, promote and sustain the physical, physical, emotional, social, cultural and economic protection of elderly persons:

- A Protection of the Elderly Network
- A Monitoring Committee for the Elderly
- An Elderly Person's Protection Unit
- Elderly Watch for different regions of Mauritius

#### **The Lois Lagesse Trust Fund and The Mauritius Union of the Blind**

120. Lois Lagesse Trust Fund and the Mauritius Union of the Blind provide training for persons with disabilities in Mauritius. The Lois Lagesse Trust Fund caters for people with visual disability in Mauritius. Its main objective is to educate, train and seek employment for them. It runs a Primary School and a pre-primary unit, and a programme to identify and rehabilitate disabled persons through home visits. It provides equipment and mobility aids (white canes). It runs a sheltered workshop where persons with visual disability are involved in basketry and canework. Other services include training in mobility and orientation, guidance and counselling, job placement, home visits and talking library. It also runs a Resource Centre on visual impairment.

121. Mauritius Union of the Blind runs a school for persons with visual disability. It also runs a unit in a mainstream school and prepares visually impaired children and adults to integrate society by providing them with training in mobility, orientation, daily living skills and education. The Union is also involved in sports and cultural activities.

#### **General policies**

122. The Ministry of Social Security and National Solidarity also provides for 5,000 inmates of charitable institutions, disabled children attending special schools and elderly persons aged 90 and above to be vaccinated against influenza. In addition, this year, persons aged 65 and above will also be vaccinated. In this context, the Ministry is purchasing 45,000 vaccines.

123. One of the objectives of Government as per Government Programme 2005 – 2010 is to promote the concept of an inclusive society so that persons with disabilities are better

integrated in the mainstream of society. To achieve this goal, a host of measures are being taken.

#### *Pensions and allowances*

124. In line with the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities which stipulate that States should ensure the provision of adequate income support to persons with disabilities, a wide range of pensions and allowances are provided to disabled persons. These include the Basic Invalidity Pension, Social Aid where it is applicable and Carer's Allowance to those who are severely disabled.

#### *Assistive devices*

125. With a view to enhancing the mobility of disabled persons, a host of devices like wheelchairs and hearing aids are provided to those in need.

#### *Education*

126. To create an inclusive society, it is important that children with disabilities benefit from education on the same level as non-disabled children.

127. In this context, the Ministry of Education and Human Resources has come up with a Strategy Paper on Inclusive Education. Efforts are being made to integrate more and more disabled children in mainstream schools.

128. At the level of the Ministry of Social Security, incentives are provided to children with disabilities to pursue secondary and tertiary studies. For example, they benefit from a scholarship scheme known as the François Sockalingum Award.

129. Furthermore, to encourage parents to send their disabled children to schools, bus fares of children are refunded if they travel by special means of transport. In case they are accompanied, the bus fare of the accompanying parent is refunded too. For those who travel by ordinary means of transport, free bus passes are provided.

130. The target is to enable the maximum number of children with disabilities to study in mainstream institutions. Those who are severely disabled will continue to attend special schools run by NGOs.

#### *Training and employment*

131. A cornerstone of Government's policy is to empower persons with disabilities. One way of doing so is to provide quality training to disabled persons so that they can access the labour market and join the world of work. This will enable them to become self-reliant. They can earn a living and lead an independent life.

132. In this context, a Memorandum of Understanding has been signed between the Training and Employment of Disabled Persons Board and the Industrial and Vocational and Training Board (IVTB). The latter has agreed to open its training institutions to disabled persons who will benefit from the same kind of training as non-disabled persons. Employers will also be sensitised on the need to provide job opportunities to trained disabled persons.

133. Steps are also being taken to make the civil service more disabled-friendly.

134. On the other hand, micro-credit facilities will be provided to encourage disabled persons to be self-employed.

*Accessibility*

135. No integration can be effective without making public buildings and places accessible to persons with disabilities.

136. In this context, regulations have been made under the Building Act to make new public buildings accessible to disabled persons. A workshop will be held soon to enhance awareness of those regulations among all professionals concerned.

137. Necessary amendments will be made to the relevant legislations to make roads and pavements more accessible to the disabled.

138. Accessibility also means access to information. In this context, a Mauritian Sign Language (MSL) is being developed. News on TV is being signed for the benefit of deaf citizens.

*Sports, culture and leisure*

139. The talents of persons with disabilities have to be developed. In this context, it is proposed to set up a national troupe of artists with disabilities.

140. Disabled persons should also have access to leisure activities. In this context, apart from holiday camps, there will be special programmes for disabled persons in hotels, parks, shopping centres, etc. Activities will also be organised in collaboration with the Ministry of Tourism and Leisure.

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