Your Excellency,

In compliance with Section 11 of the Protection of Human Rights Act 1998 I have the honour to submit to you the Annual Report of the National Human Rights Commission of Mauritius for the period 1 January 2016 to 31 December 2016.

Yours faithfully,

Dheerujlall B. Seetulsingh, S.C.
Chairman
# THE NATIONAL HUMAN RIGHTS COMMISSION

## COMPOSITION

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<thead>
<tr>
<th>Position</th>
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<tr>
<td><strong>Chairperson</strong></td>
<td>Mr. Dheerujlall Baramlall <strong>SEETULSINGH, S.C.</strong></td>
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<td><strong>Human Rights Division</strong></td>
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<tr>
<td>Deputy Chairperson</td>
<td>Vacant</td>
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<tr>
<td>Members (Part time)</td>
<td>Mrs. Rosemary Elizabeth Winifred <strong>ANODIN</strong></td>
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<td>Mr. Samioullah <strong>LAUTHAN</strong></td>
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<td><strong>Police Complaints Division</strong></td>
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<td>Deputy Chairperson</td>
<td>Mrs. Marie Lourdes Lee Ying <strong>LAM HUNG</strong></td>
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<td>Members (Full time)</td>
<td>Dr. Satiss <strong>GOWRY</strong></td>
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<td>Mrs. Marie Desirée Ariane <strong>OXENHAM</strong></td>
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<td><strong>National Preventive Mechanism Division</strong></td>
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<tr>
<td>Deputy Chairperson</td>
<td>Mr. Hervé <strong>LASSEMIllANTE</strong></td>
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<tr>
<td>Members (Part time)</td>
<td>Mrs. Anishta <strong>BABOORAM-SEERUTTUN</strong></td>
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<td>Mr. Vijay <strong>RAMANJOOLoo</strong></td>
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<td><strong>Secretary to the Commission</strong></td>
<td>Mr. Geandave <strong>GUKHOOL</strong></td>
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<tr>
<td>CHAPTER</td>
<td>TITLE</td>
</tr>
<tr>
<td>-----------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>CHAPTER I</td>
<td>INTRODUCTION</td>
</tr>
<tr>
<td>CHAPTER II</td>
<td>HUMAN RIGHTS DIVISION</td>
</tr>
<tr>
<td>CHAPTER III</td>
<td>POLICE COMPLAINTS DIVISION</td>
</tr>
<tr>
<td>CHAPTER IV</td>
<td>NATIONAL PREVENTIVE MECHANISM DIVISION</td>
</tr>
<tr>
<td>CHAPTER V</td>
<td>PROMOTION OF HUMAN RIGHTS</td>
</tr>
<tr>
<td>CHAPTER VI</td>
<td>RODRIGUES</td>
</tr>
</tbody>
</table>
# LIST OF ANNEXES

<table>
<thead>
<tr>
<th>ANNEX I</th>
<th>Human Rights Division Statistics 2016 (Subjects)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANNEX II</td>
<td>Human Rights Division Statistics 2016 (Respondents)</td>
</tr>
<tr>
<td>ANNEX III</td>
<td>Police Complaints Division Statistics 2016</td>
</tr>
<tr>
<td>ANNEX IV</td>
<td>National Preventive Mechanism Division Statistics 2016</td>
</tr>
<tr>
<td>ANNEX V</td>
<td>Sensitization Campaign 2016 Citizens Advice Bureaux</td>
</tr>
<tr>
<td>ANNEX VI</td>
<td>Judicial Committee of the Privy Council Decision in ID Case</td>
</tr>
<tr>
<td>ANNEX VII</td>
<td>Global Alliance of National Human Rights Institutions (GANHRI) Conference March 2016 – Closing Statement</td>
</tr>
<tr>
<td>ANNEX VIII</td>
<td>The Robben Island Guidelines</td>
</tr>
<tr>
<td>ANNEX IX</td>
<td>List of Human Rights Treaties to which Mauritius is a party</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

1.1 The National Human Rights Commission (the NHRC) was set up in April 2001 under the Protection of Human Rights Act 1998 to deal with violations of human rights listed in Chapter II of the Constitution of Mauritius. Such rights concern civil and political rights. Chapter II follows closely the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1951. As Mauritius was a British Colony the Constitution was drafted by English experts with the assistance of Mauritian Lawyers and was promulgated by an Order in Council in the United Kingdom. This was the pattern followed in many former British Colonies when they were granted independence last century. Chapter II of the Constitution has remained largely untouched for many years. This has been to the advantage of Mauritius especially as concern the rule of law, the respect for human rights and the security of foreign or local investment which have ensured political stability and economic progress in the country under successive governments with regular, free and fair elections.

1.2 In 2002 by virtue of a Sex Discrimination Act, a Sex Discrimination Division (SDD) was set up within the NHRC to deal specifically with sex discrimination and sexual harassment. Section 16 of the Constitution in its Chapter II deals with discrimination on the ground of sex which was therefore already within the purview of the NHRC. Interestingly enough, the original Section 16 of the Constitution bequeathed by the British in 1968 did not contain the word ‘sex’ whereas it defined ‘discriminatory’ as “affording different treatment to different persons attributable mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed”. The additional ground ‘sex’ was only added in 1995.

1.3 In 2011 an Equal Opportunities Commission (EOC) was set up under the Equal Opportunities Act to deal with discrimination generally on the ground of ‘status’ defined as “age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex, or sexual orientation”, thus going beyond what was provided in the Constitution. The jurisdiction of the Sex Discrimination Division of the NHRC was transferred to the EOC.

1.4 In 2003 was also set up in Mauritius the Office of the Ombudsperson for Children to -
(a) ensure that the right, needs and interests of children are given full consideration by public bodies, private authorities individuals and associations of individuals,
(b) promote the rights and best interests of children;
(c) promote compliance with the Convention of the Rights of the Child.

1.5 The Ministry of Gender Equality, Child Development and Family Welfare caters equally for children and women. It has within its structure a Child Development Unit to protect children and a Family Welfare and Protection Unit which deals with complaints
regarding domestic violence.

1.6 There is also created under Chapter IX of the Constitution the Office of the Ombudsman who is empowered to “investigate any action taken by any officer or authority (department of Government, Police, Prisons, Local Authorities) in the exercise of their administrative functions, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken.” Thus the Ombudsman may entertain complaints from detainees in prison or police cells.

1.7 When Mauritius acceded to the Optional Protocol to the Convention against Torture in 2005, the NHRC was entrusted with the functions of a National Preventive Mechanism to ensure that detainees were treated according to international human rights standards.

1.8 In 2012 important changes were made to the structure of the NHRC, whereby 3 Divisions were created –

(1) A Human Rights Division,
(2) A Police Complaints Division,
(3) A National Preventive Mechanism Division

The Human Rights Division (HRD) would deal with alleged violations of rights set down in Chapter II of the Constitution. As from 2013, following an amendment to the Criminal Appeal Act, the HRD is empowered to conduct enquiries into criminal convictions at the level of the Supreme Court to see if sufficient fresh and compelling evidence has come to light which would justify a reference by the HRD to the Court of Criminal Appeal for a review of the proceedings relating to the conviction. Such cases have been set out in previous Annual Reports.

1.9 In July 2016 the National Assembly enacted an Independent Police Complaints Commission Act to create a body corporate of the same name (IPCC). The Protection of Human Rights Act is amended by deleting all reference to the Police Complaints Division and the Police Complaints Act of 2012 is repealed. It is provided that the new Act shall come into operation on a date to be fixed by Proclamation and that the contract of the Deputy Chairperson and members of the Police Complaints Division shall, at the commencement of the Act be terminated. The new Act has not yet been proclaimed.

1.10 The Ministry of Social Security has the responsibility for the welfare of persons with disabilities and monitors compliance with the Convention on the Rights of Persons with Disabilities. Important issues are access to buildings and other places, the training and employment of persons with disabilities and their integration into society.

1.11 The Ministry of Social Integration and Economic Empowerment is entrusted with the onerous task of alleviating poverty, especially absolute poverty and is a major player in the attainment of the Sustainable Development Goals. The Social Integration and Empowerment Act of 2016 consolidates the powers of the Ministry and the National Empowerment Foundation to promote, within the philosophy of enhancing social justice and national unity, social integration and empowerment of persons living in
absolute poverty.

New Laws concerning Human Rights in 2016

1.12 The Police were allowed to set up a trade union by virtue of the Police (Membership of Trade Union) Act 2016. The measure preventing the Police Force from having a trade union was a lawful one as provided in Section 13(2) of the Constitution. Police Officers had lodged a case in Court challenging the Constitutional prohibition. The authorities decided to allow the Police to unionize.

1.13 The Constitution was amended in 2016 to allow for a more balanced gender representation in the Rodrigues Regional Assembly, compelling parties to field more women candidates for election in local regions. Provision was also made for better proportional representation of political parties following elections to the Assembly.

1.14 The amendment to Section 123 of the Road Traffic Act in 2016 allowed the Police to detain a driver driving under the influence of alcohol until he could be deemed fit to drive a vehicle -

(1) A person required to provide a specimen of breath shall, upon the breath test showing alcohol in excess of the prescribed limit, or upon a refusal to submit to such a test, be detained at a police station until it appears to the police officer that, were that person then driving or attempting to drive a motor vehicle on a road or other public place, he would not be committing an offence under section 123D, 123E or 123F.

1.15 The Prevention of Terrorism Act was further strengthened in 2016 to provide for control orders to be issued by a Judge in Chambers to protect the public from an act of terrorism and to allow for the use of electronic and technical devices for the purpose of intelligence gathering and surveillance in relation to offences linked to terrorism, following an order from a Judge in Chambers.

International Framework

1.16 The NHRC continued to be a member of -

(1) The Global Alliance of National Human Rights Institutions (GANHRI) based in Geneva;

(2) The regional Network of African National Human Rights Institutions (NANHRI) based in Nairobi;

(3) The Association Francophone des Commissions Nationales des Droits de L'Homme (AFCNDH);


Membership of the different bodies enables NHRI to exchange knowledge of best practices and to develop better skills in dealing with novel issues like Business and Human Rights.
Regular meetings help to consolidate NHRI globally, on the Continent where they belong, in the Commonwealth family and in the Francophone world.

1.17 As early as 2002 the NHRC was accredited as an ‘A’ status institution with the International Coordination Committee of NHRI (now GANHRI). The NHRC was reaccredited as an ‘A’ status NHRI in 2015. Compliance with the Paris Principles remains an essential requirement for accreditation. The elements of impartiality, integrity and independence are under constant scrutiny. The allocation of sufficient financial resources to enable NHRI to operate independently remains a live issue.

Complaints against Parastatal Bodies

1.18 The NHRC receives complaints against parastatal bodies which are connected with maladministration rather than with violations of human rights. It is suggested that there should be set up in Mauritius an Ombudsman for parastatals to consider such complaints. Otherwise the jurisdiction of the existing Ombudsman could be extended to entertain such complaints.

Electoral Reform

1.19 The reform of the electoral system continues to be a live issue. There is no agreement on the abolition of the Best Loser System provided for in the First Schedule to the Constitution and no consensus as yet on the type of proportional representation that may be introduced.

LGBT Rights

1.20 Mauritians have come to acknowledge the existence of an LGBT community and the fact that they are entitled to enjoy rights.

Rights of Older Persons

1.21 The authorities have done their utmost to promote the rights of older persons. Mauritius is a country which grants Old Age Pension to those over 60 and allows them free transport.

Drugs Court

1.22 The proposal to set up an independent Drugs Court within the criminal justice system is being reiterated in view of the proliferation of drugs due to trafficking and importation.
Speedy trials would probably act as a deterrent.

**Police des Polices**

1.23 The NHRC has also made recommendations in the past for better policing and disciplining of police officers within police administration. It is essential that superior officers should supervise constantly the conduct of police officers to ensure internal discipline and appropriate behaviour towards members of the public.

**Foreign Scrutiny**

1.24 The State presented its Report to the African Commission on Human and Peoples’ Rights in 2016. The Concluding Observations have not yet been received.

1.25 The United States Department of State Annual Report on Human Rights in the world once again contained many inaccuracies on the situation in Mauritius despite past requests to correct mistakes. The Report is often based on unverified newspaper articles or other sources with no attempt to ascertain the facts.
CHAPTER II

HUMAN RIGHTS DIVISION

2.1. Under the Protection of Human Rights Act of 1998 (subsequently amended in 2012) human rights are defined for the purpose of the Act as the rights set out in Chapter II of the Constitution. The purpose of the definition was (and still is) to limit the jurisdiction of the National Human Rights Commission to dealing with complaints against violations of civil and political rights.

2.2. Second generation rights i.e. economic, social and cultural rights are not protected in the Constitution though one could consider the protection of right for privacy in Section 9 as being extended to the social right of protection of the family and the home. Nevertheless this is not spelt out as is clearly done in the European Convention for the Protection of Human Rights and Fundamental Freedoms from which our Chapter II derives inspiration which states that “Everyone has the right to respect for private life and family life, his home and his correspondence.” Nor have we adopted what is set out in Article 12 of the Universal Declaration of Human Rights – “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

2.3. Similarly we have not ensured a protection of cultural rights, but section 11 protects the freedom of conscience which includes freedom of thought and of religion, freedom to change one’s religion or belief and freedom to manifest or propagate one’s religion or belief in worship, teaching, practice and observance.

2.4. In addition section 14 on the protection of freedom to establish schools contributes largely to secure the freedom to practise one’s own culture in the multi-racial society that is ours, since no religious denomination and no religious, social, ethnic, cultural association or group shall be prevented from establishing and maintaining schools at its own expense. Our Constitution recognizes the existence of different cultures or cultural practices. It divides our society for the purpose of allocating additional seats after General Elections into a Hindu Community, a Muslim Community, a Sino-Mauritian Community and a General Population consisting of those persons who do not belong to the abovementioned communities. This does not prevent the emergence of a Mauritian nation and does not make “Unity in Diversity” a cliché after 50 years of Independence.

2.5. Chapter II of our Constitution was promulgated by Order in Council in Britain in 1968 at a time when the claim to third generation rights like the right to a clean environment, the right to development, the right to clean water had not been fully acknowledged.
2.6 Suffice it to say that Mauritius recognizes the existence of second and third generation rights by having established a welfare state which provides free education, free health services, social security benefits and housing subsidies and by having adopted a range of measures to combat poverty.

2.7 The argument that these rights should not be guaranteed in a Constitution because they would become justiciable if they were, still holds good. South Africa has included them in its young Constitution and its Constitutional Court has had to rule that the provision of such rights depends on the availability of economic resources and that they are subject to progressive realization. Any review of the Mauritian Constitution should include an express reference to economic, social and cultural rights.

2.8 One could give a very broad interpretation to the right to life in Section 4 by implying that it encompasses the right to food (to be protected against famine), the right to health, the right to shelter, the right to protection against natural or manmade disasters or even road accidents, the right to live a decent life and not to be forced to live a life of abject poverty, the right to safety in all situations, the right to have drinkable water and nowadays above all, the right to a clean and safe environment, free from pollution. The protection of such rights should be ensured by the State.

2.9 The protection of the right to life also extends to the well-being of women, children, persons with disabilities and older persons who have traditionally been considered to be the vulnerable sections of the society.

2.10 However in limiting human rights to Chapter II, the founding legislation of the National Human Rights Commission has also deprived it of the right to consider violations of other Chapters of the Constitution which deal with fundamental rights, such as Chapter III on the right to nationality or citizenship, or Chapter IV on the right to vote and the right to stand for election (which right was considered by the Human Rights Committee in a communication filed by an NGO, Rezistans ek Alternativ).

2.11 The mandate of the HRD is also limited to the extent that it cannot exercise its functions and powers in relation to the President and his personal staff, the Chief Justice, the Director of Public Prosecutions, and the Service Commissions (Public Service Commission, Disciplined Forces Service Commission) as well as the Electoral Supervisory Commission and the Commission on the Prerogative of Mercy established by the Constitution. The HRD cannot enquire into any matter after the expiry of two years from the date on which the act or omission which is the subject of a complaint is alleged to have occurred. The HRD is also compelled by law to attempt to resolve a complaint by a conciliatory procedure in the first place.

2.12 The HRD has jurisdiction over rights specified in Chapter II sections 4 to 16 of the Constitution which are as follows –

3. Fundamental rights and freedoms of the individual
4. Protection of right to life
5. Protection of right to personal liberty
6. Protection from slavery and forced labour
7. Protection from inhuman treatment
8. Protection from deprivation of property
9. Protection for privacy of home and other property
10. Provisions to secure protection of law
11. Protection of freedom of conscience
12. Protection of freedom of expression
13. Protection of freedom of assembly and association
14. Protection of freedom to establish schools
15. Protection of freedom of movement
16. Protection from discrimination

2.13 Such rights are always subject to limitations “designed to ensure that the enjoyment of these rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

2.14 The limitations to the exercise of human rights are set out under each of the provisions of Chapter II. For example, although the death penalty has been abolished by the Abolition of Death Penalty Act 1995, deprivation of life may still become legally possible under the Constitution if it is in execution of a sentence of a Court in respect of a criminal offence of which a person has been convicted. The debate on the subject is an ongoing one.

2.15 Restrictions on personal liberty are authorized under certain circumstances, for example where there is reasonable suspicion that a person has committed or is about to commit a criminal offence or his being likely to commit breaches of the peace.

2.16 Compulsory acquisition of property is allowed where it is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of any property in such a manner as to promote the public benefit or the social and economic well-being of the people of Mauritius as long as provision is made for the payment of adequate compensation.

2.17 The protection for privacy of home and other property is also subject to the abovementioned limitations as well as in the interest of the development and utilization of mineral resources.

2.18 The protection of freedom of expression may be limited by laws enacted – “for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments.”
2.19 But such laws should be reasonably justifiable in a democratic society, as should laws limiting the freedom of assembly and association or the freedom of movement.

2.20 Where the limitations on the unbridled enjoyment of human rights are within acceptable norms, it is not easy for citizens in a democratic society to challenge these limitations. This may explain why challenges meet with obstacles and does not make it easy for citizens to file complaints for alleged violations of human rights set down in Chapter II of the Constitution.

2.21 Such has been the case concerning the introduction by the State of a new smart identity card which incorporates on a chip the citizen’s fingerprints and other biometric information relating to his or her external characteristics. The constitutionality of this measure was challenged as being in breach of sections 1, 2, 3, 4, 5, 7, 9, 15, 16 and 45 of the Constitution. The Judicial Committee of the Privy Council maintained the decision of the Supreme Court to the effect that –

“a law providing for the storage and retention of fingerprints and other personal biometric data regarding the identity of a person in principle constitutes a permissible derogation, in the interests of public order, under Section 9(2) of the Constitution.”

2.22 The Committee added the following in paragraph 11 of its decision -

The appellant enjoyed more success in his challenge to the storage and retention of the fingerprints. The Supreme Court held that the storage and retention of the fingerprints were not reasonably justifiable in a democratic society under Section 9(2). It held that the storage of the data was not sufficiently secure because the safeguards of the Data Protection Act were not sufficient and the storage of the data was not subject to judicial scrutiny and control. The respondents have accepted the Supreme Court’s decision on this matter and have altered this part of the statutory scheme, in response to the court’s ruling, by repealing the 2013 Regulations and replacing them with the National Identity Card (Civil Identity Register) Regulations 2015 which do not prescribe the recording of fingerprints and encoded minutiae of fingerprints on the register. Counsel for the respondents informed the Board that the encoded fingerprint minutiae were included only on the chip on the biometric identity card and not on the register, that a person’s fingerprints were destroyed after he or she was issued with the biometric card, and that the Government had not issued card-readers which would give access to the minutiae on the chip. This was, he said, a “holding position” to comply with the Supreme Court’s ruling. When the Supreme Court heard the challenge in September 2014, over 850,000 citizens had applied for identity cards. The Government’s current position is that citizens can still use their identity cards issued under the 1985 Act until 31 March 2017.

However in paragraph 27 of the decision the Committee drew attention to the following-

Questions may arise in future. The absence of the fingerprints and minutiae from the register after an identity card is issued may affect adversely the Government’s ability to prevent identity fraud, for example, if someone were to apply more than once for an identity card using different names and documentation. The extent to which an interference with a fundamental right can achieve a legitimate aim is a consideration
in any assessment of its justification. But the Board has not been informed of the Government’s proposals for the future of the MNIS and such proposals were not before the Supreme Court and are not an issue in this appeal.

(Note: the MNIS is the Mauritius National Identity Scheme)

2.23 The Committee pointed out that other sections of the Constitution had not been breached. A complaint had been filed before the NHRC on the same issues but since the complainants had already lodged a case before the Supreme Court, it was not timely for the NHRC to consider the complaint. The full text of the JCPL decision is annexed.

2.24 The HRD has been in presence of few proven violations of Human Rights in 2016. Many of the complaints received tend to focus on labour disputes, relations between employer and employee, cases of harassment at work which do not fall within the category of sexual harassment, sometimes disputes between neighbours which again fall outside the ambit of Chapter II of the Constitution, protests against action or inaction by local authorities (this type of alleged maladministration is within the jurisdiction of the Ombudsman). Nevertheless in most cases the HRD indicates to complainants where they should address their grievance to obtain satisfaction or calls the parties to a dispute to attempt a mediation.

2.25 For example in many cases concerning the right to a safe environment the HRD has called the representatives of the local authority or the Police de l’Environnement to see what solution could be found. A complainant who alleged that his neighbour was blocking a canal or drain, which action may cause flooding in heavy rain and probably endanger life had cause to protest as this concerns the right to life. At the end of 2016 the authorities were closely monitoring the issue to ensure that there is a proper drainage of excess water in the area which was prone to flooding. Similarly when a poultry processing plant was accused of polluting a waterway by discharging effluents in a neighbour’s land which waterway led to a river, the HRD intervened by instructing the authorities concerned to take appropriate steps to ensure that the plant should take corrective measures to abate the nuisance and cart away the effluents to a treatment plant.

2.26 Most of the cases alleging breaches of human rights under Chapter II of the Constitution involve the right to liberty and the right to an early trial under Sections 5 and 10 of the Constitution respectively. The NHRC has intervened to secure respect for these rights.

2.27 Protests against arbitrary deprivation of liberty by the police continue to be connected with the use of provisional charges, an issue which was dealt with in the 2015 Annual Report of the NHRC. The police are still reproached for arresting people on mere allegations of declarants without conducting an in-depth investigation to establish a reasonably strong prima facie case. The unfair procedure of Arrest and then Investigate, in spite of Court decisions maintaining that there must be strong reasonable suspicion before an arrest is made, has been heavily criticized.
2.28 In most cases the person arrested may be released on bail. But even then there is a provisional charge pending against him and his liberty of movement is restricted as his passport is seized and he may not leave the country without obtaining a special dispensation from the Court.

2.29 The person who is arrested and not released on bail (specially when nobody is prepared to stand as surety for him or he cannot afford the recognizance imposed) is in a more critical situation since he may have been arrested on unreliable evidence.

2.30 It is expected that a Bill on the lines of the Police and Criminal Evidence Act in the UK will be introduced in Parliament during the year 2017. A draft Bill is already in circulation for comments.

2.31 The action taken by the HRD in such cases is to enquire about the circumstances of the arrest from the Police. It is not the function of the HRD to interfere in a police enquiry to see whether there is a prima facie case, but at least the Police have to show that there are sufficient grounds for depriving a citizen of his liberty.

2.32 The HRD intervenes when a complainant is being held on remand for an unreasonable length of time and impresses upon the police the need to complete the enquiry in a timely manner, to get the relevant Forensic Reports and Medico-legal Reports where necessary and to forward the file to the Office of the Director of Public Prosecutions for a decision as to whether the person is to be tried and finally to ensure that the case should be lodged as soon as possible. The more so where a complainant states that he is prepared to plead guilty to an offence, the trial should be held within a reasonable time, after the police have enquired into the circumstances of the offence for the purpose of sentencing.

2.33 That a person should be tried within a reasonable time to satisfy the requirements of Section 10 of the Constitution may also affect the rights of victims. If a case of unlawful intercourse with a minor is heard five or six years later, it is likely that the victim would not remember all the details and contradict herself under severe cross-examination. In many cases the Court has been dismissing cases where the credibility of the victim has been heavily disputed by the defence.

**Community Service Orders**

2.34 Section 5 of the Constitution provides that a person may be deprived of his personal liberty in execution of the sentence or order of a Court in respect of a criminal offence of which he has been convicted. Under the Community Service Order Act the Court may suspend the sentence of imprisonment and make a community service order where it convicts a person of the age of 18 or over and sentences him to a term of imprisonment not exceeding 2 years and not being a sentence fixed by law. This may also apply to minors under the Juvenile Offenders Act. A community service order means an order
requiring a convicted person to perform unpaid work in the open. A Court may also make a community service order in lieu of inflicting imprisonment where a fine not exceeding 25,000 rupees ordered by the Court remains unpaid. In many cases persons who do not pay fines are still sent to prison for short periods. This creates an uneasy situation both for the convicted person and the prisons authorities having to cater for short term prisoners. The average daily cost of keeping a detainee in prison is Rs 600. It is recommended that more frequent orders should be made of community service to be performed under well-regulated conditions. This should be possible at a time where even detainees are helping to keep Mauritian beaches clean.

Miscellaneous Cases

2.35 Disciplinary proceedings against an employee in the private sector tend to be adjudicated upon by a panel selected by the employer, composed more often than not of senior management and senior employees. The worker tends to find himself at a disadvantage in this situation. One employee complained that he was dismissed because he published information on the internet concerning his employment which he did not consider to be confidential. Another employee in a hotel claimed she was sacked because she accepted a gift of sweets from a hotel guest. The NHRC cannot entertain complaints against the private sector as per the Protection of Human Rights Act. The Ministry of Labour is contemplating amending the law to provide for the appointment of an independent adjudicator in such disputes, which would bring more fairness in the proceedings. The worker is intimidated when he or she appears before a Panel set up by the employer even if he or she is assisted by a representative of the Labour Inspectorate of the Ministry of Labour.

2.36 Some investors who lost money in a private investment scheme (alleged to be a Ponzi Scheme) complained that they were not being refunded as promised. The NHRC could not intervene as there was no human right issue arising under Chapter II of the Constitution. The authorities had put into place a refund scheme based on established criteria.

2.37 Under the Voluntary Retirement Scheme, workers in the sugar industry had been promised compensation and a plot of land from their private employer if they took early retirement. They claimed that they had been waiting for more than ten years. As the project was being monitored by the Mauritius Cane Industry Authority (MCIA), an explanation was sought from them to find a solution. The officials of the MCIA undertook to speed up matters and explained that there was a legal problem regarding the land to be allotted to the workers, which was soon going to be solved.

2.38 A police officer who was dismissed from his job following a criminal conviction for having inflicted wounds and blows during a private dispute complained that the Commissioner of Police and the Disciplined Forces Service Commission should have given him a hearing and should not have applied strictly the DFSC Regulations. The
NHRC has no jurisdiction over the action taken by the DFSC which is set up under the Constitution. However it would be fair to review the strict application of a regulation which prescribes peremptory dismissal following a conviction without an examination of the surrounding circumstances. In this case the police officer claimed that a group of youngsters used to create trouble in the locality where he lived and would not behave properly in spite of the neighbours protesting. His intervention led to the incident which resulted in his being prosecuted.

2.39 A person who had been arrested by the police complained that he was being compelled to undergo a second test regarding DNA to help in the investigation. Since the police obtained a Judge’s Order for the DNA test there was no cause to intervene.

2.40 A complainant employed in the private sector protested against the fact that his employer had placed a GPS in a company car allocated to him and that this infringed his right to privacy. Again the HRD could not entertain a complaint against the private sector. The employee could lodge a complaint under the Data Protection Act with the Commissioner.

2.41 A person whose licence had been suspended following his conviction for drunken driving complained that this would affect his employment. The HRD could not intervene in a judgment pronounced by a Court of law. The complainant was told to write to the Commission on the Prerogative of Mercy.

2.42 Complaints from persons with disabilities do not fall squarely under Chapter II of the Constitution, more specially when it is the Ministry of Social Security which caters for the needs of such persons. The HRD received a complaint from a parent that the Ministry of Social Security had turned down a request for educational materials for his son who is an invalid. The Ministry was contacted to do the necessary. Normally such a complaint could have been addressed to the Ombudsman.

2.43 An agency in India acting on behalf of students from India claimed that they had been duped by an obscure Computer Institute in Mauritius to enrol in a non-existent course and wanted the students to be compensated and refunded the fees paid. This did not fall within Chapter II of the Constitution and was a swindling case to be investigated into by the police. The Tertiary Education Commission was informed. It was also the duty of the agency in India to check the credentials of the so called Institute before sending students abroad.

2.44 The Police arrested 15 Bangladeshi students on 11 July 2016 after receiving certain information. They were detained at Le Chaland Coast Guard Headquarters. The police enquiry revealed that some of these 15 Bangladeshis came to Mauritius for taking up employment under the pretence of pursuing higher studies in three tertiary institutions offering IT courses. These Bangladeshis were not able to communicate in English or in French and served as waiters and helpers in restaurants and supermarkets respectively. Fake school certificates and bank statements were produced to the Passport and Immigration Office. The Bangladeshi students denied having any knowledge of these
documents. They all held a recruiting agency in Bangladesh responsible for this malpractice. The representative of this agency in Mauritius had already left the country. The students were subsequently repatriated.

2.45 In order to stop further cases of alleged swindling or embezzlement and to establish effective control on what may lead to human trafficking, the National Human Rights Commission (NHRC) made the following recommendations to the Prime Ministers’ Office (PMO):

- The Passport and Immigration Office (PIO) should request students from abroad to produce the following documents:
  
  (i) a genuine medical certificate and a bank statement from a credible institution in their country of origin. The relevant documents should include the official stamps of the respective institutions.
  
  (ii) a certificate from the regulatory body for tertiary/higher education in the country of origin which stipulates that the students have undergone their studies in the language in which the course will be dispensed in Mauritius.

- The PIO and the Tertiary Education Commission (TEC) should cross check the authenticity of the certificates and other relevant documents received from recruiting agents and foreign students.

- The TEC should ensure that foreign students are admitted for the time period mentioned in the students’ visa.

- The duties and responsibilities of the TEC should be extended to allow it to monitor the attendance of foreign students following courses in local institutions.

- TEC should be informed when foreign students no longer attend courses so that their whereabouts can be tracked by the Passport and Immigration Office (PIO).

- The authorities should strengthen cooperation with High Commissions, Embassies and Honorary Consulates to establish a list of certified recruiting agents in the country of origin and to monitor them closely.

**REVIEWS OF CRIMINAL CONVICTIONS**

2.46 The HRD did not receive any valid application for reviews of criminal convictions by the Supreme Court under Section 4A of the Protection of Human Rights Act. A drug trafficker who had already been convicted for importation of heroin wrote to the Commission to state that the controlled delivery in which he was alleged to have participated following his arrest did not take place as described by the Police before Court and that his so-called accomplices who had been convicted, were innocent. The court judgments showed that the issues raised had been fully canvassed before the trial Court. The HRD found no cause to intervene. The accomplices themselves never filed an application before the HRD to show that there was sufficient fresh and compelling evidence that could satisfy the HRD that a reference should be made under section 19A(4) of the Criminal Appeal Act to the Court of Criminal Appeal to review their conviction.
In 2015 the HRD dealt with the l’Amicale case where four persons convicted for the offence of arson causing death applied for a reference to have their convictions reviewed. The HRD found there was no sufficient fresh and compelling evidence to justify a reference. The applicants have now appealed to the Judicial Committee of the Privy Council (JCPC) against the decision of the Court of Criminal of Appeal which maintained their conviction at the Assizes. The main ground of appeal relates to the tone used by the Judge in his summing up. After first rejecting the applications for leave to appeal, the JCPC considered the applications again and concluded as follows –

“(i) The Panel regrets the fact that the information about the completion of the National Human Rights Commission’s consideration of the application made to it was not put before the Panel when it was making the decision reflected in the Registrar’s Order dated 8th October 2015.

(ii) It also regrets the erroneous reference by the Registrar in that Order to an “order made by the Supreme Court of Mauritius on the 18th January 2015”. The Panel’s own reasoning, reflected in the body of the Order, was expressly directed to the Court of Appeal’s three judgments dated 18th June 2004, 27th October 2004 and 18th March 2005.

(iii) The Panel has in view of point (i) reconsidered all the applications de novo in the light of the information now available about the National Human Rights Commission’s completion of its consideration, and has reached the following decisions.

(iv) As to the judgments dated 18th June 2004 and 18th March 2005, it remains the position that no good reason has been shown for the delays, and further that the matters relied upon do not establish a risk of a serious miscarriage of justice justifying extensions of time (or, the Panel would add, permission to appeal if time were extended). Further, the fact that the National Human Rights Commission has concluded that there currently exists no fresh and compelling evidence as defined under the law does not assist the current applications.

(v) As to the judgment dated 27th October 2004, the Panel considers that there is a properly arguable case that any recording should have been made available to be listened to, and is prepared to extend time to enable the application to be made for disclosure of any such recording, if any is (in particular despite the delay which has occurred in the applications) still available. It is prepared to grant permission for an appeal on this point. The State will no doubt give consideration to voluntary disclosure of any such recording, if any is still available.”

The sound recording has been produced to the JCPC. The text of the summing up did not reveal any type of bias or unfairness. The decision of the Judicial Committee is being awaited.
CHAPTER III

POLICE COMPLAINTS DIVISION

3.1 The Police Complaints Division (PCD) was established by the enactment of the Police Complaints Act 2012 and it became operational in June 2014.

3.2 The primary purpose of the PCD is to undertake a thorough and impartial investigation of all complaints against a member/s of the police force and to enhance public confidence in the effectiveness of the police complaints system.

- The PCD makes its decisions independently of the police, political parties, the authorities and complainants. The PCD does not employ any police officer as part of its staff which is a significant indicator of impartiality.
- The complaints system is easily accessible. Complainants can lodge their complaints personally at the National Human Rights Commission, 2nd Floor, Renganaden Seeneevassen Building, Jules Koenig Street, Port Louis and may receive the help of an NHRC officer to do so. The complaint can be recorded in Creole, French or English. A complainant may also make the complaint at any police station which forwards it within forty eight hours to the PCD. Complaints may be hand delivered, or sent by mail or fax.
- Complaints are dealt with fairly and with due thoroughness. Complainants are informed about the outcome of the investigation arising from the complaint.

Staffing

3.3 The PCD is headed by a Deputy Chairperson who is assisted by two full time members, a staff of 6 independent investigators and a secretariat.

Main Functions of the PCD

3.4 The PCD has to investigate
- any complaint made by any person, or on his behalf, against any act, conduct or omission of a police officer in the performance of his duties, other than a complaint made in relation to an act of corruption or a money-laundering offence or
- the death of any person which occurred when the person was in police custody or as a result of police action.
Complaints

3.5 **Complaint flow chart**

![Complaint flow chart]

3.6 In order to be receivable, a complaint must be in writing, signed and dated by the person making the complaint.

**Importance of a complaint**

3.7 A complaint creates an official record of an incident. Every complaint is taken seriously and is treated with confidentiality.

**Time limit for making complaints**

3.8 A complaint must be made within one year of the occurrence of the alleged incident after which it cannot be accepted unless under special circumstances.

**Types of complaints**

3.9 Generally the PCD receives complaints about the misconduct of police officers such as oppressive behaviour, assault, neglect of duty, unfairness and rudeness.
Oppressive behaviour

3.10 The complaint may relate to confession to a crime or misdemeanour allegedly made under duress. The role of the PCD is to investigate the complaint; it is the prerogative of a court of law to rule on the admissibility of such a confession.

Verbal Abuse

3.11 Complaints about verbal abuse, more often than not, emanate from people who have been booked for road traffic offences or from suspects who have been arrested. It is reported that police officers use foul language as a means of intimidation or when they are allegedly drunk.

Section 296 of the Criminal Code stipulates that an injurious expression or other abuse is an insult and an offence.

Undue delay in conduct of enquiry

3.12 Suspects who are being detained either because they cannot afford bail or they have not been granted bail also complain to the PCD. They are usually being detained on a provisional charge until the main case is lodged. Sometimes delays occur because, as in drugs trafficking cases, accomplices of the suspect have to be tried first and thereafter their evidence is used against the complainant.

There is a practice of detaining suspects on the basis of a provisional charge. Further legislation relating to a Police and Criminal Evidence will provide for the abolition of provisional information and charges and for a limit to be placed on the detention of persons awaiting trial.

Investigation

Role of the investigators

3.13 The investigation is carried out by the investigators at PCD. The investigator cannot be a police officer but is a civilian investigator designated to undertake an investigation and has powers pursuant to the Police Complaints Act 2012, to record a statement under warning from any person, to enter and search any premises on the basis of a search warrant issued by a Magistrate and to inspect any document on the premises or take copies of documents. However, he has no powers of arrest.
Evidence

3.14 The PCD starts its investigation as soon as a complaint is received. The first step is to determine whether the complaint is warranted. Once it has been decided that the complainant has a reasonable basis for the complaint, the PCD will start investigating further by gathering evidence from -

- Entries in Occurrence books and Diary books – these entries may provide evidence of action taken and the decision-making process of police officers implicated in the complaint.
- The Duty Roster of police officers which can be used to confirm if certain police officers were working when the incident which is the subject of a complaint occurred.
- Log Books – Vehicle Diaries – which can confirm police attendance at incidents and people who have been conveyed in police vehicles etc.
- Medical reports or PF 58 – to find out if these tally with injuries allegedly inflicted on complainant/s by the police.
- CCTV footage if any – this includes police station holdings such as charge room and reception area footage, and street footage.
- Other documents and records.
- Statements of witnesses.
- Statements of police officers.

Duration of the investigation

3.15 The investigation of a formal complaint will be completed as soon as possible. However, much depends on the depth of the investigation and/or the availability of the complainant and witnesses.

Problems encountered during investigation

3.16 Identification of police officers is of particular concern. In quite a number of complaints, complainants have not been able to name and/or identify the police officers.

- In some cases, more particularly in death under police custody, one has to rely mostly on preliminary police investigations.
- Police officers may refuse to answer questions when they have to give their statements under warning.

Investigation of death in police custody

3.17 This is a fundamental role of the PCD which tries to bring some answers to the families who need them. It is also important that, if there has been criminal behaviour
or misconduct on the part of the police, to provide a hearing to victims, to make appropriate recommendations and to prevent similar incidents from occurring again. The examples below provide some insight into this area of work.

**Death of Mr. J. K. D. P. in police cell at Terre Rouge station**

3.18 The detainee was found hanged to the ventilator of a police cell at Terre Rouge police station on Monday 21st March 2016 at 14:22 hrs. The members of the PCD visited the locus. After investigation, the PCD concluded that the cause of death, “Asphyxia due to hanging”, required disciplinary action and referred the case to the Disciplined Forces Service Commission for proceedings against the police officer involved, for neglect of duty.

**The death of Mr. A. H. at Moka detention centre**

3.19 An independent investigation was carried out into the death of a Police Officer who was found hanged on the 30th October 2016. He was detained at the Moka Detention Centre as he was provisionally charged with the offence of importation of drugs. The investigation involved visiting the locus, analysing the medical and toxicological reports, interviewing about thirty witnesses. Unfortunately the CCTV equipment was out of order at the material time so that no CCTV footage was available. The PCD concluded that it was a case of suicide. Measures were identified which the police should take to prevent the recurrence of such unfortunate incidents and recommendations were made -

1. To put into place a system whereby all the clothes remitted and taken from the detainee are controlled by a responsible police officer. Furthermore, he has to record all movements of the clothes, their numbers and the sizes of the towels in a book which is signed by him.

2. To make available appropriate first aid safety equipment, including latex gloves, resuscitation apparatus, breathing masks and tools. The contents of first aid containers should be examined frequently and replenished as soon as possible after use.

3. To replace the tap of the washbasin in the cell with a push button as is the case with the shower.

4. To provide ongoing training to the police for suicide prevention as it is fundamental to the welfare of detainees.

5. To provide refresher courses in first aid to all police officers.

6. To ensure CCTV equipment is in good order.

7. To increase the frequency of rounds in cells if the CCTV is defective.

8. To introduce a screening form that will be used upon the detainee’s arrival to note down his profile and background.

9. To provide to the police, subjected to emotionally traumatic situations, counselling support. We note that during the investigation process, PC B.,
PC A. and PC M. who were the first to come on the crime scene were really traumatised and needed counselling.

**Options for complaint resolution**

3.20 Once an investigation is completed, the PCD has three courses of action: (1) Filing, (2) Conciliation or (3) Hearing.

(i) **Filing**

At the outset, a complaint can be filed for any one of the following reasons:
- It is considered frivolous, vexatious and made in bad faith;
- It is reported more than one year after the incident occurred;
- The conduct complained of is outside PCD’s jurisdiction;
- Complaint is too vague, no time, no place referred to;
- Complaint discloses no issue requiring investigation;
- Complaint refers to a private dispute only; or
- Complaint refers to a dispute as to whether a traffic contravention has been wrongly established.

*The complaint can also be filed if the complainant does not wish to proceed further with the case.*

(ii) **Conciliation**

The current legislation provides an opportunity for conciliation following an investigation.

Conciliation is a process of settling disputes between the complainant and the police officer with the assistance of the PCD. It offers citizens and the officers an opportunity for mediation in order to promote better understanding between them. The role of the PCD is to be neutral and impartial and it acts as a process facilitator.

Generally complaints suitable for mediation are those that are less serious in nature, for instance, matters dealing with failure to treat a citizen with respect, failure to report a matter, neglect of duty, use of abusive language, omitting to make any necessary entry in a police record.

Conciliation may be attempted at any time during the investigation of a complaint where the complainant and the police officer reach some agreement which may include a formal apology by either or both parties.

(iii) **Hearing**

During their investigation the members of the PCD may proceed to a hearing to have more clarifications about an incident.

The hearing is informal and strict rules of evidence do not apply.

The PCD may summon the complainant and his witnesses and police officers to depone in whatever language they choose. They are questioned by the members of the PCD.

There is no need to be represented by counsel in proceedings, but a party may be represented, if he so wishes.

It is to be noted that the procedure at the hearing is investigatorial and not adversarial,
that is, one party cannot be cross-examined by the adverse party. The complainant and the witnesses are not compelled to give evidence which would incriminate them.

The PCD assesses the credibility of the complainant, the witnesses and the police officers and takes into account any other evidence.

**Outcome of investigations**

3.21 If the complaint is upheld, the PCD may refer the complaint with recommendations:

- to the Director of Public Prosecutions for the police officer involved to be prosecuted for a criminal offence.
- to the Attorney-General for complainant to be granted compensation or relief.
- to the Disciplined Forces Service Commission for disciplinary proceedings to be taken against the police officer.

**Statistics 2016**

3.22 The number of complaints against police has risen from 568 in 2015 to 601 in 2016 - an increase of 5.8% in 2016.

<table>
<thead>
<tr>
<th>NUMBER OF COMPLAINTS</th>
<th></th>
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<td>9</td>
<td>387</td>
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<table>
<thead>
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<th>No. of Complaints</th>
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<tr>
<td>Verbal Abuse</td>
<td>76</td>
</tr>
<tr>
<td>Service Delivery</td>
<td>358</td>
</tr>
<tr>
<td>Total</td>
<td>601</td>
</tr>
</tbody>
</table>

Statistical information is important in order to assess the prevalence of police misconduct in Mauritius. Furthermore, the information gathered can be used to identify trends and
to proactively improve the efficiency of the services provided.
An analysis of this data reveals several encouraging trends. The increase in the number of complaints reported shows clearly that the members of the public have confidence in the police complaints system. For the year 2016, out of 601 complaints, 114 complaints emanated from women and 7 cases involved minors.
In addition, complaints received from the various police stations varied from one to twenty one per police station. In the case of fourteen police stations more than 9 complaints were received. The officers in charge of the police stations are requested to talk to their staff to reduce complaints.
The PCD normally completes investigations in a timely manner. In some cases it is necessary to wait for the outcome of a court case connected to the complaint.

**Sustained and unsustained allegations**

3.23 A number of complex and high profile investigations were undertaken into alleged misconduct.

**Unsustained allegations of complaints**

3.24 A complainant’s failure to co-operate in the investigation results in a complaint being filed. This may also happen when the PCD does not have jurisdiction when the alleged offence was reported outside the one-year limit after the incident occurred or the police officer was not acting in the performance of his duties. Another reason for putting away a complaint would be that the police officer has passed away and without an interview of the officer, there is incomplete evidence to make a finding.

**Examples of unsustained allegations**

1. In one case, an incident occurred in front of the court building where the complainant stated that on the main road the police officer was aggressive and was using abusive language towards him. The PCD reviewed video footage of the incident which had been recorded by a camera placed along the street. There was no evidence that the police officer was aggressive. On the contrary, it showed that it was the complainant who was agitated and aggressive. The PCD rejected the complainant’s version and found that the police officer was not to be blamed.

2. Six minors (girls) placed in a shelter were playing without permission on the roof of the building. The responsible officer phoned the police for assistance. The girls alleged that the police officers assaulted them when they refused to come down and they tried to seek refuge in their bedrooms. They were again assaulted near the main gate and the personnel of the shelter even tried to intervene.
During the incident some girls got injured and had to receive treatment at the hospital. The police officers averred that following the request for assistance they saw six young girls standing on the water tank on the roof of the building and they tried to persuade them to get down as it was dangerous but they refused to do so. One police officer even got injured when some girls purposely pushed the ladder on which he was climbing. The girls also damaged some furniture.

The Police Complaints Division concluded that the complaint was unfounded as the police officers had been fulfilling their duties and that it was the girls who misbehaved.

3.25  Sustained allegations

The reasons for most frequently sustained allegations were neglect of duty, unwarranted action, discourtesy and unnecessary force.

Example of a sustained case

The complainant was driving a taxi car along Lallmatie road in the direction of Flacq. On the road, he had an argument with a police officer who was driving a private car. At the same time, another police officer who was riding a motorcycle, overtook them and slowed down to enquire if there was any problem to which the complainant answered in the negative. Later the complainant went to the Police Station of Lallmatie to make a complaint against the said officer. Months after the incident, the complainant learnt that he was booked for five road traffic offences by the said officer. He also became aware that a charge of “Molesting a public officer” was levelled against him.

As for the police officer, he stated that he booked the complainant as he was causing obstruction on the main road. After hearing the parties, the PCD concluded that the complaint was justified and referred the case to the DFSC for disciplinary action against the first police officer.

Improving internal efficiency

3.26  Two training manuals for staff were produced. One entitled “Guidance on recording of complaints” is in response to the focus on quality and customer care. It is essential that complaints are dealt with carefully at the outset because this can have a significant effect on the complainant’s perception of the complaints system as a whole. The second manual entitled “Guidance on handling of complaints” aims at providing uniformity in the way of handling complaints. A customised recording system has been developed for filing. All the complaints are recorded with updates, each time the file is examined. The complainant is categorised as male or female, adult or a minor. The exact number of complaints attached to each
police station can be known. Delays in resolving a complaint are recorded for greater efficiency in the PCD and better liaison with other agencies that are jointly responsible for the issue about which the complaint has been lodged. A withdrawal form has been introduced. This requires the signature of the complainant as in the past it has happened that a complainant has withdrawn his complaint by phone and a few months later denied doing so.

**Sensitisation**

3.27 Sensitisation programmes were conducted regularly to create awareness among the public on the issue of complaints against the police. Talks were given in the twenty six Citizen Advice Bureaux around the island. Information was given on the general powers of the police to stop and search, the powers of right of entry, right of arrest and right to silence etc. If a person believes that the police has treated him/her unfairly, the best course of action is to make a complaint to the PCD. Making a statement which the citizen knows to be untrue may subject him to criminal charges and/or civil lawsuit. The PCD has also carried out awareness raising programmes targeted at barristers, attorneys and the public at large.

Twelve focussed talks were given to police officers including the newly recruited police officers and newly promoted Sergeants at Les Casernes Curepipe, Police Training School Beau Bassin, Line Barracks, MCIT and NCG Le Chaland. The PCD urged the police to behave in a more courteous manner towards the public and to abstain from using foul language. The PCD participates in television programmes; talks were given on several radio channels and interviews to newspapers on the work of the PCD.

**RECOMMENDATIONS**

3.28 Recommendations are made arising from investigations carried out by the PCD in the interest of the public

**Legal**

- The Police Complaints Act to be amended to include the power of the PCD to issue a warning, severe warning and/or reprimand to police officers and that such warning be recorded in the file of the police officer and taken into account for any promotion.
- Police officers not to execute a warrant of arrest on Saturdays and Sundays when it is difficult to present the arrested person before the Bail and Remand Court set up under the Bail Act.
- Some of the possible outcomes of conciliation to include an agreement by an officer to undergo counselling, treatment or training.
Training
• Focused training to be provided to our investigators as an important investment in their professional skills.
• More training in first aid to be given to police officers.
• Training in suicide prevention to be provided to police officers.

Interviews
• Women police officers to be always present during any interview held with a female citizen when the cases are gender-specific, especially, sexual assault cases.

Standing Orders
• Police Standing Orders to be amended through circular letters to incorporate recommendations made by the PCD

NGOs
• Co-operation with NGOs which serve as intermediaries between victims of violations and the PCD to be enhanced.
CHAPTER IV

NATIONAL PREVENTIVE MECHANISM DIVISION

Introduction

4.1 The National Preventive Mechanism Division (NPMD) was established in 2014 under the National Preventive Mechanism Act 2012 (NPMA 2012) and in accordance with the Optional Protocol to the Convention against Torture. Since its establishment, it has sought to uphold the rights of persons in places of detention by conducting visits at these premises and investigating complaints made by detainees regarding the conditions of their detention.

Functions of the NPMD

4.2 Under Section 4 of the NPMA 2012, the NPMD is mandated:
(a) to visit places of detention on a regular basis so as to examine the treatment of persons deprived of their liberty with a view to ensuring their protection against torture and inhuman or degrading treatment or punishment;
(b) to investigate any complaint which may be made by a detainee and, where the detainee so requests, investigate the complaint privately;
(c) to make to the Minister recommendations regarding the improvement of the treatment and conditions of persons deprived of their liberty in places of detention, taking into consideration the relevant norms of the United Nations;
(d) to submit to the Minister and other relevant authorities proposals and observations concerning legislation relating to places of detention and the treatment of persons deprived of their liberty;
(e) to work, where appropriate, in co-operation or consultation with any person or body, whether public or private, in connection with the discharge of any of its functions under this Act and the Optional Protocol.

Method of Work

4.3 The NPMD receives complaints directly from detainees who send letters through the Commissioner of Prisons or from the relatives of detainees or counsel for detainees. When visiting places of detention, the NPMD also meets with detainees and records their complaints about conditions of detention. Subsequently the NPMD invites the Commissioner of Prisons to give his views on the complaint and may ask for relevant documents. When the complaint concerns medical treatment, the NPMD may ask for information from the Ministry of Health and the treating doctors. When the complaint concerns social aid, the views of the Ministry of Social Security are sought. Information may also be sought from the Commissioner of Police when the detainee has been on
remand for too long to know about the status of the enquiry. As regards appropriate cases concerning respite or remission in petitions to the Commission on the Prerogative of Mercy, the NPMD may gather information from relatives or receive visits from them to help them in the formulation of recommendations. After making recommendations in all cases, the NPMD follows up to secure their implementation. Otherwise the NPMD visits all places of detention to ensure that conditions of detention meet acceptable human rights standards.

Overview

4.4 This report reviews the key issues investigated, recommendations made and actions taken by the NPMD in 2016. The following thematic sections look at:

- Conditions of detention in police cells and detention centres;
- Treatment of detainees in prisons;
- The NPMD’s visits to RYC and CYC Girls and Boys;
- The NPMD and the prerogative of mercy.

POLICE CELLS AND DETENTION CENTRES

POLICE CELLS

General Observations, Findings and Recommendations

4.5 In order to ensure the provision of adequate space in line with basic human rights standards, the NPMD liaised with the Officer in Charge of the Technical Unit of the Police Department to have a complete list of used and unused cells and to discuss general technical issues with regard to detention centres. Thereafter the NPMD, along with the Officer visited 61 police stations to inspect the police cells. Most of the cells in operation required repair and improvement in order to meet human rights standards. After consultation between the NPMD and the Police Technical Unit, the NPMD recommended the reopening of a few cells on condition that they are renovated. In December 2016, the NPMD was informed that one cell at Pointe aux Sables Station had been reopened in line with this recommendation. However in other stations having only one cell, the cell was not operational due to lack of space. In many cases, these cells were used to store exhibits to be produced in Court. Consequently another place must be found for such storage before reopening the cell. The Police Authorities confirmed that the matter is being taken into consideration.

Conditions of Detention: Observations and Recommendations

Ventilation

4.6 Ventilation is a recurrent problem in many police cells. In fact the lack of air circulation was a key reason for the closure of many cells.
Recommendations:

- The NPMD recommended that fans be fitted in the corridor opposite the doors of cells.
- Air extractors could be installed in the cell blocks to remove hot air.
- The polycarbonate sheets fitted on cell doors ought to be removed as the structure prevents adequate air flow and blocks lighting within the cell.
- The NPMD recommended the removal of Plexiglas on cell doors, but not on transom windows for the safety of detainees.

Washrooms

4.7 The dirtiness and smelliness of washrooms in many police cells was deplorable. The fetid smell pervaded part of the cell adjacent to the washroom. The NPMD enquired about the maintenance of the washrooms and the usual reply of the Station Manager was that the responsibility for maintenance rests with cleaners. However the smell and dirtiness clearly indicated that the job was not being done properly. The Division recommended regular cleaning and stressed that detergents should be provided to the cleaner to maintain the cleanliness of cells and washrooms.

Further investigation revealed that some cleaners did not like to work in police stations and requested transfer or applied for vacation when pressure was put on them. In light of this situation, a cautious outsourcing of the work may be required. Caution must be exercised on account of the security requirements of a police station.

Mattresses

4.8 Nasty smell in some police cells was also traced back to old mattresses, notably due to perspiration and urine. Upon being questioned, some station managers stated that mattresses were changed only when they were damaged while others pointed out that they changed mattresses twice every year. However the NPMD stresses that mattresses can and must be changed regularly, to ensure a healthy and humane condition for detainees.

Physical Exercise

4.9 The Division further observed that detainees in different stations are allowed between 10 to 30 minutes out daily to exercise. The NPMD recommended that a standard specific amount of time should be allowed for daily exercise in all police cells.
Food

4.10 Detainees in some police cells also complained about the bad quality of food. Many reported that their meals were unpalatable. The Division requested the relevant station managers to ensure that the local caterer improve the quality of food provided to detainees. In this respect, the Division was informed that each detainee is allocated a specific budget for his meal and this limits the choice of meals available. However the NPMD highlighted that though the choice may be restricted, a proper standard should be maintained.

Structural Defects

4.11 Some station managers complained that cells are sometimes situated too close to the charge room. Others pointed out that the washroom was situated at the back of the station building, which made it risky to escort detainees from the cells to the washroom as they may try to escape. In the case of Terre Rouge police station, the building is surrounded by high buildings, which hamper air circulation and lighting. In this particular instance, after visiting the cells, the NPMD recommended their closure.

On 21st March 2016, Mr J. K. D. P. was found hanged to a transom window bar in a police cell at Terre Rouge Police Station. The cells in the station were temporarily closed. Subsequently the NPMD visited the cells and concluded that they were inappropriate for detention on account of structural defects.

Role of Police Sentries

4.12 Sentries play an important role in keeping an eye on detainees for the latter’s own security. The NPMD is of the view that sentries must perform their duties diligently. In particular, the Police Standing Orders mention the number of rounds to be effected, which sentries must abide by.

DETENTION CENTRES

General Observations and Recommendations

4.13 There are 3 detention centres in Mauritius, namely Metropolitan Detention Centre (Alcatraz), Moka Detention Centre and Vacoas Detention Centre. The NPMD, during its visits, observed that conditions of detention in a detention centre are often worse than in prison cells. Detainees are confined in their cells about 22 hours a day. They leave their cells either to go to the washroom or to do physical exercise. They do not have access to television, radio or newspapers and have no leisure activities such as indoor
games. These detainees are still presumed innocent but their conditions of detention are more severe than those applied to convicted detainees.

(a) Metropolitan Detention Centre (Alcatraz)
The NPMD visited the Metropolitan Detention Centre three times in 2016. In particular, as part of an investigation into a complaint whereby a detainee had allegedly been bitten by rats and insects- the NPMD visited the Centre and took photographs of his badly wounded feet. The photographs as well as letters from the NPMD requesting an enquiry were sent to the police. The relevant Supervising Officers replied that a debugging campaign had been carried out. The Pest Control Unit had laid baits to eliminate rodents and fans were fitted on both floors of the detention centre.
Nevertheless the wooden floor on the first level remains infested with insects and detainees have complained about bed bugs. Ideally, a complete renovation of that floor should be carried out but the authorities claim this would necessitate enormous expenditure. In light of this financial consideration and in particular should the proliferation of insects persists, the NPMD recommended the closure of all the cells on the first floor.

(b) Vacoas Detention Centre
The NPMD visited Vacoas Detention Centre twice in 2016. The major problem is with regard to the structure. Notably, 7 cells out of the 20 cells are not operational due to water leakages. Upon enquiring into the corrective measures taken in this regard, the Division was told that the Police Headquarters had already been informed. The NPMD noted that the time taken to resolve such issues is lengthy and the absence of progress is regrettable. In the meantime, the 7 cells remain closed.

(c) Moka Detention Centre
The NPMD visited the Moka Detention Centre six times in the year 2016. A key observation made is the poor design of the female section. In fact, female detainees are deprived of natural light. They also complained about poor air circulation.

Specific Issues and Recommendations

CCTV Camera Systems in Detention Centres

4.14 In its General Comment No 2 on Article 2 of the Convention against Torture, the UN Committee against Torture recommends the use of new methods to prevent the inhuman treatment or punishment of detainees. In particular, it encouraged the use of closed circuit television (CCTV) as a monitoring system in detention centres. When visiting the Detention Centres, the NPMD noted that CCTV cameras installed
therein were not in good working condition. The Division sent recommendations to the Commissioner of Police to take action in this regard.

(a) Vacoas Detention Centre
At Vacoas Detention Centre, the NPMD observed that while CCTV cameras were installed in all cells, they were all out of order. The Division was informed that the contract of the service provider had been discontinued and the latter had taken away his equipment. The Detention Centre sent several correspondences to the Communications Branch to sort out the matter. The NPMD obtained copies of these correspondences and accordingly made recommendations to hasten the procedure to install new cameras.

(b) Metropolitan Detention Centre
All cells and corridors at Metropolitan Detention Centre are equipped with CCTV cameras. When they visited the Control Room, the NPMD observed that several cameras were not functioning. Moreover some cameras were transmitting deficient and blurred images. The NPMD made recommendations to the Commissioner of Police to give priority to repair existing cameras or to install new CCTV camera systems if need be.

(c) Moka Detention Centre
During its last visit to Moka Detention Centre in 2016, the NPMD observed that Cells No 1 and 12 (Male cells) and Cell No 3 (Female Cell) were all fitted with new operational cameras. In the Control Room, the NPMD noted that the images transmitted from the cameras were of good quality. Recommendations were made to install CCTV cameras in all cells.

Risk of Suicide in Detention Centres

4.15 The year 2016 witnessed three cases of suicide in places of detention and prisons in Mauritius, all caused by hanging. One suicide is one too many. Suicides must be prevented. The NPMD visited the cells where these deaths occurred and accordingly made recommendations to prevent further suicides in Detention Centres, notably:

- The NPMD emphasised the role of police sentries in preventing suicide amongst detainees and encouraged the optimal use of CCTV cameras.
- The greatest care must be taken to remove protruding objects such as pipes and taps as well as other objects which may be used to inflict lethal wounds upon oneself such as metal, porcelain or ceramic objects, from the reach of detainees. Persons who are prone to commit suicide will use any accessible dangerous object to do so.
Cells for Juveniles

4.16 Article 13.5 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’) states: ‘while in custody, juveniles shall receive care, protection and all necessary individual assistance- social, educational, vocational, psychological, medical and physical that they may require in view of their age, sex and personality.’

To determine whether the conditions of detention for juveniles were in line with the Beijing Rules, the NPMD visited the cells for juveniles at Petite Rivière Police Station, which is the only station providing for the detention of juveniles awaiting trial. There was no detainee at the time of the visit but the six cells reserved for male juveniles were all normally used. The cells were dirty and stuffy due to poor ventilation. There were no fans or air extractors. Moreover polycarbonate sheets with tiny holes were fitted to the windows despite the presence of iron bars. The mattresses were also in poor condition. Water leakage from toilet pipes and roofs was another important issue.

As a result, the NPMD made the following recommendations:

• The NPMD pressed for better aeration and suggested that these cells should be cleaned regularly to ensure a healthy environment for young detainees.
• Mattresses in the cells must be changed on a regular basis.
• The NPMD further recommended the repair of leaking pipes in the toilet and the waterproofing of the roof.
• The washrooms must be cleaned on a regular basis to ensure hygienic conditions.
• The NPMD advocates the opening of appropriate, accessible and child-friendly juvenile detention centres in different parts of the country. The Division finds it equally necessary to have a separate detention centre for female juveniles.
**PRISONS**

**General**

4.17 The NPMD visited all the prisons in the Republic of Mauritius in 2016 and sought to assist the detainees in line with its mandate under the National Preventive Mechanism Act.

4.18 The following describes key issues identified by the NPMD during its visits and highlights recommendations made and action taken.

**Prisons Buildings**

Most prisons in the country are old buildings, except for the Eastern High Security Prison (EHSP) at Melrose and the Women Open Prison at Barkly which became operational two years ago.

(a) **EHSP**

At Trochetia Unit in EHSP, the NPMD noted that on rainy days, water pours into an association yard. Detainees had to use old clothes for protection against rain and slippery floors. Moreover in all Units and Association Yards visited, concrete benches did not have wooden planks fitted on them. Cold benches have a negative impact on the health of older detainees. Moreover in summer, it is hard for detainees to stay in their dormitories or cells because of poor ventilation. **Upon the NPMD’s recommendation, fans have been placed.**

The NPMD also visited the Geriatric Unit of the EHSP where elderly and sick persons are detained. The damaged floor had cutting edges which could be dangerous for detainees or worse, could be used as weapons. The NPMD held a meeting with the Supervising Officer. Repair works have already started at the Geriatric Unit.

(b) **Petit Verger Prison**

The NPMD noted a lack of renovation and maintenance in other prisons. For instance, at Petit Verger Prison, the toilets in the dormitories were in a deplorable state. Other disturbing features were the untidiness of the kitchen as well as the presence of birds in dormitories. **The Division wrote to the Prison Administration to remedy the situation until further inspection.**

(c) **Grand River North West Remand Prison**

At Grand River North West (GRNW) Remand Prison, the NPMD visited several yards and noted the dirtiness of washrooms. The water tanks and flush buttons were damaged, and urine and stool stayed floating in the water. **The Division is following up with the Commissioner of Prisons on action taken to remedy**
these deplorable conditions.

(d) Women Prison
At the Women Prison, the detainees complained that there were bed bugs in their cells. The NPMD team saw traces of blood on the walls which the female detainees explained, was caused by smashing bugs on the walls. In light of the proliferation of insects within the cells, the NPMD recommended a debugging campaign.

(e) Central Prison
Buildings at the Central Prison are old and require renovation. Additional washrooms, pipes and taps have to be provided.

(f) Other prisons
In general, there is an urgent need for repair in other prisons. The NPMD contacted the Office of the Commissioner of Prisons and pressed for corrective measures. The Responsible Officers informed the Division that administrative procedures for renovation were lengthy and complicated. Changes cannot be effected overnight.

Association Yards

Most detainees spend the day inside this dedicated area within prisons. Detainees at Petit Verger, Melrose, GRNW, and Barkly Prisons complained of the improper maintenance of Association yards. During its visits the NPMD noted the untidiness and smelliness of toilets and showers. There was insufficient provision for outdoor activities.

(a) Association Yard A – Remand Detainees GRNW
At the GRNW Prison, the Division found dirty and smelly toilets and showers. The toilet vase was broken and this prevented the evacuation of waste. All flush buttons were broken and detainees had to fill the water tanks manually. The concrete sink also was dirty. This deplorable and unhygienic condition is likely to encourage the spread of diseases. The NPMD drew the relevant Authorities’ attention to these problems so that appropriate remedial measures may be taken.

(b) Yard 3, Central Prison- Enquiry with regard to Lack of Indoor and Outdoor Activities
During a visit at Yard 3, Central prison, the Division met with detainees who complained about the lack of activities. The Commissioner of Prisons responded positively to the recommendations of the NPMD. Thereafter indoor games such as carom boards, ludo, scrabble and chess were provided to detainees. A football tournament was organised where detainees participated.
Other issues in Dormitories and Individual Cells

Inadequate Ventilation

4.20 The NPMD received complaints from detainees in several prisons regarding the inadequate ventilation in dormitories and individual cells. Upon meeting the Responsible Officers, the Division insisted that fans should be fitted in order to solve the aeration problem. Following our recommendations, fans were fitted in some EHSP dormitories.

Lack of Cleaning Facilities

4.21 In some prisons the NPMD found that some cells were dirty and infected with bugs. The NPMD was informed that detainees are responsible for maintaining the cleanliness of their cells. Upon consultation with the NPMD, the authorities agreed to provide detainees with detergent and insecticide which they would use under the supervision of prison officers.

Washroom and the Use of Chamber Pots in Cells

4.22 Detainees have the responsibility to maintain washrooms in prisons. However they complained that they are provided with little or no detergent. In fact the NPMD found washrooms in some prisons very smelly. Detainees also complained about old and faulty equipment in washrooms. The Prison Authorities assured the NPMD that appropriate action would be taken to remedy the situation. Moreover detainees at GRNW Prison complained about the chamber pots which they use. They averred that these pots are kept in their cells from 5 pm to 6.30 am. The NPMD brought up the issue with the Prison Authorities who informed them that the Industry Section of the Prison Department has been instructed to carry out a survey and to manufacture covers for chamber pots in these cells.

Assault

4.23 The NPMD received 12 written complaints regarding assault against detainees in 2016. The NPMD followed up on these complaints, by inter alia visiting the said detainees and asking to view the relevant CCTV footage in the prisons where available and referred them to the Police as necessary.
Segregation Unit

4.24 When detainees are accused of misconduct, they are locked up in a separate unit until they appear before the disciplinary committee. During the NPMD’s visit in prisons, some detainees complained that they are treated unfairly. For instance they are not told when they will be presented before the committee. They also complained that they are locked up for several days and often have to plead guilty in order to be freed from segregation.

The NPMD recommends that detainees accused of misconduct should, as per the law, appear before the disciplinary committee at the earliest.

Section 41 (1) of the Reform Institution Act 1988, entitled ‘Segregation’, reads:

‘Where it appears to the officer in charge that for the good order and discipline of institution it is desirable for a detainee to be segregated and not to work or be associated with other detainees, he may order accordingly for such period as he thinks fit.’

It is rather disturbing that the detainee may be segregated ‘for such period’ as the Officer in Charge thinks fit. It is at the discretion of the Officer to deem that the segregation is desirable for the good order and discipline of the institution or that it is in the interest of security to place prisoners under special report.

The NPMD considers that the period of segregation ought to be defined and limited by law. Otherwise it can result in an excessive period of segregation, thus causing more harm and frustration than good.

Convicted and Remand Detainees

4.25 Detainees are categorised as convicted or remand and are not supposed to mix. However during a visit at the Central Prison, a detainee informed the NPMD that on a particular occasion, a convict had entered into the Remand Unit. He caused trouble in the Unit, which led to a brawl. The concerned detainees were arrested and put into the Segregation Unit. The NPMD was further informed that convicted detainees tend to threaten remand detainees.

Remand detainees are still presumed innocent and have the right to be treated fairly until their trial. In this regard, the NPMD maintains its position that convicted and remand detainees should be kept separately in order to prevent any contact between them.

Medical Treatment

4.26 Access to proper medical treatment is a fundamental right. The NPMD received written and verbal complaints with regard to the medical treatment provided to detainees. Inter alia some complainants stated that medical officers ill-treated them or did not examine them appropriately, doctors always prescribed the same medication. Their
privacy is not respected because Prison Officers are always present when they are being examined by doctors.
The NPMD followed up these complaints with the Commissioner of Prisons and obtained medical reports of detainees when required. With regard to detainees’ privacy when being examined, relevant Medical Officers informed the NPMD that for reasons of security they did not object to the presence of Prison Officers when examining detainees. However, private consultations were usually granted when detainees so requested. The NPMD also met with relevant Medical Officers to discuss health services provided to detainees, including HIV treatment, risks of Hepatitis transmission, Suboxone programmes, and the follow-up of drug addicts, amongst others. The NPMD will follow up these issues.

Mental Health of Prisoners

4.27 During 2016, the NPMD enquired about the mental health of detainees since approximately 12% of the detainee population were following psychiatric treatment. A very high percentage of detainees suffered from psychotic problems due to misuse and abuse of psychoactive substances. Drug treatment, and in particular overmedication or the combination of different substances, pose serious risks to a person’s health. The NPMD’s monitoring indicated that too often, the treatment in Mauritius consists primarily of drug therapy which is not tailored to the individual. Moreover essential components of effective treatment such as therapeutic activities, including access to occupational therapy, art, music, sport or individual psychotherapy, are rarely explored or completely absent.

The NPMD also noted the issue of involuntary placement at Brown Sequard Hospital. The Subcommittee on the Prevention of Torture (SPT), set up under OPCAT, accepts involuntary placement as a measure of last resort and subject to guarantees that prevent arbitrary detention and ensure regular judicial review of the decision on deprivation of liberty. The SPT considers that alternatives to involuntary placement must be put in place to minimise long term institutionalisation. Furthermore the NPMD has investigated the use of seclusion and restraint, both in terms of duration and frequency, and its negative impact on the mental health of detainees. This reality calls for action, especially since existing international standards tend to limit the use of such practices.

The NPMD has further recommended that there should be a regular follow-up of detainees in prisons, in particular, to enable psychologists to assess the suicidal tendencies of detainees. Furthermore a psychological study would be useful in defining any rehabilitation and re-insertion programme.

Welfare Officers

4.28 Interviews for the recruitment of additional Welfare Officers were carried out by the Disciplined Forces Service Commission on 21st, 22nd and 25th January 2016.
Consequently in February 2016, 5 Welfare Officers were recruited, 4 men and 1 woman.

Food Supply in Prisons

4.29 The NPMD received several complaints regarding the standard of food provided to detainees. For instance at EHSP, detainees complained about improperly cooked food. In another case, a detainee at the Central Prison complained that he does not receive appropriate meals prescribed by his dietician. The NPMD is looking into these complaints. Detainees at the Central Prison and Richelieu Open Prison complained about the type of food provided to them. The NPMD visited these premises at the time meals were served and determined that they were up to the standard.

Canteen

4.30 The NPMD also received complaints about the prison canteens. For instance at the EHSP, detainees complained that the prices at the canteen were higher than normal prices in shops. The NPMD raised the issue with the Supervising Officer and has requested the Consumer Protection Unit to look into the matter.

Transfer

4.31 The NPMD received several letters from detainees who wished to be transferred from one prison or yard to another, for different reasons: to be closer to the place of residence of their families in order to benefit from more regular visits; or to have access to facilities and services available in other yards. The NPMD communicated these requests to the Commissioner of Prisons and the authorities positively acceded to many of these requests.

Legal Information for Detainees

4.32 During the NPMD’s visit at GRNW Remand Prison, many detainees complained having no access to local laws. In this regard, the NPMD was informed by Prison Authorities that detainees can access the laws of Mauritius through an application for same. Welfare Officers may also assist detainees by retrieving a copy from the internet.

Status of Police Enquiry and Court Case

4.33 Many remand detainees sought to know the status of their case. The NPMD successfully intervened and obtained the relevant information from the Commissioner of Police
which was then communicated to the detainees. This is directly relevant to conditions of detention, more precisely the length of time which the detainee waits before his trial. In this regard, the NPMD has been pressing for early trials. **In cases where the police had completed the enquiry, the NPMD recommended that the file be sent to the DPP. The DPP’s office is also informed in cases where the detainee is prepared to plead guilty to the charge.**

**Legal Aid**

4.34 Detainees who are on remand and who do not have the means to retain the services of a legal counsel wish to apply for legal aid. Many detainees complained that their application before the Bail and Remand Court was being delayed. The Division intervened and liaised with the Ministry of Social Security to speed up the matter.

**Social Aid**

4.35 The NPMD has intervened in cases where detainees requested social aid for their families. For instance, a detainee had complained that school materials were not given to his children. **In this regard, the NPMD liaised with the Permanent Secretary of the Ministry of Social Integration and Economic Empowerment to know whether the children were eligible for such aid and if so, how to apply for same. The detainee’s family was informed accordingly.**

**Further Recommendations**

4.36 **The NPMD recommends that Section 51 A of the Reform Institutions Act be amended so that persons convicted of an offence under any provision of the Dangerous Drugs Act, other than Section 34 or a sexual offence on a child or handicapped person, would benefit from remission or parole.** Such cases ought to be decided on a case by case basis. The present blanket denial of remission or parole is too harsh and weighs heavily upon convicts who find it difficult to cope with their despair.
VISIT TO REHABILITATION YOUTH CENTRE (RYC) AND CORRECTIONAL YOUTH CENTRE (CYC) (Girls and Boys)

**RYC (Girls)**

4.37 The NPMD visited RYC (Girls), after the girls rebelled violently against the personnel. The NPMD team met the girls who complained that the Officers were ill-treating them. They also complained about other problems such as the lack of water, foul smell, sleeping in a locked room, dirty washing machine, bed bugs, inmates not having access to toilets at night but forced to use chamber pots instead, water stagnation, pungent odours, blocked drains, unhygienic toilets and bathrooms, lack of proper counselling and psychological support and very few outdoor activities. The NPMD is following up these issues with the relevant authorities.

**RYC (Boys)**

4.38 During their visit at RYC (Boys), the NPMD noted that the institution has several structural defects. Moreover while several members of the staff do their best, the RYC personnel, in general, is not adequately trained to cater for the needs of children. In this regard, the NPMD recommended more and appropriate training for the staff. A RYC is being set up in Rodrigues so that boys do not have to be transferred to Mauritius, far away from their relatives.

**CYC (Girls)**

4.39 The CYC (Girls) was inaugurated on 28th April 2016. While the criminal rate for juvenile girls is relatively low, the setting up of the institution is a laudable initiative in line with the Convention on the Rights of the Child which establishes rights for all children less than 18 years of age (Article 1) and includes special protection for children in conflict with the law.

**CYC (Boys)**

4.40 When visiting CYC (Boys), the NPMD met with many inmates who complained that the food they are given is not palatable and that rodents are present inside the building. The NPMD also met a detainee who had been locked up due to his aggressive behaviour. He was detained in poor conditions. For instance during the day he was deprived of his bed mattress and bed sheet. During its investigation the NPMD found out that this was done as a precautionary measure. In fact there was a risk that the inmate may make use of the bed sheet in an attempt to commit suicide or he may tear the mattress cover to commit an unlawful act. Instead he was given a plastic chair to use.
the intervention of the NPMD, he was provided with a mattress. The CYC Officers also informed the NPMD that the inmate was given all toilet facilities.
Some of the young detainees have been convicted for drug offenses, in particular for consumption of synthetic drugs. However there is no provision for any type of treatment for drug addicts in the CYC. The NMPD recommends that a detoxification program should be put in place in the CYC.

PREROGATIVE OF MERCY

4.41 The National Preventive Mechanism Division received complaints from detainees about the length of period of imprisonment and external circumstances which made their stay in prison more difficult to bear. For instance, a detainee’s wife was bedridden with cancer while another detainee’s son had been admitted in the Intensive Care Unit. Some detainees prayed for a reduction in their sentence so they can return home to cater for their family. Other inmates claimed that the sentence inflicted upon them was unjust and disproportionate.
In appropriate cases the NPMD made recommendations in petitions to the Commission on the Prerogative of Mercy. The NPMD does so by sending the original petition, the judgement convicting and sentencing the detainee, the NPMD’s views and recommendations, as well as the Prison Welfare Officer’s Report to the Office of the Commissioner of Prisons who then forwards these to the Commission on the Prerogative of Mercy.
Petitions are of two types. The first type concerns petitioners who apply for a reduction in their sentence. The second type deals with respite in accordance with Section 75 (1) (b) of the Constitution. The latter applies to matters of urgency, for instance detainees requesting to leave the institution temporarily to live at a specific address in order to deal with unforeseen problems such as the critical health of a relative. These applications require decisions at a short notice. In such cases and based on proven facts, the NPMD may refer the matter directly to the Commission on the Prerogative of Mercy. The sentence may be suspended briefly subject to stringent conditions such as reporting to the nearest police station daily.
Some applications for mercy relate to sentences which did not take into account remand periods spent in jail or in a police cell. Others are based on sentences imposing heavy fines, in addition to imprisonment, which detainees cannot pay on account of lack of funds or the fact that their property has already been seized, as it happens in convictions for drug offences.
CHAPTER V

PROMOTION OF HUMAN RIGHTS

5.1 Apart from ensuring the protection of human rights, an important function of the NHRC and its Divisions is to promote human rights and to inform all citizens of Mauritius about the meaning of human rights, how they have to respect the rights of others, which institutions to turn to when they feel their human rights are being breached and the type of remedies available to them. Talks and workshops cover the history of Mauritius on such human rights topics as settlement, colonisation, the introduction of slavery and its abolition, arrival of immigrants and indentured labour, the impact of the two World Wars, decolonisation and the march towards Independence, the Universal Declaration of Human Rights, the inclusion of human rights in the Constitution, the creation of a Welfare State and the introduction of a Republican system.

5.2 Talks all over the island were given throughout the year in Citizens Advice Bureaux. The audience consisted of persons of all age groups including students and representatives of civil society. They have the opportunity to interact with members of the NHRC.

5.3 A major target audience consists of newly recruited Police Officers and those who are promoted as well as those who follow refresher courses in the different Police Training Schools at Line Barracks, Port Louis, Beau Bassin, Curepipe, the SMF Quarters in Vacoas, the National Coastguard Headquarters at Le Chaland. The main emphasis is to improve relations between the public and the police and to ensure that complaints are reduced to a minimum. The police have to earn the respect of members of the public when dealing with them, when establishing contraventions for Road Traffic offences, when receiving complaints at the police station, and even when dealing with suspects who are being arrested. When police officers, especially from the Anti-Drug Smuggling Unit (ADSU), carry out searches on private premises, they have to conduct themselves in such a manner as to respect the rights of the occupants. In talks given to them they are reminded to show search warrants when entering premises. They have to abide by the requirements of necessity and proportionality before using force. Further, they are reminded that it is illegal to obtain a confession from a suspect by using force or duress.

5.4 Talks to prisons officers also have as main objective the improvement of relations between officers and detainees, the necessity to abide by human rights standards, the importance of encouraging offenders to mend their ways and to follow rehabilitation programmes and the need to discourage recidivism.

5.5 Talks to student nurses have as objective to teach them about their rights and to make them understand the importance of the right to health.

5.6 Talks to the staff in the Ministry of Foreign Affairs aim additionally at explaining the international obligations of Mauritius following ratification of the main international
human rights treaties, the preparation of reports to treaty bodies and the procedure adopted when submitting reports as well as the examination of such reports.

5.7 Reporting to treaty bodies was also the subject of a Workshop held by the Prime Minister’s Office in conjunction with the Office of the High Commissioner for Human Rights in December 2016, in which the NHRC participated. The audience consisted of representatives of government, the private sector and civil society. In 2016, reports were submitted to the Committee Against Torture established under the Convention Against Torture and the Human Rights Committee set up under the International Covenant on Civil and Political Rights.

5.8 Representatives of the NHRC also participated as resource persons in the Youth Parliament organised by the local branch of Transparency International. Participants prepared interactive presentations on human rights issues and discussed them openly.

5.9 The above activities were complemented by talks and interviews given by members of the NHRC on the Mauritius Broadcasting Corporation (MBC), private radios and television on the work of the NHRC. Members of the public were also given the opportunity to put questions on radio programmes.

5.10 On the occasion of Human Rights Day on 10th December 2016, a Workshop was held for young barristers to explain the work of the NHRC in protecting human rights. A video competition was launched on the role of human rights defenders and on the theme decided by the United Nations – ‘Stand up for someone’s rights today’.

5.11 A delegation from Rwanda consisting of a representative of the Attorney General’s Office and a representative of the Rwanda NHRI visited Mauritius to find out more about the work of the NPMD. Rwanda has ratified OPCAT but has not yet set up a full-fledged National Preventive Mechanism (NPM). The visit was organised by the Association for the Prevention of Torture (APT) based in Geneva. It was an opportunity to share the experience of the NPMD and to discuss the lessons learnt.

5.12 Members of the NPMD have also had the opportunity to attend workshops organised by the APT. The Université d’été in Lyon, France focussed on the conditions of detention for persons in police custody. Another seminar was held on the role of NPMs in monitoring psychiatric institutions. The work done by the APT is tremendous in promoting OPCAT and providing training on the observance of international human rights standards (the Nelson Mandela Rules) in places of detention.

5.13 Other international meetings in which the NHRC participated concerned topics such as ‘Creating an enabling legal environment and strengthening access to HIV and TB prevention, treatment, care services for key populations’ organised by the Network of African National Human Rights Institutions and the African Regional seminar on ‘Finding Practical Solutions for addressing Violence and Discrimination based on Sexual Orientation, Gender Identity and Gender Expression’ organised by the South Africa National Human Rights Commission.
5.14 The NHRC was also present at the Annual Conference of the Global Alliance of National Human Rights Institutions (GANHRI) which addressed the theme ‘Current Challenges to Human Rights Protection’. The closing statement is annexed.

5.15 The Robben Island Guidelines on the Prohibition and Prevention of Torture in Africa are annexed for guidance to the authorities and civil society.
CHAPTER VI

RODRIGUES

6.1 Complainants in Rodrigues have to send their complaints by post to the NHRC office in Port Louis, or may lodge complaints when members of the NHRC visit Rodrigues. Discussions were held with the Office of the Chief Commissioner in Rodrigues to have a permanent office in the island and to designate an officer who will be able to receive complaints alleging breaches of human rights and complaints against the police, and who will impart advice to complainants.

6.2 Due to administrative difficulties and in spite of efforts following a visit of the NPMD in Rodrigues, no progress was made in that direction. The NHRC is still pressing for an officer from the Commissioner’s Office to be detached to perform these duties. Following the recent elections to the Rodrigues Regional Assembly, it is hoped that the problem will be resolved.

6.3 Complaints against the police continue to be lodged at police stations in Rodrigues to be transmitted thereafter through the Commissioner of Police to the Police Complaints Division. The Police are lectured on the need to maintain good relations with members of the public. The three Divisions monitor closely the situation in Rodrigues. The NPMD ensures that conditions of detention comply with Prisons Regulations and human rights standards.
# HUMAN RIGHTS DIVISION

## STATISTICS 2016

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<td>Private Disputes</td>
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<tr>
<td>Environmental Issues</td>
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<td>Local Government</td>
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<tr>
<td>Parastatal Bodies</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>133</strong></td>
<td><strong>122</strong></td>
<td><strong>11</strong></td>
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## ANNEX III

### POLICE COMPLAINTS DIVISION

**STATISTICS 2016**

<table>
<thead>
<tr>
<th>Nature</th>
<th>No. of Complaints</th>
<th>Disposed of</th>
<th>Pending</th>
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<tr>
<td>Assault</td>
<td>167</td>
<td>105</td>
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<td>Verbal Abuse</td>
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<td>55</td>
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<tr>
<td>Service Delivery</td>
<td>358</td>
<td>239</td>
<td>119</td>
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<td><strong>TOTAL</strong></td>
<td><strong>601</strong></td>
<td><strong>399</strong></td>
<td><strong>202</strong></td>
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<td></td>
<td>No. of Visits</td>
<td>Prisons (Island of Mauritius &amp; Rodrigues)</td>
<td>81</td>
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<tr>
<td>---</td>
<td>------------------------------</td>
<td>------------------------------------------</td>
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</tr>
<tr>
<td>2</td>
<td>No. of Visits</td>
<td>Police Cells (Island of Mauritius &amp; Rodrigues)</td>
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<td>3</td>
<td>No. of Visits</td>
<td>RYC/CYC</td>
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<td>No. of Visits</td>
<td>Police Detention Centres</td>
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<td>5</td>
<td>No. of Visits</td>
<td>Hospitals</td>
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<td>6</td>
<td>Prisoners Interviewed</td>
<td>(476 Males &amp; 231 Females)</td>
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<td>7</td>
<td>No of Complaints</td>
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<td>576</td>
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## ANNEX V

### SENSTITIZATION CAMPAIGN 2016

**Citizens’ Advice Bureaux**

<table>
<thead>
<tr>
<th>LOCATION</th>
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</thead>
<tbody>
<tr>
<td>Quatre Bornes</td>
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<tr>
<td>Residence Vallijee</td>
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<tr>
<td>Rose Belle</td>
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<tr>
<td>Colline Monneron</td>
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<tr>
<td>Riviere des Anguilles</td>
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<td>Long Mountain</td>
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<td>Mahebourg</td>
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<td>Goodlands</td>
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<td>Beau Bassin</td>
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<td>Riviere du Rempart</td>
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<tr>
<td>Bois des Amourettes</td>
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<td>Sainte Croix</td>
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<td>Petite Riviere</td>
</tr>
<tr>
<td>Triolet</td>
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<tr>
<td>Bel Air Riviere Seche</td>
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<td>Saint Pierre</td>
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<tr>
<td>Plaines Magnien</td>
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<td>Lallmatie</td>
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<td>Floreal</td>
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<tr>
<td>Piton</td>
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<tr>
<td>Midlands</td>
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<tr>
<td>Grand Bay</td>
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<tr>
<td>Chemin Grenier</td>
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<td>Rte Nicolay</td>
</tr>
<tr>
<td>Bambous</td>
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<td>Curepipe</td>
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</table>
JUDGMENT

Madhewoo (Appellant) v The State of Mauritius and another (Respondents) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Mance
Lord Clarke
Lord Wilson
Lord Sumption
Lord Hodge

JUDGMENT GIVEN ON

31 October 2016

Heard on 20 July 2016
Appellant
Sanjeev Teeluckdharry
Erickson Mooneapillay
(Instructed by Blake Morgan LLP)

Respondents
James Guthrie QC
Kamlesh Domah
(Instructed by Royds Withy King)
LORD HODGE:

1. The National Identity Card Act 1985 (“the 1985 Act”) provides for adult citizens of Mauritius to carry identity cards which bear their names and signatures. More recently, the government proposed to introduce a new smart identity card, which incorporates on a chip the citizen’s fingerprints and other biometric information relating to his or her external characteristics. The National Identity Card (Miscellaneous Provisions) Act 2013 (“the 2013 Act”) is the legislative vehicle which was enacted for this scheme, which it effected by amending the 1985 Act.

2. Mr Maharajah Madhewoo (“the appellant”), a citizen of the Republic of Mauritius, has not applied for a biometric identity card. He challenges the constitutionality of the 2013 Act by seeking redress under section 17 of the Constitution, which allows a person to apply to the Supreme Court for redress if he alleges that any of sections 3 to 16 of the Constitution, which set out the individual’s fundamental rights and freedoms, “has been, is being or is likely to be contravened in relation to him”.

The 1985 Act as amended by the 2013 Act

3. Section 3 of the 1985 Act (as amended) provides for the Registrar of Civil Status to keep a register in electronic or other form in which the particulars of every citizen would be recorded. Section 3(2) provides that the particulars to be recorded on the register shall be the sex and names of the person and such reasonable or necessary information as may be prescribed regarding the identity of the person. The particulars which were prescribed for recording on the register included both fingerprints and encoded minutiae of fingerprints: the National Identity Card (Particulars in Register) Regulations 2013, regulation 3 (“the 2013 Regulations”). As explained in para 11 below, these Regulations were later repealed.

4. Section 4 of the 1985 Act (as amended) provides that every citizen within six months of attaining the age of 18 must apply for an identity card at an office designated by the registrar. Section 4(2) provides:

“Every person who applies for an identity card shall -

(a) produce his birth certificate or his certificate of registration or naturalisation as a citizen of Mauritius, as the case may be;
(b) produce such other documents as the Registrar may require;

(c) allow his fingerprints, and other biometric information about himself, to be taken and recorded; and

(d) allow himself to be photographed,

for the purpose of the identity card.”

Section 5 provides that the identity card shall bear the person’s names, date of birth, gender, photograph, signature or thumbprint, and NIC number and also the date of issue and (in section 5(2)(h)) “such other information as may be prescribed”. The appellants have expressed concern that the latter provision could result in the inclusion of medical and health data on the chip in the identity card, but the Government has not prescribed the inclusion of such data and one of its witnesses, Mr Ramah, the project director of the Mauritius National Identity Scheme (“MNIS”), gave evidence that no such data has been recorded on the cards.

5. Section 7 of the 1985 Act (as amended) provides:

“(1) Every person may -

(a) in reasonable circumstances and for the purpose of ascertaining the identity of another person; or

(b) where he is empowered by law to ascertain the identity of another person,

request that other person to produce his identity card where that person is a citizen of Mauritius.

(1A) Where a person is required to produce his identity card in accordance with subsection (1)(b), he shall -

(a) forthwith produce his identity card to the person making the request; or
(b) where he is not in possession of his identity card, produce his identity card within such reasonable period, to such person and at such place as may be directed by the person making the request.

(2) Where any person is required to produce evidence of his identity, it shall be sufficient for that purpose if he produces his identity card.”

6. Section 9(2) of the 1985 Act (as amended) provides that it is an offence to contravene the Act or any regulations made under it; and section 9(3) provides that the maximum penalties for an offence are a fine of 100,000 rupees and imprisonment for a term of five years. Section 12 provides that the collection and processing of personal data, including biometric information, under the Act shall be subject to the Data Protection Act.

7. In this appeal the appellant challenges the constitutionality of (a) the obligation to provide fingerprints and other biometric information under section 4, (b) the storage of that material on the identity card under section 5, (c) the compulsory production of an identity card to a policeman under section 7(1A) in response to a request under section 7(1)(b), and (d) the gravity of the potential penalties under section 9(3) for non-compliance. He claims, first, that the implementation of the new biometric identity card is in breach of sections 1, 2, 3, 4, 5, 7, 9, 15, 16 and 45 of the Constitution coupled with article 22 of the Civil Code (which provides that everyone has the right to respect for his private life and empowers courts with competent jurisdiction to prevent or end a violation of privacy) and, secondly, that the collection and permanent storage of personal biometric data, including fingerprints, on the identity card are in breach of those sections of the Constitution and that article of the Civil Code.

The judgment of the Supreme Court

8. In an impressive judgment dated 29 May 2015 the Supreme Court (Balancy SPJ, Chui Yew Cheong and Caunhye JJ) upheld part of the appellant’s challenge under section 9(1) of the Constitution, which provides:

“Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.”

The Court stated that the Constitution must be given a generous and purposive interpretation and held that
“The protection under section 9(1) would clearly be against any form of undue interference by way of a search of any part of the body of a person without his consent. The coercive taking of fingerprints from the fingers of a person and the extracting of its minutiae would thus clearly fall within the scope of the protection afforded to the integrity and privacy of the person under section 9(1) of the Constitution.”

The Court therefore held that the provisions of the 1985 Act (as amended) which enforce the compulsory taking and recording of fingerprints of a citizen disclosed an interference with the appellant’s rights guaranteed under section 9(1) of the Constitution. The Court rejected the submissions that the other provisions of the Constitution and the article of the Civil Code had been breached.

9. Having held that there was interference with a right guaranteed by section 9(1) of the Constitution, the Supreme Court went on to consider whether that interference was justified under section 9(2) which provides:

“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 -

(a) in the interests of … public order …

(b) for the purpose of protecting the rights and freedoms of other persons; …

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.”

10. The Supreme Court held that the provisions of the 2013 Act which provided for the taking and recording of fingerprints for the purposes of a national identity card were a permissible derogation under section 9(2) as the creation of the card was in the interests of public order and it had not been shown that the provisions were not reasonably justifiable in a democratic society.

11. The appellant enjoyed more success in his challenge to the storage and retention of the fingerprints. The Supreme Court held that the storage and retention of the fingerprints were not reasonably justifiable in a democratic society under section 9(2).
It held that the storage of the data was not sufficiently secure because the safeguards of the Data Protection Act were not sufficient and the storage of the data was not subject to judicial scrutiny and control. The respondents have accepted the Supreme Court’s decision on this matter and have altered this part of the statutory scheme, in response to the court’s ruling, by repealing the 2013 Regulations and replacing them with the National Identity Card (Civil Identity Register) Regulations 2015 which do not prescribe the recording of fingerprints and encoded minutiae of fingerprints on the register. Counsel for the respondents informed the Board that the encoded fingerprint minutiae were included only on the chip on the biometric identity card and not on the register, that a person’s fingerprints were destroyed after he or she was issued with the biometric card, and that the Government had not issued card-readers which would give access to the minutiae on the chip. This was, he said, a “holding position” to comply with the Supreme Court’s ruling. When the Supreme Court heard the challenge in September 2014, over 850,000 citizens had applied for identity cards. The Government’s current position is that citizens can still use their identity cards issued under the 1985 Act until 31 March 2017.

12. The Supreme Court has granted the appellant leave to appeal to the Board.

The various challenges

13. It is not in dispute that the Constitution is given a generous and purposive interpretation and in particular the provisions that enshrine fundamental rights should receive a generous and not literalist interpretation: Olivier v Buttigieg [1967] 1 AC 115, p 139; Minister of Home Affairs v Fisher [1980] AC 319, pp 328-329; Ong Ah Chuan v Public Prosecutor [1981] AC 648, pp 669-670. But, giving full weight to that well-established principle of constitutional interpretation, the Board is satisfied that, of the fundamental rights and freedoms protected by the Constitution, only section 9 is engaged by the challenged provisions of the 2013 Act. The Board reminds itself of what it said in Matadeen v Pointu [1999] 1 AC 98, pp 117-118, that the rejection of a narrow or legalistic interpretation cannot mean that section 3 and later sections of the Constitution “can be construed as creating rights which they do not contain”.

14. As the Supreme Court has addressed the other provisions of the Constitution very satisfactorily, the Board can state its views briefly. Section 4, which protects the right to life, is not engaged as it is concerned with the deprivation of life and not with any suggested diminution in the quality of life resulting from having to provide fingerprints and biometric information. Indeed, counsel for the appellant did not press this claim in his written case and oral submissions.

15. Instead, he argued that section 7 of the 1985 Act (as amended by the 2013 Act), by requiring the citizen to produce his or her identity card, breached the protections, in
sections 5 and 15, of the rights to personal liberty and freedom of movement. In the Board’s view, this is misconceived. The obligation to produce the identity card in section 7(1A) applies only in the context of section 7(1)(b), where the person requesting its production is a person otherwise empowered by law to ascertain the identity of another person. The 2013 Act imposes no obligation to respond to a request by anyone else to produce an identity card under section 7(1)(a). It was not disputed that section 7(1)(b) referred to the power of a policeman to request proof of identity, for example, in the context where he could stop a person when he had reasonable grounds to suspect the commission of a crime. An interference with liberty and freedom of movement, if any, would arise by the exercise of this police power and not as a result of the obligation to respond to the requirement to produce the identity card. Further, section 7(1A)(b) allows the person, who is required to produce his identity card but who does not have it to hand, to produce it within a reasonable period. The section does not authorise any form of detention.

16. Similarly, the Board is satisfied that the 2013 Act does not engage section 7 of the Constitution, which protects against torture and inhuman or degrading treatment. Counsel for the appellant submitted that the coercive act of taking a citizen’s fingerprints and storing the minutiae on a microchip on the identity card without his consent and when he had not been the subject of any criminal investigation or conviction amounted to the treatment which section 7 prohibited. But the appellant’s subjective fear of degradation and stigmatisation because he saw himself as being treated in the same way as a criminal has to be balanced by a recognition that every citizen over 18 years of age in Mauritius is required to provide his or her fingerprints for the purpose of the identity card. Many people may resent having to provide their fingerprints, but the compulsory provision of fingerprints in section 4 of the 1985 Act (as amended) does not come close to the treatment prohibited by section 7 of the Constitution. The only case which the appellant’s counsel cited, *Raninen v Finland* (1997) 26 EHRR 563, provides no support for his proposition; the European Court of Human Rights held that the unjustified public handcuffing in that case did not come up to minimum level of severity of treatment needed to engage the equivalent provision of the European Convention on Human Rights (“ECHR”).

17. The Board agrees with the Supreme Court that the compulsory taking of fingerprints and the extraction of minutiae involved an interference with the appellant’s section 9 rights which required to be justified under section 9(2). The appellant argued that he also had rights under section 3(c) of the Constitution, which provides:

“It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination … 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 -
… (c) the right of the individual to protection for the privacy of his home and other property …

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.”

18. Section 3 of the Constitution is not a mere preamble but is a freestanding enacting section which must be given effect in accordance with its terms: Société United Docks v Government of Mauritius [1985] AC 585, 600 D-G; Campbell-Rodriques v Attorney General of Jamaica [2007] UKPC 65; [2008] RVR 144, paras 8-12; Newbold v Commissioner of Police [2014] UKPC 12, para 32. But the terms of section 3(c) do not give wider protection than that provided by section 9(1). In particular, the Board sees no basis for the submission by the appellant’s counsel that the combination of sections 3(c) and 9 creates a more general right requiring respect for private life similar to that in the differently worded article 8 of the ECHR. Thus the Supreme Court was, in the Board’s view, correct to look to the terms of section 9(2) of the Constitution in its assessment whether the interference was justified.

19. Before turning to section 9(2), the Board notes that the appellant seeks to argue that the requirement to provide fingerprints in order to obtain an identity card was discriminatory, contrary to section 16 of the Constitution, because no such requirement was imposed on foreign residents and tourists. The Board was informed that this was not argued in submissions before the Supreme Court. It cannot be raised now. In any event, foreigners in Mauritius have passports to establish their identity and there was no evidence that there was a problem of identity theft in relation to their passports. Prima facie therefore the difference in treatment was not the result of their different race or place of origin but because they were outside the mischief that the 2013 Act addressed.

20. The Board turns to the appellant’s reliance on other provisions. Section 1 of the Constitution, which declares Mauritius to be a sovereign democratic State, and section 2, which declares the Constitution to be the supreme law of Mauritius, are important provisions. Section 1, which is entrenched by section 47(3), is a bastion to protect the rule of law and the separation of powers, including a judiciary independent of both the executive and legislature: State of Mauritius v Khoyratty [2007] 1 AC 80. Section 2 limits the law-making powers of any branch of government. The two sections provide the backdrop to the appellant’s constitutional challenge but do not enhance the scope of that challenge, which depends on the wording of the relevant sections in Chapter II of the Constitution. Section 45 provides that, subject to the Constitution, Parliament may
make laws for the peace, order and good government of Mauritius. It confirms Parliament’s subjection to the Constitution and does not make arguments on such matters as the prioritizing of the use of public funds, the adequacy of parliamentary scrutiny of the legislation, and the absence of procurement exercises into constitutional challenges. Finally, article 22 of the Civil Code does not create rights which a citizen can enforce directly under section 17 of the Constitution.

*Justification of the interference under section 9(2)*

21. The Supreme Court recognised, correctly, that the right under section 9(1) was not an absolute right and interference with that right could be permitted under section 9(2). The Court held, under reference to *Leela Förderkreis EV v Germany* (2009) 49 EHRR 5 at para 86, that the relevant provision of the 1985 Act (as amended), section 4(2)(c), was under the authority of law because it was enacted in a domestic statute and was formulated with sufficient precision to enable citizens to regulate their conduct. The Court then considered and accepted the evidence of Mr Ramah and also Mr Pavaday, who was project manager and head of operations of the MNIS, that the use of fingerprints enabled the cards to be issued to the correct person and avoided the serious flaws of the previous identity card system which failed to protect against identity fraud. The Court concluded that the section and the Regulations implementing it were made in the interests of public order under section 9(2)(a).

22. In addressing the question whether section 4(2)(c) of the 1985 Act (as amended) was reasonably justifiable in a democratic society the Supreme Court drew on jurisprudence of the European Court of Human Rights in *S v The United Kingdom* (2009) 48 EHRR 50, para 101, and *Şahin v Turkey* (2005) 41 EHRR 108, para 103. In substance the Court asked whether the measure pursued a legitimate aim, whether the reasons given by the national authorities for the interference in pursuit of that aim were relevant and sufficient, and whether the measure was proportionate to the aim pursued. This evaluation is essentially the same as that adopted by the courts in the United Kingdom in relation to article 8(2) of the ECHR, in which the courts ask themselves (a) whether the measure is in accordance with the law, (ii) whether it pursues a legitimate aim, and (iii) whether the measure will give rise to interferences with fundamental rights which are disproportionate, having regard to the legitimate aim pursued. In relation to (iii), the courts ask themselves: (a) whether the objective is sufficiently important to justify a limitation of the protected right, (b) whether the measure is rationally connected to the objective, (c) whether a less intrusive measure could have been used without compromising the achievement of the objective (in other words, whether the limitation on the fundamental right was one which it was reasonable for the legislature to impose), and (d) whether the impact of the infringement of the protected rights is disproportionate to the likely benefit of the measure: *R (Aguilar Quila) v Secretary of State for the Home Department (AIRE Centre intervening)* [2012] 1 AC 621, para 45; *Bank Mellat v H M Treasury (No 2)* [2014] AC 700, 790-791, para 74; and *R (Bibi) v*
Secretary of State for the Home Department (Liberty intervening) [2015] 1 WLR 5055, para 29.

23. The Supreme Court concluded:

“we find that it can hardly be disputed that the taking of fingerprints within the applicable legal framework pursues the legitimate purpose of establishing a sound and secure identity protection system for the nation and thus answers a pressing social need affording indispensable protection against identity fraud. Such a purpose, as has been amply demonstrated, is vital for proper law enforcement in Mauritius.

Furthermore, taking into consideration the appropriate safeguards in the taking of fingerprints for their insertion in the cards, and the relatively limited degree of interference involved, we are led to conclude that such interference is proportionate to the legitimate aim pursued.”

24. The Board in performance of its duty will scrutinise the justification of an interference with a fundamental right but it will be slow to interfere with an evaluation of this nature performed by a local court which is more familiar with the circumstances in its society than the Board can be.

25. The appellant challenges the Supreme Court’s evaluation because, he submits, the creation of a reliable identity card system does not justify the interference with his fundamental rights. He submits that the obligation to provide his fingerprints interferes with his right to be presumed innocent and also that an innocuous failure to comply with section 4(2)(c) could give rise to draconian penalties under section 9(3) of the Act (para 6 above). He also points out that in India a proposal for a biometric identity card was held to be unconstitutional, and, in the United Kingdom, libertarian political opposition resulted in the repeal of legislation to introduce biometric identity cards. The interference, he submits, is disproportionate.

26. In the Board’s view, these challenges do not undermine the Supreme Court’s assessment. First, the requirement to provide fingerprints for an identity card does not give rise to any inference of criminality as it is a requirement imposed on all adult citizens. It is true that, if circumstances arose in which a police officer was empowered to require the appellant to produce his identity card and the government had issued card readers, the authorities would have access to his fingerprint minutiae which they could use for the purposes of identification in a criminal investigation. But that does not alter the presumption of innocence. Secondly, the penalties in section 9(3) are maxima for
offences, including those in section 9(1), which cover serious offences such as forgery and fraudulent behaviour in relation to identity cards. The subsection does not mandate the imposition of the maximum sentence for any behaviour. Thirdly, while judicial rulings on international instruments and the constitutions of other countries can often provide assistance to a court in interpreting the provisions protecting fundamental rights and freedoms in its own constitution, the degree of such assistance will depend on the extent to which the documents are similarly worded.

27. The Board notes that the Government’s holding position pending this judgment, which it discussed in para 11 above, involves the placing of fingerprints and minutiae on the register only while the identity card is produced and issued to the applicant. What is placed on the identity card are fingerprint minutiae which, according to the evidence of Mr Pavaday, cannot be used to recreate the image of the fingerprint but can be matched with a person’s fingerprint. The fingerprints on the register are used to make sure that the card is issued to the correct person. Thereafter, the fingerprints are expunged from the register. Questions may arise in future. The absence of the fingerprints and minutiae from the register after an identity card is issued may affect adversely the Government’s ability to prevent identity fraud, for example, if someone were to apply more than once for an identity card using different names and documentation. The extent to which an interference with a fundamental right can achieve a legitimate aim is a consideration in any assessment of its justification. But the Board has not been informed of the Government’s proposals for the future of the MNIS and such proposals were not before the Supreme Court and are not an issue in this appeal.

28. Similarly, the proportionality of an interference with fundamental rights may be affected by the use which is made in the future of the power in section 5(2)(h) of the 1985 Act (as amended) to prescribe other information to be included on the chip of an identity card. But on the evidence currently available, the chip on the card has no capacity to accommodate the sensitive medical and health data, about which the appellant has expressed concern. Accordingly, it is not likely that such data could be placed on the identity cards and therefore the power to prescribe the inclusion of other information cannot support a challenge under section 17 of the Constitution.

A fair hearing?

29. Finally, the appellant asserts that the Supreme Court did not give him a fair hearing. But his counsel did not develop the arguments in his oral submissions and the materials which he has placed before the Board, including the transcript of the appellant’s evidence in chief, do not substantiate this claim.
30. The appellant’s challenge to the judgment of the Supreme Court for failing to assess the evidence (a) conflates evidential and legal findings and (b) criticises the court for failing to assess the evidence of his expert, Mr Sookun, and to record parts of the evidence on cross-examination of Mr Pavaday. But it was Mr Sookun’s evidence which caused the court to uphold his challenge to the storage and retention of the fingerprints and biometric data on the register or database. While the court might have summarised that evidence, so far as it accepted the evidence as relevant, that would not have assisted in this appeal. Nor would the evidence on cross-examination of Mr Pavaday, which the Board has also considered, have affected the outcome of this appeal. The Government has not cross-appealed and the issue of the storage and retention of the data is not before the Board.

_The Supreme Court’s order_

31. There is an inconsistency between paras 5 and 6 of the Supreme Court’s order in that para 5 states that the law providing for the storage and retention of fingerprints and other biometric data constitutes a permissible derogation under section 9(2) of the Constitution while para 6 holds the same provisions to be unconstitutional. The Board considers that the paragraphs can be reconciled if para 5 were amended to read:

> “a law providing for the storage and retention of fingerprints and other personal biometric data regarding the identity of a person in principle constitutes a permissible derogation, in the interests of public order, under section 9(2) of the Constitution.”

(emphasis added to show amendments)

_Conclusion_

32. Subject to the alteration of para 5 of the Supreme Court’s order in accordance with para 31 above, the Board dismisses the appeal. Prima facie, the respondents should be entitled to the costs of this appeal but the Board gives the appellant 21 days from the promulgation of this judgment, and the respondents 14 days thereafter, to make submissions as to costs, if they so wish.
Global Alliance of National Human Rights Institutions at its 2016 annual conference
“CURRENT CHALLENGES TO HUMAN RIGHTS PROTECTION”
Geneva, 23 March 2016

On 23 March 2016 national human rights institutions (NHRIs) from all regions of the world met in Geneva for the Annual Conference titled “Current Challenges to human Rights Protection”. The Conference was organized by the Global Alliance of National Human Rights Institutions (GANHRI) – formerly known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR).

NHRIs from all regions together with international experts, member states and representatives of civil society discussed human rights challenges resulting from conflicts, massive displacement and intolerance, racism and xenophobia and how NHRIs could address these challenges by applying their mandates under the Paris Principles.

NHRIs participating in the Conference adopted the following Statement:

We, the Global Alliance of National Human Rights Institutions (GANHRI) as the international association of independent NHRIs, guided by the Paris Principles of the United Nations and representing more than 100 NHRIs from the four world regions – Africa, the Americas, Asia-Pacific and Europe –, take this opportunity to collectively express our deep concern with regard to the devastating impact that widespread situations of armed conflict, the massive displacement of people, as well as the increase in racism and intolerance often leading to violent extremism have on the protection of human rights everywhere in the world.

At the same time, we are encouraged by an ever growing and interconnected global civil society that is committed to the vision of the United Nations towards a planet of peace and freedom where the promise of the Universal Declaration on Human Rights of 1948 (UDHR) is fulfilled and that every member of the human family enjoys their inherent, inalienable and indivisible rights.

Fully aware of the complexities of the current challenges and also of the complex nature of the answers to these challenges, we state with confidence that human rights and their underlying principles, such as participation, accountability, non-discrimination, transparency and the rule of law, offer guidance to finding solutions and the right balance in situations of crises. In this context, we particularly encourage all state and non-state actors around the globe to implement the Sustainable Development Goals (SDGs) adopted in 2015 in the spirit of and based on human rights. By last year’s adoption of the Merida Declaration on the role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development, GANHRI and its members have documented their commitment to the SDGs and will do their part in the SDG implementation process in line with their mandates as independent actors for the promotion and protection of international human rights standards. This will include policy advice, human rights training and awareness raising, analyses and impact assessments, as well as individual complaint handling. GANHRI and its members invite all state and non-state actors to actively approach “their” NHRI or NHRI network and engage in dialogue and benefit from NHRI’s human rights expertise.
We have examined and discussed NHRI experiences, instruments and cooperation for preserving human rights in the face of (1) situations of large-scale violations of human rights in the context of armed conflict, (2) an ongoing worldwide massive displacement of people resulting in high levels of vulnerability for uprooted individuals and families, and (3) growing nationalism, intolerance, racism and xenophobia, which threaten to undermine the vision and achievements once triggered by the Universal Declaration of Human Rights. As outcome of this examination and discussion we have identified the following roles, tasks and actions for NHRI when engaging in the three areas of concern:

(1) With regard to large scale violations of human rights caused by or related to armed conflict,

We re-affirm our commitment expressed in the Seoul Declaration on the role of NHRI on upholding human rights during conflict and while countering terrorism of 2004 and the Kyiv Declaration on the role of NHRI in conflict and post-conflict situations of 2015.

We, therefore, embrace the UN Secretary General’s Human Rights Up Front Initiative and will – individually and collectively – strive to systematize and make more effective our function as early-warning mechanisms by, inter alia, further professionalizing our internal and external knowledge and information sharing, by intensifying our monitoring function domestically and by facilitating a culture of human rights dialogue at the national, regional and local levels.

We further stress the importance of ensuring that NHRI, whilst operating in conflict situations, can continue to work independently, free from reprisals and other acts of intimidation, and free from violence and undue interference.

(2) With respect to massive displacement of people,

We renew our commitments expressed in the Santa Cruz Declaration on the role of NHRI and migration of 2006,

We welcome the commitments expressed in the Belgrade Declaration on the protection and promotion of the rights of refugees and migrants of 2015, as further specified in the Thessaloniki Regional Action Plan on the Refugee/Migrants Crisis and Human Rights in February 2016.

We also take note of the Malta Declaration on Migration adopted on 10 March 2016 by the 28 members of the Association of Mediterranean Ombudsmen,

We affirm our intention to make use of every function and instrument our respective mandates provide us with, in order to

(a) uphold and realize the human rights guaranteed by international and regional human rights instruments, as well as the Geneva Refugee Convention (with particular emphasis on the principle of non-refoulement), for every migrant, refugee, asylum-seeker and displaced person at all times, upon arrival, during asylum procedures, returns, and their stay both in the country of arrival and in receiving states, and

(b) turn law and policy makers’ attention towards protection measures for the most vulnerable among migrants, refugees and asylum seekers.

We encourage governments, parliaments and every public servant to view and treat every migrant, refugee and asylum-seeker as an individual having the right to have his or her case examined and reviewed individually. In light of the principle of non-discrimination, international human rights law does not allow for arbitrary categorization, generalization or collective expulsion and, thus, prohibits selectivity as well as the use of strict numeral limitations with regard to access to an asylum procedure.

(3) With regard to intensified intolerance, nationalism, racism and xenophobia in many countries, often paired with an increasingly hatred-fueling style of public debate, we take to heart the UN Secretary General’s Plan of Action to Prevent Violent Extremism and will contribute to it through our actions at home. Here, too, we will bring in all elements of our mandates, with special focus on awareness raising and capacity building for media
personnel, in order to (re-)establish ways to debate that are based on mutual respect and human dignity. We consider it our responsibility to strengthen the human rights narrative within public debate.

These three areas of concern are interdependent and intertwined. A consistent and systematic human rights approach in each area promises to have a positive impact in the other ones. In light of this, we see our task in mainstreaming human rights in all policy fields, facilitating alliances and partnerships among state and non-state actors and holding governments and parliaments to account. Fulfillment of this task will include bringing issues from the domestic sphere to the UN and regional organizations and, in turn, bring the views, recommendations and decisions of the international sphere home. In this context, we renew our commitment to advocate for ratification and implementation of all international human rights treaties by the State. As NHRIs in line with the Paris Principles we are in a unique position to advise, to cooperate with all actors and rights holders, to investigate, monitor and report, and to cooperate at regional, cross regional and global levels through our coordinating networks. We will fulfill our responsibilities to the best of our abilities, and we encourage governments, parliaments, judges, civil society actors, the business sector and all other stakeholders to do the same – in the spirit of the Universal Declaration of Human Rights.
RESOLUTION ON GUIDELINES
AND MEASURES FOR THE PROHIBITION
AND PREVENTION OF TORTURE,
CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT IN AFRICA

THE ROBBEN ISLAND GUIDELINES
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IN COLLABORATION WITH THE ASSOCIATION FOR THE PREVENTION OF TORTURE

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RESOLUTION ON GUIDELINES
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OR DEGRADING TREATMENT OR PUNISHMENT
IN AFRICA

THE ROBBEN ISLAND GUIDELINES
FOREWORD

The African Charter on Human and Peoples Rights establishes a regional human rights body, the African Commission on Human and Peoples’ Rights, with the mandate to promote the observance of the Charter, ensure the protection of the rights and freedoms set out in the Charter, interpret the Charter and advise on its implementation.

Article 5 of the African Charter provides that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man and particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

At the 28th Ordinary Session of the African Commission, the Association for the Prevention of Torture (APT), an international NGO enjoying Observer Status to the African Commission and committed to working internationally to tackle the global problem of torture and ill-treatment, proposed to the African Commission to hold a joint workshop in order to formulate concrete measures which would be taken for effective implementation of the provisions of Article 5 of the African Charter.

The workshop was held, from 12 to 14 February 2002, on Robben Island, a symbolic place for Africa, where Nelson Mandela and other activists against the South African Apartheid regime were detained for many years. This meeting drew together African and international experts from a variety of backgrounds. The result of this co-operative efforts was the successful drafting of comprehensive guidelines and measures for the prohibition and prevention of torture and ill-treatment in Africa, called “Robben Island Guidelines”.

The Robben Island Guidelines were adopted by the African Commission during its 32nd ordinary session. These Guidelines are designed to assist States to meet their national, regional and international obligations for the effective enforcement and implementation of the universally recognised prohibition and prevention of torture.
The adoption of the Robben Island Guidelines is an important step forward in the promotion of human rights and in the prevention of torture and ill-treatment in Africa, but it is not an end in itself. The Guidelines need to be promoted and implemented. They have also to be understood as a collective endeavour of the African community to deal with the phenomena of torture and to look forward to every person enjoying the right to be free from torture and other forms of ill-treatment.

The African Commission on Human and Peoples’ Rights would like to draw the attention of all African national and regional actors, as well as international ones, to the next crucial step of implementing the Guidelines. The implementation of the Guidelines has to be encouraged at national level. This needs co-operation, dialogue and the endeavour of several actors such as appropriate States Authorities, Parliamentarians, National Human Rights Institutions and the whole Civil Society.

Andrew R. Chigovera,
Commissioner of the African Commission on Human and Peoples’ Rights
RESOLUTION ON GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA

The African Commission on Human and Peoples' Rights, meeting at its 32nd ordinary session, held in Banjul, The Gambia, from 17th to 23rd October 2002;

Recalling the provisions of:

- Article 5 of the African Charter on Human and Peoples’ Rights that prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;

- Article 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African Governments may base their legislation;

- Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further its Resolution on the Right to Recourse Procedure and Fair Trial adopted during its 11th ordinary session, held in Tunis, Tunisia, from 2nd to 9th March 1992;

Noting the commitment of African States to ensure better promotion and respect of human rights on the continent as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa;

Recognising the need to take concrete measures to further the implementation of existing provisions on the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
Mindful of the need to assist African States to meet their international obligations in this regard;

Recalling the recommendations of the Workshop on the Prohibition and the Prevention of Torture and Ill-treatment, organised jointly by the African Commission and the Association for the Prevention of Torture, on Robben Island, South Africa, from 12th to 14th February 2002;

1. Adopts the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

2. Establishes a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.

3. Assigns the following mandate to the Follow-up Committee:
   • To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders;
   • To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels;
   • To promote and facilitate the implementation of the Robben Island Guidelines within Member States;
   • To make a progress report to the African Commission at each ordinary session;

4. Urges Special Rapporteurs and Members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate;

5. Encourages States parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines;

6. Invites NGOs and other relevant actors to widely disseminate and utilise the Robben Island Guidelines in the course of their work.

Done in Banjul, The Gambia, 23rd October 2002
GUIDELINES AND MEASURES
FOR THE PROHIBITION AND PREVENTION OF
TORTURE, CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT IN AFRICA

THE ROBBEN ISLAND GUIDELINES

**Preamble**

*Recalling* the universal condemnation and prohibition of torture, cruel, inhuman and degrading treatment and punishment;

*Deeply* concerned about the continued prevalence of such acts;

*Convinced* of the urgency of addressing the problem in all its dimensions;

*Recognising* the need to take positive steps to further the implementation of existing provisions on the prohibition of torture, cruel, inhuman and degrading treatment and punishment;

*Recognising* the importance of preventive measures in the furtherance of these aims;

*Recognising* the special needs of victims of such acts;

*Recalling* the provisions of:

- Art. 5 of the African Charter on Human and Peoples’ Rights which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;

- Art. 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African Governments may base their legislations;
- Arts. 3 and 4 of the Constitutive Act of the African Union by which States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further the international obligations of States under:

- Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;
- Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;
- Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa to ensure better promotion and respect of human rights on the continent;

Desiring the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard;

The “Robben Island Workshop on the Prevention of Torture”, held from 12 to 14 February 2002, has adopted the following guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment and recommends that they are adopted, promoted and implemented within Africa.
PART I: PROHIBITION OF TORTURE

A. Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:

   a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;

   b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;

   c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;

   d) Ratification of or accession to the Rome Statute establishing the International Criminal Court.

B. Promote and Support Co-operation with International Mechanisms

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.
3. States should co-operate with the United Nations Human Rights Treaty Bodies, with the UN Commission on Human Rights’ thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

C. Criminalization of Torture

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.

5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.

6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.

7. Torture should be made an extraditable offence.

8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.

9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

10. Notions such as “necessity”, “national emergency”, “public order”, and “ordre public” shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.

12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.
13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.

14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

D. Non-Refoulement

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

E. Combating Impunity

16. In order to combat impunity States should:

   a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process;

   b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law;

   c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards;

   d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody;

   e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.
F. Complaints and Investigation Procedures

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.

18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.

19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)1.

PART II: PREVENTION OF TORTURE

A. Basic Procedural Safeguards for those Deprived of their Liberty

20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:

a) The right that a relative or other appropriate third person is notified of the detention;

b) The right to an independent medical examination;

c) The right of access to a lawyer;

d) Notification of the above rights in a language, which the person deprived of their liberty understands;

B. Safeguards during the Pre-trial Process

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.

23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

24. Prohibit the use of incommunicado detention;

25. Ensure that all detained persons are informed immediately of the reasons for their detention.

26. Ensure that all persons arrested are promptly informed of any charges against them.

27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.

28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.

29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.

30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.

31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.

32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

C. Conditions of Detention

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners;

34. Take steps to improve conditions in places of detention, which do not conform to international standards.

35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.

36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.

37. Take steps to reduce overcrowding in places of detention by, inter alia, encouraging the use of non-custodial sentences for minor crimes.

D. Mechanisms of Oversight

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary;

3 - UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977.

4 - UN Doc. E/CN.4/1995/39
39. Encourage professional legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.

40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.

41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights5;

42. Encourage and facilitate visits by NGOs to places of detention.

43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.

44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

E. Training and Empowerment

States should:

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups;

46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other

relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

F. Civil Society Education and Empowerment

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.

48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

PART III: RESPONDING TO THE NEEDS OF VICTIMS

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependants are:

   a) Offered appropriate medical care;
   
   b) Have access to appropriate social and medical rehabilitation;
   
   c) Provided with appropriate levels of compensation and support;

In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.
### List of Human Rights Treaties to which Mauritius is a party and reporting status

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