

ANNUAL REPORT

of the

NATIONAL HUMAN RIGHTS COMMISSION

MAURITIUS

For the year 2013

MARCH 2014

TABLE OF CONTENTS

		PARAGRAPHS	PAGES
	OVERVIEW	1 - 16	1-5
CHAPTER I	NEW LEGISLATION	1.1 - 1.10	6-12
CHAPTER II	THE COMMISSION	2.1 - 2.24	13-23
CHAPTER III	THE POLICE	3.1 - 3.37	24-37
CHAPTER IV	PRISONS	4.1 - 4.31	38-51
CHAPTER V	SEX DISCRIMINATION	5.1 - 5.7	52-54
CHAPTER VI	THE JUDICIARY	6.1. - 6.12	55-59
CHAPTER VII	MISCELLANEOUS COMPLAINTS	7.1 - 7.8	60-61
CHAPTER VIII	PROMOTION OF HUMAN RIGHTS	8.1 - 8.6	62-64
CHAPTER IX	REVIEWING LAWS	9.1 - 9.5	65-66
CHAPTER X	THE FUTURE	10.1 - 10.8	67-70

ANNEXES

ANNEX I	Complaints to the NHRC 2009
ANNEX II	Complaints received at the Sex Discrimination Division for the years 2009-2010-2011
ANNEX III	Complaints to the NHRC 2010
ANNEX IV	Complaints to the NHRC 2011
ANNEX V	Complaints to the NHRC 2012
ANNEX VI	Complaints to the NHRC 2013
ANNEX VII	United Nations Declaration on Human Rights Education and Training
ANNEX VIII	Concluding Observations of the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 2011
ANNEX IX	Report of the Working Group on the Universal Period Review – Mauritius
ANNEX X	Addendum to Annex IX
ANNEX XI	Convictions and Appeals 2012
ANNEX XII	Convictions and Appeals 2013
ANNEX XIII	Protection of Human Rights Act
	<p>The following Acts –</p> <ol style="list-style-type: none"> (1) Protection of Human Rights Act (2) Police Complaints Act (3) National Preventive Mechanism Act <p>may be consulted at http://mauritiusassembly.gov.mu/English/acts/Pages/Acts-of-Year-2012.aspx</p>

OVERVIEW

1. The present Report of the National Human Rights Commission is made under the new legislation that came into force on 1 July 2013.
2. All the complaints pending before the Complaints Investigation Bureau (CIB) of the Police Department were transferred to the new Police Complaints Division of the NHRC at that date.
3. National human rights institutions in developing countries are known to have a limited budget and scarce resources. This is also true of Mauritius. It is expected that adequate resources will be allocated to the NHRC with the creation of three Divisions – the Human Rights Division, the Police Complaints Division and the National Preventive Mechanism Division.
4. Mauritius is a compliant human rights country respectful of its original Constitution which dates back 46 years when Mauritius acceded to Independence. The Constitution contains a strong Bill of Rights modelled on the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.
5. Mauritius has recently been reviewed by Treaty Bodies, namely the Committee against Torture in 2011 and the Committee on the Elimination of Racial Discrimination in 2012. The Country Reports were forwarded to the

National Human Rights Commission for its comments before being submitted to the Treaty Bodies.

6. The Concluding Observations of the Committee against Torture are reproduced at Annex VIII to help towards its dissemination among the public.
7. Extracts from the Report of the Working Group on the Universal Periodic Review of Mauritius before the Human Rights Council in 2013 are reproduced at Annex IX. They give a clear picture of the Recommendations endorsed by the State of Mauritius and an indication of the official stand on other Recommendations. The UPR exercise shows that Mauritius abides largely by its human rights commitments.
8. Mauritius has already submitted its first Country Report under the Convention on the Rights of Persons with Disabilities and is in the process of finalizing its long overdue Country Report under the International Covenant on Civil and Political Rights.
9. The Annual Report of the United States Department of State on the human rights situation in different countries of the world is on the whole favourable to Mauritius as it does not reveal any serious human rights violations.

10. The year 2013 witnessed the completion of the construction of the Eastern Prison at Melrose, a project which has cost over Rs 2 billion rupees and which is a testimony to the Government's respect for the human rights of those deprived of liberty. The new prison will solve the problem of overcrowding in the other prisons and provide conditions of detention compliant with human rights norms. The National Human Rights Commission has been following the implementation of the project.
11. Subsequent to negotiations at international level, Mauritius has agreed to put Somali pirates on trial locally and to detain them in the country if they are found guilty. New facilities have been constructed to implement this agreement.
12. One of the major recommendations of the Annual Report of the NHRC in 2013 is that Prisons authorities should continue to devote maximum efforts to the rehabilitation of detainees and that specialized staff should be recruited to contribute to this task. The transfer of foreign prisoners to prisons in their country of origin should be pursued. They should benefit from conditions which would help towards their rehabilitation and reinsertion in their own society instead of serving long sentences in Mauritius with few visits or no visit at all from their families. Furthermore expatriate detainees rarely get bail. They remain in prison for years until their case is heard.

13. The Police Force needs to create a legal department to help it deal with complex laws and issues like cybercrime, economic crimes, serious fraud, asset recovery, pornography and hate speech on the internet. There are now more than 600 barristers in Mauritius from whom about 20 could be recruited to advise the Commissioner of Police and to speed up investigation of complex cases. The recruits may in the first instance be attached to the Office of the Director of Public Prosecutions for a period of six months and may also follow courses at the Institute of Judicial and Legal Studies. The budget of the Police Department which stands at almost eight billion rupees for 2013 could easily be adjusted to cater for this specific need.

14. In 2013 the process of electoral reform has been initiated to make better provision in the Constitution for the protection of minorities, thus reinforcing the guarantee of civil and political rights to all sections of the population. The exercise is a delicate one, in that it has to prove that politics can be a unifying force, not a divisive force and that it can effectively promote nation building in our young Republic.

15. The First Schedule to the Constitution makes it compulsory for every candidate at any general election of members of the National Assembly to declare which community he belongs to. (Hindu, Muslim, Sino-Mauritian or General Population). However, community affiliation was only mandatory in the 1972 census. The Human Rights Committee set up under the International Covenant on Civil and Political Rights (to which Mauritius is a party) found the following -

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

According to the Committee, Mauritius has to comply with its obligations under the Covenant.

16. The ideal solution would be for all Mauritians to consider themselves as sons and daughters of Mauritius. They do not have to belong to a community. Their religion or the country of origin of their ancestors would differentiate them only on a cultural basis, thereby contributing to the richness of the Mauritian identity.

CHAPTER I

NEW LEGISLATION

- 1.1 On 3 August 2012 the National Assembly enacted three laws –
- (1) The Protection of Human Rights (Amendment) Act 2012 to amend the Protection of Human Rights Act 1998 (PHRA)
 - (2) The Police Complaints Act 2012
 - (3) The National Preventive Mechanism Act 2012

The new Acts were proclaimed in July 2013.

- 1.2 The PHRA created the following Divisions within the National Human Rights Commission -

- (a) A Human Rights Division
- (b) A Police Complaints Division
- (c) A National Preventive Mechanism Division

- 1.3 The National Human Rights Commission itself now consists of a Chairperson who heads every Division and 3 Deputy Chairpersons, each of whom is assigned to a Division.

Each Division consists of the Chairperson of the NHRC, its Deputy Chairperson and 2 members.

1.4 In the PHRA the functions of the Commission are as follows –

3A. Functions of the Commission

The Commission shall –

- (a) *promote and protect human rights;*
- (b) *review the safeguard provided by or under any enactment for the protection of human rights;*
- (c) *review the factors or difficulties that inhibit the enjoyment of human rights;*
- (d) *submit to the Minister any opinion, recommendation, proposal or report on any matter concerning the promotion and protection of human rights;*
- (e) *prepare reports on the national situation with regard to human rights in general, and on more specific matters;*
- (f) *inform the Minister of situations of violation of human rights and advise on ways in which such situations can be ended;*
- (g) *promote and ensure the harmonisation of national legislation and practices with the international human rights instruments to which Mauritius is a party, and their effective implementation;*
- (h) *encourage ratification or accession to the instruments referred to in paragraph (g), and ensure their implementation;*
- (i) *contribute to the reports which Mauritius is required to submit to United Nations bodies and committees, and to regional institutions, pursuant to its treaty obligations and, where necessary, to express an opinion on the subject, with due respect for its independence;*
- (j) *cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;*
- (k) *assist in the formulation of programmes for the teaching of, and research into, human rights and take part in their execution in schools, universities and professional circles;*
- (l) *publicise human rights and efforts to combat all forms of discrimination by increasing public awareness, especially through information and education and by making use of all press organs;*

(m) exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.

1.5 In Section 4 of the Police Complaints Act 2012 the functions of the Police Complaints Division are as follows –

4 *Functions of Division*

Without prejudice to the jurisdiction of the Courts or the powers conferred on the Director of Public Prosecutions, the Ombudsman or the Disciplined Forces Service Commission, the functions of the Division shall be –

- (a) 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 duty, other than a complaint made in relation to an act of corruption or a money laundering offence;*
- (b) to investigate the death of any person which occurred when the person was in police custody or as a result of police action;*
- (c) to advise on ways in which any police misconduct may be addressed and eliminated;*
- (d) to perform such other function as may promote better relations between the public and the police and as may be conferred upon it by any other enactment.*

1.6 In the National Preventive Mechanism Act the functions of the National Preventive Mechanism Division are as follows –

5. *Functions of Division*

The functions of the Division shall be –

- (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.

1.7 The National Preventive Mechanism has been set up to enable Mauritius to comply with its obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (OPCAT) adopted by the General Assembly of the United Nations on 18 December 2002 and acceded to by the Government of Mauritius on 21 June 2005.

Mauritius was the first country to be visited in 2007 by the Subcommittee on the Prevention of Torture established under the OPCAT.

1.8 The new laws purport to put under a single administration the three divisions, insofar as finance, stores and establishment matters are concerned. The Commission will provide each Division with adequate staff and facilities for the proper discharge of its functions. The Commission will be free to recruit part of its own staff as required by the Paris Principles, but to do so it will require funding from Government as it has no means of raising funds and receives little financial aid from outside sources. Its budget is voted annually as a separate item by the National Assembly. Like other institutions its resources are strictly limited by economic constraints. Further it has to use manpower seconded by the Civil Service. The staff which is on secondment prefer to keep their status as employees of Government which ensures better security of employment. Nevertheless, such staff when seconded to the NHRC perform their duties diligently and do not consider themselves as employees of Government. That is, they conduct investigations impartially even where there are allegations that the State or the Police have committed breaches of human rights.

1.9 In 2013 the Protection of Human Rights Act was further amended to widen the jurisdiction of the NHRC. A person who believes that he has been unjustly convicted may now apply to the NHRC to carry out an

enquiry as to whether his case should not be reviewed by the Supreme Court.

4A. Application by convicted person for reference to Court under Criminal Appeal Act

(1) A convicted person, or his representative, may apply to the Human Rights Division, in such form as may be prescribed, for an enquiry to be conducted as to whether there exists sufficient fresh and compelling evidence that may satisfy the Human Rights Division that a reference should be made under section 19A(4) of the Criminal Appeal Act.

(2) On receipt of an application under subsection (1), the Human Rights Division shall –

(a) conduct such preliminary investigation as it considers necessary;

(b) determine, within a period of 30 days from receipt of the application, whether it will conduct an enquiry into the matter; and

(c) inform the convicted person, or his representative, accordingly.

(3) The Human Rights Division shall, without prejudice to its other powers under this Act, conduct the enquiry in such manner as it considers appropriate and shall, as far as practicable, complete its enquiry within 6 months from receipt of the complaint.

(4) On completion of the enquiry, the Human Rights Division may –

(a) grant the application and refer the conviction to the Court of Criminal Appeal in accordance with section 19A(4) of the Criminal Appeal Act; or

(b) reject the application,

And shall forthwith inform the convicted person or his representative of its decision.

1.10 As at 31 December 2013 no such application had been made to the NHRC although a panel of lawyers had prepared a ‘dossier’ on the case of a number of persons convicted for having set fire to a gaming house in the capital, Port Louis, causing the death of several victims.

CHAPTER II

THE COMMISSION

- 2.1 The National Human Rights Commission was created by Act of Parliament in April 2001 under the Protection of Human Rights Act 1998. It is established in conformity with the Paris Principles (UN General Assembly Resolution 48/134 of 20 December 1993).
- 2.2 Many national human rights institutions have only consultative powers in that they provide advice to Governments, carry out research on human rights, produce studies and make general recommendations on human rights issues. The NHRC of Mauritius also carries out these functions, but in addition it has quasi-judicial powers in that it can carry out investigations, summon witnesses, call for documents and hold hearings pertaining to alleged breaches of human rights.
- 2.3 However, it has no power to prosecute those who have violated human rights or to take disciplinary action against them. These powers are entrusted to the Director of Public Prosecutions and the Public Service Commission or the Disciplined Forces Service Commission, which are institutions established under the Constitution. The NHRC may make

recommendations to these bodies but such recommendations are not binding.

2.4 The NHRC received complaints against the Police, the Prisons Authorities and Ministries etc. Where the complaints did not raise human rights issues, the complainants were so informed and redirected towards the bodies or authorities which could assist them. For example, where convicted persons complained about the length or harshness of sentences meted out to them by courts of law they were told to address their grievances to the Commission on the Prerogative of Mercy set up under Section 75 of the Constitution. Where citizens complained about maladministration by public authorities, they were informed about the Office of the Ombudsman set up under Section 96 of the Constitution (e.g. cases where local authorities failed to grant a licence for a commercial activity).

2.5 The National Human Rights Commission has a limited jurisdiction. Complaints about promotion, recruitment and disciplinary matters in the public service are not within the jurisdiction of the NHRC. The NHRC cannot intervene in matters concerning the Public Service Commission and the Disciplined Forces Service Commission (as per section 4(7) of

the Protection of the Human Rights Act 1998) as these are bodies set up under the Constitution.

2.6 Similarly the NHRC cannot interfere in matters related to the office of the Chief Justice, the Director of Public Prosecutions and the Ombudsman. However when complainants, detained on provisional charges or because they could not afford bail, protested about delays in their cases being lodged in Court, the NHRC would enquire from the Police or from the Office of the DPP about the reasons for the delay. The explanations which the NHRC received were that the delay was due to the complexity of the case or the necessity for a separate trial for the accomplices of a complainant so that they would subsequently give evidence against the complainant at an eventual trial. This practice was adopted by the prosecution in relation to drugs dealers or drugs couriers. Other reasons were that a medical report or a report from the Forensic Laboratory was awaited to complete the enquiry. Matters were speeded up following the queries from the NHRC.

2.7 The backlog of Assizes cases has been considerably reduced by the setting up of a Criminal Division within the Supreme Court.

2.8 Complaints from civil servants within a particular Ministry or from employees of parastatal bodies of alleged victimization also do not fall within the purview of the NHRC if they are not in breach of human rights guaranteed by the Constitution. As far as public servants are concerned, they may lodge their complaint to the Ombudsman if it refers to an act of maladministration or to the Public Bodies Appeal Tribunal set up under the Constitution if it relates to issues of promotion and discipline, but not on matters of recruitment. It is to be noted that the Equal Opportunities Commission has no jurisdiction regarding recruitment or promotion of public officers or the police officers. These fall within the purview of the Public Service Commission for civil servants and the Disciplined Forces Service Commission for the Police.

2.9 The NHRC is precluded from intervening in matters concerning, the Electoral Supervisory Commission, the Electoral Boundaries Commission, the Commission on the Prerogative of Mercy which are all separate bodies set up under the Constitution.

2.10 The NHRC can only enquire into violations of the human rights listed in Chapter II of the Constitution -

TABLE I

	Protection of the right to life
	Protection of the right to personal liberty
	Protection from slavery and forced labour
	Protection from inhuman treatment
	Protection from deprivation of property
	Protection for privacy of home and other property
	Provisions to secure protection of law
	Protection of freedom of conscience
	Protection of freedom of expression
	Protection of freedom of assembly and association
	Protection of freedom to establish schools
	Protection of freedom of movement
	Protection from discrimination in the public sector on the ground of race, caste, place of origin, political opinions, colour, creed or sex

2.11 The NHRC does not deal with violations of human rights listed in the treaties and covenants signed and ratified by Mauritius except where the legislator has given a specific mandate for the intervention of the NHRC. For example, the new National Preventive Mechanism Division within the NHRC will apply the Optional Protocol to the Convention against Torture. Mauritius has a dualistic approach to the law of treaties so that no treaty becomes part of the laws of Mauritius unless specific legislation is enacted to that effect.

2.12 Mauritius adhered to the following international human rights instruments
on the dates mentioned thereafter –

TABLE II

1.	The International Covenant on Civil and Political Rights 1966 (CCPR) – 12 December 1973
1A.	Optional Protocol 1976
2.	The International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) -12 December 1973
3.	The International Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD) – 30 May 1972
4.	The Convention on the Elimination of All Forms of Discrimination against Women (1974) (CEDAW) – 9 July 1984
4A.	Optional Protocol – 2008
5.	The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT) – 9 December 1992
5A.	The Optional Protocol to CAT 2005
6.	The Convention on the Rights of the Child (1989) (CRC) – 26 June 1990
6A.	Optional Protocol to CRC on the sale of children, child prostitution and child pornography – May 2011
6B.	Optional Protocol to CRC on the involvement of children in armed conflict – February 2009
6C.	Optional Protocol to CRC on communications – signature in 2012
7.	The Convention on the Rights of Persons with Disabilities (2006) – January 2010
7A.	Optional Protocol signed September 2007
8.	African Charter on Human and People’s Rights (1981) – 19 June 1992
8A.	Protocol to the African Charter on the Establishment of an African Court on Human and Peoples’ Rights – 2003
8B.	African Charter on the Rights and Welfare of the Child (1990) – 14 February 1992

The following treaties relevant to human rights have also been adhered to

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TABLE III

	Rome Statute of the International Criminal Court 1998 –2002
	ILO Conventions
	Geneva Convention relative to the treatment of Prisoners of War 1949
	Geneva Convention for the amelioration of the condition of the wounded and sick in the armed forces in the field 1949
	Geneva Convention relative to the protection of civilian persons in time of war 1949
	Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea

2.13 Mauritius is not a party to the following Conventions, among others –

TABLE IV

	Convention relating to the status of Refugees 1951
	International Convention on the Protection of the Rights of all Migrant Workers and Members of their families 1990
	The International Convention for the Protection of All Persons from Enforced Disappearance (2006)

2.14 None of these treaties except the Geneva Conventions and the Rome Statute has been incorporated in toto in Mauritian Law. Mauritius has consistently adopted the stand that it has complied with its human rights treaty obligations by enacting different pieces of legislation to abide by relevant provisions of each treaty. This stand has been maintained each and every time the State has presented periodic reports to Treaty Bodies or to the Human Rights Council for the Universal Periodic Review. The

same stand has been taken before the African Commission on Human and Peoples' Rights.

2.15 On the other hand the National Human Rights Commission ensures that national legislation is in harmony with international human instruments and encourages ratification or accession to the same.

2.16 Further, such civil and political rights as the right to citizenship and the right to participate in political life are to be found in Chapters of the Constitution other than Chapter II with the result that NHRC cannot entertain complaints regarding these rights. For example, a citizen who is not allowed to stand as candidate for elections cannot complain to the NHRC.

2.17 In 2012 following a submission made by an NGO to the Human Rights Committee established under the ICCPR, the Committee ruled that the refusal to register a person who wished to stand a candidate for general elections if he did not declare to what community he belonged on his nomination paper infringed his right to participate in political life (Article 25(a) of the ICCPR). A provision to that effect had been introduced in the First Schedule to the Constitution in 1968 to ensure that minorities would be adequately represented in Parliament following a general

election to implement the Best Loser System. The Human Rights Committee requested the Government to take measures to remove this impediment.

2.18 Economic, Social and Cultural Rights do not feature in the Constitution of Mauritius. However, protection of the freedom of expression, freedom of conscience, freedom to establish schools are closely linked with the promotion of social and cultural rights in a country where the people are of diverse origins (Indians, Muslims, Africans ,Chinese, French) and where there is also a mixed population. Furthermore, there is a blending of western and eastern and African cultures leading towards a Mauritian Culture.

2.19 Many economic and social rights such as the right to education, the right to health, the right to housing and the right to social security rest upon the prior establishment of a Welfare State in Mauritius. Despite the international economic crisis in recent years which has had serious repercussions on the economy of Mauritius, particularly the tourism industry and the export of textiles, millions of rupees continue to be spent on free education, free transport for students and for elderly people, on the provision of free health care in public hospitals, with equipment and pharmaceutical drugs, on subsidies for housing for lower income earners

and for old age pensions and social aid to widows and orphans. As pointed out by Cass Sustein and Holmes in their book “The Cost of Rights”, published by Norton Paperback (2000) maintaining human rights can prove to be an expensive exercise.

2.20 Complaints concerning the enjoyment of economic and social rights are more closely linked to maladministration and would fall within the jurisdiction of the Ombudsman, not within that of the NHRC

2.21 Complaints against Police must be about alleged violations that do not date back for more than 1 year whereas other complaints about violations of human rights must not arise out of acts or omissions which date for more than 2 years.

2.22 The NHRC has no jurisdiction over the private sector, but does have jurisdiction over companies where the State has a controlling interest. (Air Mauritius, Mauritius Telecoms, State Bank of Mauritius etc.) and over parastatal bodies.

2.23 Mauritius has developed a National Strategic Plan on Human Rights which was approved by the Cabinet of Ministers in October 2012. A Database on Human Rights Indicators was launched by the Prime Minister’s Office on 10 December 2013 with the participation of the National Human Rights Commission to commemorate Human Rights

Day. Thus Mauritius is among the first countries (including the United Kingdom, Ecuador etc.) to embark upon such an enterprise.

2.24 The National Human Rights Commission was engaged in the Universal Periodic Review of the Human Rights Council. It commented on the update of the Recommendations made during the first UPR exercise on Mauritius.

CHAPTER III

THE POLICE

- 3.1 The Police Complaints Act of 2012 abolished the Complaints Investigation Bureau of the Police Force set up in 1998. All complaints against the police made at police stations throughout the country were channelled to the CIB which was also empowered to receive complaints at its own office in the centre of the island. The complaints were investigated by police officers who were detached from the regular police force. A similar mechanism exists in many countries where the police do enquire on the police. However, in a small country like Mauritius the perception of partiality is a strong one if police officers investigate complaints against their own colleagues (especially when there is a strong likelihood when they may know each other).
- 3.2 The CIB had to inform the NHRC of each and every complaint it received and of the action taken on each complaint. Trivial complaints were filed and the serious ones referred to the Office of the Director of Public Prosecutions for decision and necessary action. Where the CIB did not take action on a complaint, the NHRC had the power to query the CIB and to ask that the enquiry be reopened. However, the NHRC has no power to intervene or interfere in whatever decision the DPP takes.

- 3.3 As from 1 July 2013 the Complaints Investigation Bureau (CIB) of the Police situated in Rose Hill closed down. All investigations pending before the CIB were transferred to the Police Complaints Division (PCD) of the National Human Rights Commission. 893 files were received at the PCD comprising cases dating from the year 2010 and had to be sorted out.
- 3.4 Complaints related to protest against contraventions under the Road Traffic Act were returned to the Commissioner of Police. The statements given in such cases would be enclosed in the contravention file and produced as a defence; should the contravention case be taken to Court and should the alleged offender (i.e. the complainant) plead not guilty. It is obvious that the PCD cannot and does not have the means to embark on an investigation as to whether road users had been justly or unjustly booked for road traffic offences. This is for the Magistrate to decide.
- 3.5 Complaints related to private disputes between members of the public and police officers not acting in the course of their duty fall outside the purview of the PCD. Files were returned to the Commissioner of Police with the recommendation that such matters should not be investigated by the Police Officers of the same station where the police officer against

whom there is a complaint worked. This is done in order to avoid any perception of partiality. For example a woman married to a police officer may allege that she is a victim of domestic violence. The case should normally be enquired into independently by police posted at the Divisional Headquarters.

3.6 The Commissioner of Police also receives letters of complaint from members of the public and these used to be sent to the CIB to be dealt with. If these matters are of an administrative nature, they should be dealt with by Senior Police Officers and not be forwarded to the PCD. Some 66 letters of complaint were pending with the C.I.B. as at 1 July 2013.

3.7 The new legislation of 2012 has made provision allowing members of the public to continue filing complaints at a police station. The Commissioner of Police has to forward these complaints to the PCD. The attention of the Police has been drawn to the fact that road traffic contraventions and private disputes should continue to be dealt with by the Police.

3.8 Should a complaint contain an allegation of corruption or money laundering, the matter has to be reported to the Independent Commission Against Corruption which is empowered to deal with such complaints.

TABLE V
COMPLAINTS AGAINST POLICE
FROM JANUARY – DECEMBER 2013

Police Complaints Division			
	Received	Disposed	Pending
Police Brutality	110	26	84
Verbal Abuse	42	23	19
Service Delivery	212	95	117
Sub-total	364	144	220
Files received from CIB as from 1st July 2013			
Police Brutality	229	48	181
Verbal Abuse	62	52	10
Service Delivery	446	341	105
Contraventions & Private Disputes	149	149	Returned to CP
Alleged Corruption Cases	7	7	Referred to ICAC
Sub Total	893	597	296
TOTAL	1257	741	516

3.9 The NHRC continued to entertain complaints against the Police which are made directly at the NHRC. The procedure for complainants is to call at the NHRC and fill in a complaint form giving details of the complaint. They can also ask for information by phone. Where a complainant does not understand English, an officer of the NHRC helps him to formulate his complaint. The terms of the complaint (date, place, nature of the

incident) may be recorded in Creole or in French in the actual words of the complainant. He has to give names of his witnesses, if any.

3.10 Thereafter the NHRC asks the Police for extracts of the Diary Book and the Occurrence Book relating to the incident and any other relevant document (for example extracts from the log book of Police Vehicle) and declarations/statements made. Police Officers who are incriminated also have to forward their statements. Should the complaint concern an allegation of physical brutality and should the complainant have been examined by a doctor, certified copies of medical reports are called for. Exhibits like torn clothes or pictures may be produced.

3.11 After gathering the evidence, the NHRC holds a hearing where complainant and his witnesses depone and are questioned by the members of the NHRC. Respondents also depone and give their version of the incident.

3.12 However it is not the practice to adopt the same procedure as obtains in a court of law where witnesses are examined, cross-examined and re-examined and where parties are usually represented by Counsel. The procedure is investigatorial and not adversarial. Witnesses are compelled to answer questions but the answers which they give may not be used

against them if there are civil or criminal proceedings subsequently in a court law. (Section 8 of the Protection of Human Rights Act).

3.13 The National Human Rights Commission has to assess the credibility of complainants, witnesses and respondents and take into account any other evidence before making recommendations.

3.14 It is noteworthy that under the new Police Complaints Act, complainants and witnesses are not compelled to give evidence and therefore whatever evidence they give may be used against them subsequently. (Section 13 of the Police Complaints Act 2012).

3.15 Complainants do not necessarily have to be represented by Counsel in proceedings before the National Human Rights Commission. Thus, they need not incur any expense. It is the role of the National Human Rights Commission to help complainants to present their case at a hearing in whatever language they choose.

3.16 Several complaints relate to confession to crimes or misdemeanors allegedly made under duress and where suspects wish to retract. It is not the role of the National Human Rights Commission to rule on the admissibility of such confessions as this is the prerogative of a Court of Law. In such cases, the National Human Rights Commission asks that a

statement be recorded from the complainant as to the circumstances under which the alleged confession was obtained so that the complainant may use the statement for his defence in Court if ever he is prosecuted. This new statement has to be included in the Police File submitted to the Office of the Director of Public Prosecutions.

3.17 It is expected that following the amendment to the Legal Aid Act in 2012 whereby suspects may ask to be assisted by a lawyer and apply for legal aid from the very initial stages of the enquiry, there will be fewer allegations of the police having used any form of duress to extract confessions. The future introduction of a Police and Criminal Evidence Bill (on the lines of PACE in the UK) will make it compulsory for the police to record confessions on video. A Custody Officer will also have a major role to play in protecting the rights of suspects.

3.18 The authorities gave the following undertaking during the Universal Periodic Review of Mauritius before the Human Rights Council in October 2013 –

“As regards the practice of detaining suspects on the basis of provisional information, Mauritius indicated that the Police and Criminal Evidence Bill stipulates that the police shall not arrest a person on the basis of a mere allegation by a third party, unless the necessary investigations have been conducted to verify that an offence has been committed or is about to be

committed. Mauritius also noted that the Police Force is already equipped with a video-recording system to record statements from suspects involved in high-profile cases.”

3.19 Even in cases of alleged physical brutality or verbal abuse by the police the National Human Rights Commission is bound by law to hold a conciliation sitting in the first instance to see whether the parties may reach an agreement on the issue. Complainants do accept an apology from a police officer. Some prefer not to see a police officer being prosecuted or disciplined with the risk of losing his job. It has been said that this may encourage a culture of impunity. Mediation is more likely to take place where the incident is of a less serious nature.

3.20 Complaints against the police also tend to be against delays in enquiries. Where suspects are being detained either because they could not afford bail or because they have not been granted bail, they suffer unduly if the police enquiry drags on. They are usually detained on a provisional charge until the main case is lodged.

3.21 In such cases the National Human Rights Commission queries the police about the reasons for such delays as suspects are being unduly detained and deprived of an early trial. The explanations given range from the complexity of the case which necessitates a prolonged enquiry, the

difficulty to trace other suspects or the fact that reports are not yet ready (It is also the practice that accomplices have to be tried first and then their evidence is used against the complainant as in drugs trafficking cases). Sometimes judges' orders have to be obtained to get evidence on bank accounts or from telecommunications companies.

3.22 Cases of verbal abuse sometimes arise out of incidents where complainants are booked for road traffic offences and protest vehemently at what they deem to be over zealotry on the part of the Police.

3.23 In 2013, the National Human Rights Commission and the Complaints Investigation Bureau received about hundred complaints from members of the public against police officers allegedly using foul language.

3.24 While delivering talks to police officers, the NHRC has urged police to behave in a more courteous manner towards the public. Most police officers behave in a dignified and civilized manner and win the respect of the public. Unfortunately, a few do not!

3.25 In the culture of these few police officers the use of bad language is rather normal. Foul words have become part of their vocabulary and may, ironically, be considered as terms of endearment, connoting familiarity or

are used as a friendly salutation. While they may not use such language at home, they find it normal to use it with friends or even at work. They do not realize that when such language is used with members of the public who are not accustomed to this behavior, the latter may feel deeply insulted, more especially when they are in the company of their wife and children.

3.26 In certain cases foul language may be used as a means of intimidation. A shower of foul words poured on a suspect who has been arrested would put him to fear. This is allegedly used during interrogation to put the suspect in a weak position. This type of conduct is not justifiable in any circumstance.

3.27 Some complaints about verbal abuse emanate from people who have been booked for road traffic offences and who, when they protested against the contravention, were severely reprimanded in a foul language.

3.28 Complaints have also been received to the effect that police officers use foul language when they are allegedly drunk and they cannot control their behavior.

- 3.29 A frequent complaint is about verbal abuse being used as a means of reprimand if a member of the public has allegedly committed an offence. If, for example, a driver has parked his car on a double yellow line he may be either booked or firmly asked to move his vehicle. It is not necessary to remonstrate with him by using foul language.
- 3.30 Investigating each and every complaint is obviously time consuming. The police officer concerned would always deny the allegation. It is imperative to ensure that such complaints should decrease.
- 3.31 The best way forward is to educate police officers who indulge in use of foul language to mend their behavior and urge them to fight against this bad habit. They need to be reminded that molesting a member of the public is an offence and that being convicted for this offence would reflect badly on their record. Section 296 of the Criminal Code clearly stipulates that an injurious expression or other abusive language is an insult. When committed by means of words, exclamations or threats in public, the offence carries a fine of 10,000 rupees. They may also be liable to disciplinary action which may hamper their chances of promotion.

3.32 Police Officers have been lectured on the need to use restraint and to keep calm in the face of adversity. Members of the public may tend to get carried away when they find themselves in tense situations and may seek to vent their anger by insulting the Police. The latter should be more phlegmatic and adopt a psychological approach. Very often when the Police are called as a result of incidents among relatives or in cases of domestic violence, the situation gets out of control and one of the parties turns against the Police. It is for the latter to learn how to keep control of the situation.

3.33 When the British conquered the *Isle de France* in 1810, they allowed the French on the Island to keep their laws, customs and property (by the Treaty of Paris). By that time, the *Codes Napoleon* had already been introduced in Mauritius. The criminal law that prevailed was therefore regulated by the Napoleonic *Code Penal* and the *Code de Procedure Penale*.

On the other hand, it was left to English administrators to apply the Penal code and British judges came from England to try cases. Gradually British criminal procedure governed the application of criminal substantive law that was of French origin and replaced French criminal procedure.

Thus the system of the '*juge d'instruction*' which allowed the judicial body to control the way in which police enquiries were carried out was not applied in Mauritius.

Under a British colonial system, the Police possessed immense powers in exercising their right to arrest people and to question thereafter.

Although judges' rules were introduced, there was no control over police enquiries.

3.34 With the creation of the Office of the Director of Public Prosecutions, the police had to submit the more important cases for the decision of the DPP and his officers, but they were not compelled to do so until they had completed the enquiry.

3.35 As mentioned earlier complaints arise about delays in police enquiries, especially in complex cases. A better supervision of police enquiries would speed up the process. It is recommended that the Police should recruit a team of lawyers well versed in criminal procedure and the law of evidence to provide legal advice on the conduct of enquiries. This would be done independently before cases are referred to the Office of the DPP.

3.36 A recent case which drew a lot of media attention revealed weaknesses at the level of Police enquiries. It would appear that the enquiring team was

too easily satisfied when they obtained a confession from one of the accused parties and did not carry out a thorough investigation. The defence, while not challenging the admissibility of the confession, managed to convince the jury not to attach any weight to it, with the result that the case was dismissed. The jury was satisfied that the human rights of the suspect had been breached. It was claimed he was not given access to Counsel and the confession was obtained by force. By law the jury did not have to give reasons for their verdict but the lesson to be drawn is that the rights of the suspect have to be respected at all times and that the presumption of innocence remains a sacrosanct principle protected by the Constitution of Mauritius.

3.37 The Commission has at all times delivered lectures to the Police on these matters and emphasized that they must follow well established rules and procedures in all criminal investigations and not seek an easy way out by attempting to extract confessions from suspects.

CHAPTER IV

PRISONS

4.1 A recent report of the Prisons Service reveals that about one third of detainees out of some 3,527 detainees admitted to prison in 2011 were in prison because of non-payment of fines.

TABLE VI

	Fine defaulters	Amount of Fine (Rs)	Number	
			2010	2011
(a)	Between 2010 to 2011, the number of fine defaulters admitted to prison went down by 16%.	<1,001	224	143
		1,001-5,000	822	614
(b)	87% of those admitted in 2011 were due to non-payment of fines of Rs 25,000 or less.	5,001-10,000	212	203
		10,001-20,000	87	92
		20,001-25,000	16	14
		25,001-60,000	42	74
		60,001 & Over	49	78
		Total	1,452	1,218

4.2 Over seventy per cent of those detainees had committed minor offences like simple assaults, attempt at larceny, drunkenness and disorder. They could have been subjected to community service work under the Community Service Order Act 2009 instead of being sent to prison.

4.3 The National Human Rights Commission has recommended in the past that Courts should not in the first instance issue warrants of arrest for non-payment of fines, (more especially for road traffic offences) but should cause a summons to be served on convicted parties to give them a second chance to pay the fine. Deprivation of liberty should only be used as a measure of last resort.

4.4 The execution of warrants of arrest issued for non-payment of fines or non-appearance in Court by the Police (who usually have to act in the early hours of the morning to catch the culprit) gives rises to complaints against police and leads to unpopularity of the police. We have constantly reminded the police that execution of such warrants could be done in a more discreet manner. The persons concerned complain that the presence of police vehicles and a cohort of police officers in front of their house create the impression that they are hardened criminals, and lowers their reputation in the eyes of neighbours. Police officers defend this type of operation by claiming that they have to go to people's residence in sufficient numbers as they often meet with resistance, more particularly in certain neighbourhoods.

4.5 The following table shows the number of convicts admitted to prison by length of sentence:-

TABLE VII

Length of sentence	2010	2011	%
	Number		
<1 month	930	931	26.4
1 – 3 months	495	391	11.1
4 – 6 months	313	328	9.3
7 – 18 months	249	311	8.8
19 months to less than 2 years	81	93	2.6
Two years and over	230	255	7.2
Life sentence	0	0	-
Undefined (fine defaulters)	1,452	1,218	34.5
Total	3,750	3,527	100.0

4.6 Overcrowding continues to be a problem in Mauritian prisons as it is in most prisons of the world, including those in developed countries. It is expected that with the coming into operation of Melrose prison in early 2014 the problem will be solved. Melrose will have the capacity to accommodate up to 1000 male detainees and will consist of three individual cell blocks, five dormitory blocks, high security special units, a geriatric block, a segregation dormitory block, a workshop complex, 4 buildings for religious worship, a huge building for classrooms and educational facilities, a modern kitchen with baking facilities apart from the administrative block, staff facilities and service yard. The prison is built over 37 arpents of land and will have a large sports ground. Each

block will have a library and TV sets. The buildings are painted in soft colours to create an atmosphere conducive to a peaceful mood.

- 4.7 The Mauritius Prison Service has recently produced a Strategic Plan for the period 2012 to 2022 entitled

“From Prison to Correction”

under the guidance of a consultant from the United Nations Office on Drugs and Crime (UNODC). As stated therein *“the Plan provides a roadmap for prisons to introduce more modern prison practices and to amend legislative provisions that currently reduce prison performance”*.

The Commissioner of Prisons in his message expects that *“the prison will contribute to the protection of the society by engaging detainees in activities that will help them to become law-abiding citizens”*.

- 4.8 Three key pillars of six pillars in the Plan refer to:-

Strategic Planning and Research

Integrated Detainee Management

Rehabilitation and Resettlement

4.9 The NHRC supports the recommendations made in the Plan to improve conditions of detention. Many of them deal with those shortcomings to which the NHRC has drawn attention in previous reports. For example, it is important that there should be a separate unit for women remand detainees who are at present kept together with women convicted detainees. This often leads to an unmanageable situation in prison. In fact, this may be considered as gender discrimination in the treatment of detainees. This discrimination is further exacerbated by the fact that there is no open prison for women whereas there is one for men at Richelieu. The construction of an open prison for women is expected to start soon.

4.10 The NHRC has also referred to the need for better health care facilities. Long term convicts obviously become aged and frail and require monitoring and support. Detainees undergoing drug withdrawal treatment have to be catered for. Some detainees have claimed that they are not satisfied with the treatment. The complaint has not proved to be justified. For their own benefit detainees should cooperate with the treatment providers who have undertaken a very difficult task.

4.11 The Prisons Service should employ a team of psychologists to help detainees, to advise the authorities, and to participate in research into the

causes of the high rate of re-offending. As recommended in the Plan, detainees have to be prepared for their return to the community in pre-release and post-release programmes. More frequent contact with relatives through visits and telephone will help towards rehabilitation.

4.12 The NHRC has also recommended an increased use of the Richelieu Open Prison which is underutilised. Those imprisoned for non-payment of fines should actually be sent to Richelieu, though this has to be applied on a case to case basis for deserving cases after careful screening.

4.13 International experts have drawn attention to the heavy sentencing regime which prevails in Mauritius (so has the NHRC in its Annual Reports). The problem of maximum mandatory sentences fixed by law for murder, drugs trafficking etc. has been solved. Judges now have a discretion in fixing the maximum sentence in terms of proportionality and the particular circumstances of the serious offence. A maximum mandatory sentence constitutes inhuman and degrading punishment. Heavy sentences for drugs offences have not solved the increasing drugs problem in Mauritius. On the contrary, powerful traffickers have found means of plying their illegal trade from behind bars.

4.14 A UNODC adviser on correctional matters finds that in our country there is “*a community in which citizens are supportive of harsh punishment, or at best are not favourable towards more liberal or enlightened sentencing or correctional practices*”. This conclusion is a debatable one as Mauritian society is now more liberal and conscious of compliance with human rights norms. Furthermore, it is essential that Magistrates be provided with training and guidelines on sentencing at the new Institute of Judicial and Legal Studies to enable them to make a more judicious use of community service as a punishment. On the other hand it is claimed that there is no adequate structure for follow up of community service to ensure that the culprits pay back their debt to society and find it a sufficient deterrent to discourage them from committing further offences.

4.15 In its annual report of 2005 the NHRC recommended that Magistrates and State Law Officers, especially from the DPPs’ Office, should visit prisons to be aware of conditions of detention. It is encouraging to learn that such visits are now being carried out.

4.16 Over the past ten years, the NHRC has unsuccessfully advocated the granting of remission for good conduct to convicted drug traffickers and

other detainees convicted for serious crimes. There are more than 350 detainees who are not eligible for remission. The NHRC still believes that this measure will not only reduce overcrowding in prisons, but will also create a better atmosphere and even help harsh criminals mend their ways by better behaviour in prisons. The authorities have been adamant in rejecting this recommendation, in the belief that the removal of remission will act as a deterrent and discourage offenders in the future.

4.17 The NHRC has pointed out that the form in which certificates of morality are issued has had a negative impact on detainees in their reinsertion in the community, as it has prevented them from obtaining work on release from prison. The NHRC recommended in its Annual Report of 2006 that when the Director of Public Prosecutions issues a certificate for an ex-detainee, it should clearly mention the crime or misdemeanour and the period during which he was imprisoned. This would enable a prospective employer to make an enlightened assessment of the situation instead of automatically rejecting the ex-detainee's application for a job. The Attorney-General has taken positive steps in that direction and the Certificate of Character Act 2012 now implements such recommendations.

4.18 The NHRC supports the view that imprisonment need not commence immediately at the time a custodial sentence is handed down. A convicted person must be given reasonable time to make satisfactory arrangements concerning his family, his house and his work before serving his sentence.

4.19 In some quarters it is being advocated that convicted persons should not automatically lose their employment on a conviction. Depending on the nature of their employment they could take their annual leave to serve their term of imprisonment. The authorities need to review the Regulations of the Public Service Commission if this were to be applied in the public sector. Obviously if the offence is related to fraud or dishonesty, no employer would agree to continue keeping the person in his employment.

4.20 Part time imprisonment or week-end detention is now a practice in a few countries like Australia. This could be a part solution to the excessive use of imprisonment as a punishment for non-payment of fines. It would also solve the problem of overcrowding if the suggestion of 'booking for accommodation' in prison is adopted, that is, convicted persons would

serve their sentence during periods when the prison population is not at its peak.

4.21 These novel proposals deserve to be studied further before being put into practice. But they are interesting and attractive insofar as they protect and promote human rights of detainees while ensuring both that the interests of victims are safeguarded and that imprisonment acts as deterrent and a punishment.

4.22 The NHRC recommends the recruitment of Prisons Staff to reinforce rehabilitation and resettlement programmes. Drug and alcohol counsellors, recreation officers, case managers, education specialists and psychologists who can conduct intervention programmes with convicts for violent offending and sex offending have to be recruited and given appropriate training.

4.23 A major proportion of detainees consists of drug addicts. The NHRC endorses the UNODC proposal to set up a Drug Withdrawal Unit “*where newly received detainees can safely undergo detoxification from drugs and alcohol and receive symptom relief, support and information*”.

4.24 On the average the costs of keeping a detainee in prison is Rs 500/ per day or some Rs 182,000/ per year.

The budget of the Prisons Department is as follows:-

2010 - Rs 765 M

2011 - Rs 1,181 M

2012 - Rs 1,325 M

2013 - Rs 1,408 M

4.25 The state of the art Eastern prison costs more than Rs 2 billion and will probably be ‘a jewel’ among prisons in Africa and the Indian Ocean, given the facilities it will offer. It will be a model in terms of respect of the human rights of detainees. Deprivation of liberty does not mean that detainees should be denied the right to decent conditions of detention.

4.26 It is a fact that the Parole System does not function effectively. There is probably a fear that a detainee released on parole may commit other offences. The procedure for parole needs to be reviewed with adequate safeguards to ensure that the early release of a detainee would not constitute a threat to the community.

4.27 The NHRC agrees with the view that the use of short prison sentences known as “short sharp shock” may prove counter-productive as a deterrent. It could upset the life of an offender in his family and work and result in a deterioration of his behaviour. The contact with other criminals may also prove harmful.

TABLE VIII

In 2010, out of 3750 detainees :-
965 were sentenced to less than 1 month
499 were sentenced to between 1 and 3 months
314 were sentenced to between 4 and 6 months

4.28 Electronic tagging is used abroad as an alternative to imprisonment to solve the problem of overcrowding in prisons. Thus convicted persons may continue to work and lead almost a normal life. It may also be a means to control those who have been released on parole though it has been found to be costly to monitor. The Commission recommends that a thorough study be undertaken before considering the introduction of tagging. In France 20,000 persons are under this type of electronic surveillance (see *Le Nouvel Observateur 11 Octobre 2012 “La vérité sur le bracelet électronique”*).

4.29 The NHRC caused leaflets to be produced in English, French and Creole to inform newly admitted detainees about conditions of detention and their rights in prison at the time of reception and induction. The First Night Strategy Guide is important to ensure that the detainee is fully prepared psychologically for detention.

4.30 Complaints from detainees are often about minor details or issues which do not relate to general conditions of detention. For example there is now a Lotus Centre in prison to take care of drug addicts in prison under the stewardship of a Senior Prisons Officer. Some detainees have made unsubstantiated allegations of favouritism on the part of the Senior Prisons Officer. The latter claimed that those detainees were difficult and would not follow his instructions. Such complaints related to general administration do not come strictly within the purview of the National Human Rights Commission. The Ombudsman is empowered to receive such complaints and thus acts as a National Preventive Mechanism. In the first instance it is advisable that these matters be dealt with at the level of the Commissioner of Prisons.

4.31 More serious complaints concern segregation of detainees. This is a punishment for breach of prison discipline. The National Human Rights Commission cannot act as an appellate body against the sanctions imposed by authorities. It is expected that the Board of Visitors will be reactivated to consider such cases. The NHRC's role is to ensure that conditions in segregation do not constitute inhuman or degrading punishment.

CHAPTER V

SEX DISCRIMINATION

- 5.1 Until the end of 2011 the Sex Discrimination Division of the National Human Rights Commission dealt with cases of sex discrimination and sexual harassment.
- 5.2 The Equal Opportunities Commission now deals with discrimination on the following twelve grounds which are wider than the list in Section 16 of the Constitution - *age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex and sexual orientation.*
- 5.3 The former Sex Discrimination Division consisted of the Chair of the National Human Rights Commission, the Vice-Chairperson of the Sex Discrimination Division who was a retired lady judge from the Supreme Court and another lady member who was an experienced secondary school teacher and active trade unionist. It was found that very often lady complainants were more at ease in explaining their grievances to the Vice Chairperson and the member, especially when it came to cases of sexual harassment. The Division held many conciliatory sittings especially for

sex discrimination as it was bound to do by law under the Sex Discrimination Act of 2002 (now repealed).

5.4 The recurrent cases of sex discrimination concerned allocation of classes for teachers in primary schools. Few cases of sexual harassment were reported. The Sex Discrimination Division formulated guidelines concerning elimination of sex discrimination and sexual harassment at work. The Sex Discrimination Division also asked that notices be put on buses to warn against harassment in public transport. A study carried out by a young lady American researcher on a Fulbright scholarship to Mauritius concluded that many cases of sexual harassment, especially at work, went unreported because the victims did not wish to bear any social stigma or be subjected to retaliation from the perpetrator. Unfortunately these victims remained anonymous and did not file complaints before the Sex Discrimination Division. The fear of retaliation from the employer must have prevailed.

5.5 One much publicised case of sexual harassment which allegedly occurred in a broadcasting station was dismissed by the Magistrate in a District Court on the ground that the version of the victim was not credible. The

Sex Discrimination Division had let the police deal with the matter, as it appeared that there was a prima facie case of sexual harassment.

5.6 Women's rights received a boost with the law legalising abortion under certain conditions. Many religious authorities voiced their opposition to this new measure.

5.7 Another great leap forward was an amendment to the Constitution to ensure that there are more women candidates at local government elections. It is expected that the same measures will be adopted for general elections in the new project for electoral reform.

CHAPTER VI

THE JUDICIARY

- 6.1 Section 10 of the Constitution is concerned with the right to a fair trial, a principle widely acknowledged and respected in Mauritius. One regular complaint however relates to delays. Many important cases are tried years after the offence took place, for different reasons – absence of accused parties or witnesses, Counsel not being available or delays in police enquiries. In cases of sexual offences perpetrated upon children, the victims tend to forget relevant facts when the case comes for trial years later with the result that such cases are dismissed.
- 6.2 The NHRC has asked that the exercise of the right to Counsel of the suspect's or accused's choice should be governed by certain rules (e.g the cab rank principle) instead of being considered as an absolute right.
- 6.3 The exercise of the right of appeal to the Judicial Committee of the Privy Council is governed by rigid rules in criminal cases and is very costly even when the Judicial Committee sits in Mauritius. There is an urgent need to set up a Court of Appeal to replace a system where judges of the Supreme Court sit on appeal on the decisions of their colleagues. This would ensure the right to a fair trial. Judges of this new appellate court

need not all come from the Supreme Court, as once more this may create the perception of partiality of appellate judges sitting on appeal on the judgments of judges who may have been their former colleagues.

6.4 The NHRC has also been in favour of the “constitution de partie civile” in a criminal case whereby the victim may sue the perpetrator in the criminal case without having to enter a separate civil case. This would save costs and time for victims and their relatives, especially in cases of road accidents.

6.5 On the issue of sentencing, guidelines need to be issued by the Supreme Court. Sometimes convicted persons complain to the NHRC believing that they have been treated unfairly by the Court because other persons have allegedly received lighter sentences for similar offences. The Judicial Committee has in a recent decision laid down the principle regarding the deduction to be made from a sentence for the period spent on remand. From a human rights point of view, being given that the time spent on remand also results in deprivation of liberty, the whole period spent on remand should be deducted. There is not much difference in the conditions of detention of detainees on remand and convicted detainees.

- 6.6 It is recommended that Judges and Magistrates follow up on the way sentencing is operating as regards convicted persons. A system of “*Juge d’application des peines*” on the model prescribed in the French *Code de Procedure Penale* could be instituted in Mauritius.
- 6.7 Many District Courts across the island now operate in rather dilapidated buildings. Justice needs to be imparted in a serene atmosphere. Magistrates should be given the opportunity to administer justice in secure surroundings. It is recommended that the authorities should allocate more financial resources to modernize the infrastructure in District Courts.
- 6.8 Judges are more fully involved in mediation of civil cases. It has been found that under the guidance of a judge the parties may come to an agreement without going for a trial in Court. It is suggested that this method could be applied to criminal cases, especially for misdemeanours. A breach of criminal law is often considered to be an offence against the State and the laws of the land. But if the victim is prepared to accept an apology and the offender is prepared to make amends, there would be no need to go for a full scale trial in Court, which takes the time of the magistrate, parties, witnesses, police officers, expert witnesses and

Counsel. Conciliation would work for minor offences and save a lot time and money, thus reducing the case burden in our Courts of law.

6.9 We reiterate our recommendation made in the Annual Report of 2005 that the Family Court should have a wide jurisdiction to deal with domestic violence, protection of women and children and as well as juvenile delinquency.

6.10 In Mauritius cases are tried before a judge and a jury consisting of nine members. Following English criminal procedure the judge is the sole judge of law and the jury the sole judges of facts. At the end of the trial the judge sums up the case and gives directions in law to the jury. Unlike in the French system, the judge or judges do not retire with the jury to assist with their deliberations. Following a high profile murder case where the jury acquitted two accused parties, the question was raised as to whether the jury system should not be reviewed or abolished.

6.11 The very basis of a jury trial is that an accused party has the right to be tried by his peers. This is not a constitutional right or a fundamental right as such. For example, in drugs cases at the Assizes the judge now sits without a jury to decide on the guilt of the accused. There is a fear that

the jury may be too subjective and may be easily influenced by the oratorical powers of defence counsel. This has been the risk willingly taken by the prosecution over the years in Mauritius and elsewhere.

6.12 Apart from drugs cases only cases of murder and manslaughter come before the Assizes. Cases of wounds and blows causing death without intention to kill, involuntary homicide and rape are now tried before the Intermediate Court before a single magistrate. They may be tried before two magistrates where necessary. If ever there is a policy decision to abolish the jury system, Assize cases should be tried by a Presiding judge sitting with two judges or two senior Magistrates to ensure a more objective assessment of the case.

CHAPTER VII

MISCELLANEOUS COMPLAINTS

- 7.1 Numerous complaints are received which do not fall within the jurisdiction of the National Human Rights Commission since they do not concern the human rights listed in Chapter 2 of the Mauritian Constitution.
- 7.2 Nevertheless these complaints have to be examined and the complainants redirected towards the appropriate authorities.
- 7.3 Complaints against Counsel who allegedly have not fulfilled their duty towards their client according to the latter's expectations have to be directed to the Attorney-General and the Chairperson of the Mauritius Bar Council.
- 7.4 Complaints against Magistrates have to be directed to the Chief Justice or the Master of the Supreme Court.
- 7.5 Complainants whose requests for a change of name are turned down have to petition the Attorney-General anew.

- 7.6 Those who complain that a local authority has not treated them fairly may have recourse to the Ombudsman.
- 7.7 Persons who have been denied promotion in the public sector can apply for judicial review in the Supreme Court or may now go to the Public Bodies Appeal Tribunal (PBAT), but not to the Equal Opportunities Commission. Under Section 118 (4) of the Constitution, the Public Service Commission (a body set up under the Constitution), is not subject to the control or authority of any other body (except the PBAT for matters of promotion, but not recruitment).
- 7.8 Police officers who complain about the treatment meted out to them by their superiors in the course of their duty tend to write to the National Human Rights Commission, assuming that their complaint falls under the category of complaint against police provided for under Section 4 of the Protection of Human Rights Act 1998. However Section 4 caters for complaints from the public and is not intended to deal with the internal administration or disciplinary matters within the Police Force. Disciplinary matters fall within the purview of the Disciplined Forces Service Commission (a constitutional body) which has delegated certain of its powers to the Commissioner of Police.

CHAPTER VIII

PROMOTION OF HUMAN RIGHTS

- 8.1 The NHRC has a specific mandate to promote human rights. Creating an awareness of such rights is the ideal way of making people respect the rights of fellow citizens. Their rights stop where the rights of their neighbours start. The citizen must understand that in a democratic society he is not in conflict with the State, but that he must seek the help of the authorities to protect his rights.
- 8.2 Through talks, workshops and TV programmes the NHRC continued its campaign of Human Rights Education in English, French and Creole. Each talk is tailored to the needs of the target audience, whether it be police officers, prisons offices, teachers, students, hotel employees, trade unions, civil society, NGOs, social workers, Civil Servants or members of youth centres. Police officers have to be informed about their own human rights. In turn they would learn to respect the rights of members of the public including those of suspects. Following the Proclamation of the Police Complaints Act in 2013, the Chairman explained the new provisions in a series of six talks to all the Divisions of the Police Force in Mauritius and in Rodrigues. On a weekly basis the Chairman gave talks on Human Rights in Kreol to members of the public in Citizens Advice Bureaux (CAB) all over the island.

TABLE IX
AWARENESS RAISING CAMPAIGN

SN	CAB	DATE
1.	Bambous	Tuesday 5 February
2	Mahebourg	Tuesday 12 February
3	Rivière du Rempart	Tuesday 19 February
4	Sainte Croix	Tuesday 26 February
5	Bel Air	Tuesday 5 March
6	Petite Rivière	Tuesday 19 March
7	Triolet	Tuesday 26 March
8	Quartier Militaire	Tuesday 2 April
9	Curepipe	Tuesday 9 april
10	Pointe aux Sables	Tuesday 16 April
11	Pamplemousses	Tuesday 23 April
12	Vacoas	Tuesday 30 April
13	Goodlands	Tuesday 7 May
14	Beau Bassin	Tuesday 14 May
15	Route Nicolay	Tuesday 21 May
16	Flacq	Tuesday 28 May
17	Saint Pierre	Tuesday 4 June
18	Rivière Noire	Tuesday 11 June
19	Grand Bois	Tuesday 18 June
20	Montagne Blanche	Tuesday 25 June
21	Quatre Bornes	Tuesday 2 July
22	Piton	Tuesday 9 July
23	Rose Belle	Tuesday 16 July
24	Cité V allijee	Tuesday 23 July
25	Floréal	Tuesday 30 July
26	Rivière des Anguilles	Tuesday 6 August8
27	Colline Monneron	Tuesday 13 August
28	Grand Baie	Tuesday 20 August
29	Midlands	Tuesday 27 August
30	Bois des Amourettes	Tuesday 3 September
31	Rose Hill	Tuesday 17 September
32	Plaine Magnien	Tuesday 24 September
33	Lallmatie	Tuesday 1 October
34	Chemin Grenier	Tuesday 8 October
35	Montagne Longue	Tuesday 15 October

8.3 The Chairman addressed all the batches of recruits in different locations of the Police Training School.

TABLE X
LECTURES TO POLICE RECRUITS

8 April 2013	Beau Bassin Training School
10 April 2013	Les Casernes Curepipe Training School
6 May 2013	SSU Training Unit, Line Barracks, Port Louis
14 May 2013	La Cambuse Training School

8.4 The Prime Minister’s Office, the Ministry of Education and the Mauritius Institute of Education have decided to implement the plan to integrate human rights education at all levels of formal education at school. Rectors of state secondary schools and managers of private secondary schools participated in a workshop on the subject to give their views. The National Human Rights Commission will assist in the development of the curriculum.

8.5. Human rights education must be accompanied by citizenship education to teach young people civic responsibility and inculcate in them a sense of patriotism.

8.6 Elderly persons and persons with disabilities are also being informed about their rights by the Ministry of Social Security.

CHAPTER IX

REVIEWING LAWS

- 9.1 Among the functions conferred upon it by law, the Commission may review the safeguards provided by or under any enactment for the protection on human rights.
- 9.2 The NHRC has provided its views to the authorities on the amendment to the Criminal Code in 2012 to authorize the termination of pregnancy in specified circumstances, especially when the life of the pregnant person is in danger or where there is substantial risk that the continued pregnancy will result in a severe malformation of the foetus, or where the pregnancy has not exceeded fourteen weeks and results either from a case of rape or sexual intercourse with a girl under the age of 16.
- 9.3 The NHRC has supported amendments to the law for better provision of legal aid, changing the eligibility threshold from Rs 5,000 to Rs 10,000 as regards monthly income and Rs 75,000 to Rs 500,000 as regards the value of the property owned by the applicant. Access to justice is fundamental to the protection of human rights.

9.4 Under the new provisions of the Legal Aid Act, legal assistance will be provided to a suspect as from the moment he is arrested. This should help to do away with allegations that confessions have been obtained by duress. Any child who is accused of having committed an offence will obtain legal aid at the inquiry stage and for bail application. He is further guaranteed legal assistance in the preparation or presentation of his defence.

9.5 The NHRC's views were sought on the Equal Opportunities Act and on proposed legislation to curb abuse by the media of the freedom of expression. Complaints have been made against some sections of the media which print inaccurate facts, thus tarnishing the reputation of citizens. Although legal remedies are available, defamation cases take a long time in Court and do not fully repair the damage done. The ideal solution would be self-regulation and a degree of restraint by the press and a better sense of fair play.

CHAPTER X

THE FUTURE

10.1 An experienced international observer of the Mauritian scene has recently made most pertinent comments in a press interview.

“Maurice doit faire face, aujourd’hui à plusieurs défis. Jusqu’à présent, le modèle mauricien s’est appuyé sur les qualités fondamentales de ses habitants: la tolérance, l’accueil, un esprit familial fort, double d’une spiritualité rare et vécue intensément. Le défi, aujourd’hui est de maintenir ces valeurs culturelles auprès de la jeune génération, qui est confrontée à des chocs culturels et à la société de consommation”.

The concept of human rights is not a static one. With economic progress and the advent of new technology human rights have to evolve and to adapt to new situations while fundamental freedoms are preserved. Thus, the range of third generation rights continues to widen. Environmental issues have come to the fore, reminding us of the popular saying that the world does not belong to us, but has been entrusted to us to take care of for the benefit of future generations. *Maurice Ile Durable* falls squarely within this idea.

10.2 Man has to fight constantly against the degradation of the environment due to natural disasters, human negligence and the fast depletion of resources. Mauritius already has too many vehicles on the road. Although this is a sign of progress and satisfies the legitimate aspiration of each family to possess a car or more than one car, it is necessary to control air pollution as well as noise pollution. Tuning engines of cars and motorcycles has become the craze and could turn our country into a noisy hell. Pollution is a breach of the citizen's human right to a clean and peaceful environment. A heavy tax should be imposed on those who increase the power of the engines of their vehicles by tuning.

10.3 Education serves towards the promotion of human rights. Human Rights Education teaches people about their rights and how to respect the rights of others. The introduction of Kreol and Bhojpuri as optional subjects in schools will help disadvantaged children in securing a better education in the long term.

10.4 More value has to be attributed to manual work and to such skills as plumbers, electricians, metal workers and masons in the construction industry. Those occupations should not be left to those who have not succeeded in the academic field. Those who are prepared to work hard

for their country should earn the respect of their fellow citizens. In this way economic rights will be protected and we shall be nearer to attaining the Millennium Development Goals.

10.5 Another live issue in the field of human rights is the abolition of the death penalty. This measure was adopted in Mauritius in 1995, but there was no amendment to the Constitution to abolish the derogation from the right to life. Mauritius has not signed and ratified the Optional Protocol to the International Covenant on Civil and Political Rights which binds signatory parties to abolish the death penalty.

10.6 There is now more pressure to recognize the rights of sex workers. It is claimed that women who become sex workers are forced into this trade. Their rights would be better protected if they were not at the mercy of pimps and if their activities were regulated. Many societies still hesitate at legalizing prostitution. The problem cannot be brushed under the carpet and will have to be addressed at some stage. In the first instance, some kind of protection has to be put into place to help those at risk, especially those under age. There have been cases of prostitutes being subjected to gang rape. Allegations that Mauritius is a popular

destination for sex tourism have not been substantiated, but cases of child prostitution have been reported.

10.7 The Lesbian Gay Bisexual Transexual issue is also coming to the fore. The Equal Opportunities Act acknowledges the existence of sexual orientation in Mauritius and prohibits discrimination on that score. Soon the questions of LGBT marriage and adoption of children will crop up and will have to be dealt with in Mauritius. The proposed Sexual Offences Bill with a provision to decriminalize sodomy among consenting adults was referred to a Select Committee of the National Assembly and has now lapsed.

10.8 Mauritian society is nowadays more sensitive on the issue of human rights and welcomes new developments. While the citizen is aware of his rights, the State too is more conscious of its obligations, as witnessed by the regular reporting to UN treaty bodies set up under different international human rights instruments and by the commitments Mauritius has made under the Universal Periodic Review to the Human Rights Council in Geneva.

STATISTICS			
COMPLAINTS TO THE NHRC AS AT 31 DECEMBER 2009			
	No. of Complaints	Disposed of	Pending
Complaints against Police			
A. Police Brutality	56	33	23
B. Verbal Abuse	14	8	6
C. Service Delivery	19	15	4
D. Other Complaints	71	57	14
Sub-total	160	113	47
II. Complaints against Public Bodies			
E. Prisons Authorities	10	8	2
F. Ministries/ Government Departments	10	10	-
G. Parastatal bodies	2	2	0
H. Government owned companies	-	-	-
Sub-total	22	20	2
III. Complaints against Institutions other than public bodies (outside jurisdiction)			
I. Judiciary	7	6	1
J. DPP	2	2	-
K. Miscellaneous Complaints	6	6	0
Sub-total	15	14	1
TOTAL	197	147	50

**STATISTICS OF COMPLAINTS RECEIVED AT
THE SEX DISCRIMINATION DIVISION (SDD) FOR THE YEAR 2009**

Category	Number of Cases	Disposed of	Pending
Sex Discrimination	6	6	NIL
Sexual Harassment	15	15	NIL
Others	16	16	NIL
TOTAL	37	37	NIL

**STATISTICS OF COMPLAINTS RECEIVED AT
THE SEX DISCRIMINATION DIVISION (SDD) FOR THE YEAR 2010**

Category	Number of Cases	Disposed of	Pending
Sex Discrimination	2	2	NIL
Sexual Harassment	4	4	NIL
Others	17	17	NIL
TOTAL	23	23	NIL

**STATISTICS OF COMPLAINTS RECEIVED AT
THE SEX DISCRIMINATION DIVISION (SDD) FOR THE YEAR 2011**

Category	Number of Cases	Disposed of	Pending
Sex Discrimination	2	2	NIL
Sexual Harassment	9	9	NIL
Others	10	10	NIL
TOTAL	21	21	NIL

STATISTICS			
COMPLAINTS TO THE NHRC 2010			
	No. of Complaints	Disposed of	Pending
Complaints against Police			
A. Police Brutality	28	6	22
B. Verbal Abuse	7	3	4
C. Service Delivery	7	3	4
D. Other Complaints	50	41	9
Sub-total	92	53	39
II. Complaints against Public Bodies			
E. Prisons Authorities	13	8	5
F. Ministries/ Government Departments	6	6	-
G. Parastatal bodies	5	4	1
H. Government owned companies	1	1	-
Sub-total	25	19	6
III. Complaints against Institutions other than public bodies (outside jurisdiction)			
I. Judiciary	6	5	1
J. DPP	3	3	-
K. Miscellaneous Complaints	10	9	1
Sub-total	19	17	2
TOTAL	136	89	47

STATISTICS			
COMPLAINTS TO THE NHRC UP TO 31.12.2011			
	No. of Complaints	Disposed of	Pending
Complaints against Police			
A. Police Brutality	23*	11	12
B. Verbal Abuse	Nil	Nil	Nil
C. Service Delivery	3	2	1
D. Other Complaints	44	22	22
Sub-total	70	35	35
II. Complaints against Public Bodies			
E. Prisons Authorities	10	6	4
F. Ministries/ Government Departments	10	7	3
G. Parastatal bodies	Nil	Nil	Nil
H. Government owned companies	Nil		
Sub-total	20	13	7
III. Complaints against Institutions other than public bodies (outside jurisdiction)			
I. Judiciary	17	12	5
J. DPP	2	2	Nil
K. State of Mauritius	2	2	Nil
L. Miscellaneous Complaints	5	5	Nil
Sub-total	26	21	5
TOTAL	116	69	47

Out of 23 cases, 9 confessions through Police Brutality

STATISTICS 2012			
COMPLAINTS TO THE NHRC AS AT 31 DECEMBER 2012			
	No. of Complaints	Disposed of	Pending
Complaints against Police			
A. Police Brutality	34	20	14
B. Verbal Abuse	3	2	1
C. Other Complaints	71	64	7
Sub-total	108	86	22
II. Complaints against Public Bodies			
D. Prisons Authorities	24	17	7
E. Ministries/ Government Departments	17	15	2
F. Parastatal bodies	6	5	1
G. Government owned companies	NIL	NIL	NIL
Sub-total	47	37	10
III. Complaints against Institutions other than public bodies (outside jurisdiction)			
H. Judiciary	20	18	2
I. DPP	2	2	0
J. Miscellaneous Complaints	28	26	2
Sub-total	49	46	3
TOTAL	205	169	36

STATISTICS 2013			
COMPLAINTS TO THE NHRC FROM 01.01.13 to 31.12.13			
	No. of Complaints	Disposed of	Pending
(1) Human Rights Division			
Ministry/Department	17	17	0
Parastatal Bodies	3	1	2
Government Owned Companies	-	-	-
Judiciary	11	10	1
DPP	2	2	0
Miscellaneous	32	28	4
Sub-total	65	58	7
(2) Police Complaints Division			
Police Brutality	110	26	84
Verbal Abuse	42	23	19
Service Delivery	212	95	117
Sub-total	364	144	220
Files received from CIB as from 1st July 2013			
Police Brutality	229	48	181
Verbal Abuse	62	52	10
Service Delivery	446	341	105
Contraventions & Private Disputes	149	149	Returned to CP
Alleged Corruption Cases	7	7	Referred to ICAC
Sub Total	893	597	296
(3) National Preventive Mechanism			
Prisons	32	19	13
Sub-total	32	19	13
TOTAL	1354	818	536

* In addition, 66 letters from CIB were received and are still under consideration.

ANNEXES

ANNEXE I	Complaints to the NHRC 2013
ANNEXE II	United Nations Declaration on Human Rights Education and Training
ANNEXE III	Concluding Observations of the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 2011
ANNEXE IV	Report of the Working Group on the Universal Period Review – Mauritius
ANNEXE V	Addendum to Annexe IV
ANNEXE VI	Convictions and Appeals 2012
ANNEXE VII	Convictions and Appeals 2013
ANNEXE VIII	Protection of Human Rights Act The following Acts – (1) Protection of Human Rights Act (2) Police Complaints Act (3) National Preventive Mechanism Act may be consulted at http://mauritiusassembly.gov.mu/English/acts/Pages/Acts-of-Year-2012.aspx

PROTECTION OF HUMAN RIGHTS ACT

Section

1	Short Title
2	Interpretation
3	Establishment of Commission and setting up of Divisions
3A	Functions of the Commission
3B	Human Rights Division
4	Functions of Human Rights Division
4A	Application by convicted person for reference to Court under Criminal Appeal Act
5	Staff of Commission and Divisions
6	Powers of Human Rights Division
7	Investigation
8	Protection of Witnesses
9	Persons likely to be prejudicially affected
10	Protection from liability
11	Report of Commission
12	Finance
13	Offences
14	-
15	Regulations
16-17	