ANNUAL REPORT

of the

NATIONAL HUMAN RIGHTS COMMISSION

MAURITIUS

For the year 2014

MARCH 2015
<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>Main Events in 2014</th>
<th>PARAGRAPHS</th>
<th>PAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Main Events in 2014</td>
<td>1.1 - 1.13</td>
<td>1 - 6</td>
</tr>
<tr>
<td>II</td>
<td>Jurisdiction of the Commission</td>
<td>2.1 - 2.3</td>
<td>7 - 11</td>
</tr>
<tr>
<td>III</td>
<td>Police Complaints Division</td>
<td>3.1 - 3.30</td>
<td>12 - 32</td>
</tr>
<tr>
<td>IV</td>
<td>Human Rights Division</td>
<td>4.1 - 4.18</td>
<td>33 - 40</td>
</tr>
<tr>
<td>V</td>
<td>National Preventive Mechanism Division</td>
<td>5.1 - 5.22</td>
<td>41 - 48</td>
</tr>
</tbody>
</table>
LIST OF ANNEXES

Annex I   Functions of the Commission

Annex II  Functions of the Police Complaints Division

Annex III Functions of the National Preventive Mechanism Division

Annex IV  Views of Human Rights Committee

Annex V   Constitution (Declaration of Community) Act 2014

Annex VI  Process of Investigation PCD

Annex VII  SARPCO Code of Conduct for Mauritius Police

Annex VIII Monitoring Places of Detention: A practical guide Check list (APT)

Annex IX   Statistics 2014

Annex X    International Human Rights Instruments

Annex XI   Chapter II of the Constitution
COMPOSITION OF THE NATIONAL HUMAN RIGHTS COMMISSION UNDER THE PROTECTION OF HUMAN RIGHTS ACT

Chairperson
Mr. Dheerujlall Baramlall SEETULSINGH

Human Rights Division
Deputy Chairperson
Mrs. Premila BALGOBIN
Mrs. Rosemary Elizabeth Winifred ANODIN
Mr. Samioullah LAUTHAN

Police Complaints Division
Deputy Chairperson
Mrs. Marie Lourdes Lee Ying LAM HUNG
Members
Dr. Satiss GOWRY
Mrs. Marie Desirée Ariane OXENHAM

National Preventive Mechanism Division
Deputy Chairperson
Mr. Hervé LASSEMINLANTE
Members
Mrs. Anishta BABOORAM-SEERUTTUN
Mr. Vijay RAMANJOOLOO
CHAPTER 1
MAIN EVENTS IN 2014

1.1 The Commission was reconstituted in June 2014. A Deputy Chairperson and 2 members were appointed in each Division, that is, the Human Rights Division, the Police Complaints Division and the National Preventive Mechanism Division.

1.2 The Police Complaints Division dealt with more than eight hundred complaints transferred from the Complaints Investigations Bureau of the Police which had closed down in mid-2013 as well as complaints against police lodged at the National Human Rights Commission.

1.3 The National Preventive Mechanism Division visited prisons and other places of detention to ensure that conditions in which detainees were held complied with both national norms (Prisons Regulations) and international norms including UN Standard Minimum Rules for the Treatment of Prisoners and the Optional Protocol to the Convention against Torture (OPCAT). Mauritius has to fulfil its obligations under OPCAT and prepare for the next visit of the Sub Committee on the Prevention against Torture (SPT) set up under OPCAT. The visit may take place in the near future as Mauritius was the first country to be visited by the SPT after latter was set up. The NPM also dealt with complaints sent by detainees or their relatives.
1.4 The Human Rights Division deals with alleged breaches of human rights listed in Chapter II of the Constitution. It also has the powers of a Criminal Cases Review Commission to review criminal convictions by the Supreme Court. In July 2014 it received an application in connection with the *Amicale* case – a case of arson causing the death of seven persons in a gambling house in May 1999 and in which four persons were convicted by a jury at the Assizes in November 2000 and sentenced to life imprisonment. The task of the Division is to consider whether there is fresh and compelling evidence which would justify a reference to the Court of Criminal Appeal for a review of the case. The investigation is ongoing, the case being of a very complex nature. The applicants have recently lodged an application with the Judicial Committee of the Privy Council (JCPC) for special leave to appeal. Their initial request for leave to appeal to the JCPC under Section 81 of the Constitution had been turned down by the Supreme Court in Mauritius previously.

1.5 The holding of general elections in the country on 10 December 2014 was perhaps the strongest landmark of the year in the exercise of civil and political rights in the country as Mauritius prides itself on holding regular, free and fair elections. Few minor incidents were reported and the results went unchallenged. To prevent instances of usurpation of identity voters had to produce their Identity Cards for voting.
1.6 Furthermore, for the first time since Independence in 1968, candidates did not have to declare to which community they belong to be able to stand as candidates. This followed an amendment to the Constitution in July 2014 to comply with a decision of the Human Rights Committee under the International Covenant on Civil and Political Rights. The views of the Committee are reproduced at Annex IV.

1.7 However, the amendment to the Constitution was in relation to the general elections of 2014 only, which means that other amendments are required if the views of the Human Rights Committee are to be complied with in future. (Annex V)

1.8 The year 2014 also witnessed the introduction of a new Biometric ID card on the Singaporean model. Although the majority of the population had no qualms about acquiring the new ID card, a section of the population viewed it as a violation of the right to privacy and expressed the fear that the authorities may use the data in an untowardly manner, thus affecting the liberty of the subject. A group of persons lodged a complaint at the National Human Rights Commission, viewing the Biometric card as a threat to their right to freedom to demonstrate and freedom of movement. Since similar cases had been lodged before the Supreme Court which has pre-eminence over the Commission, it was deemed advisable that the matter be thrashed out by the Court. In the meantime the authorities
extended the validity of the old ID card to the end of March 2015.

1.9 Another event in relation to human rights worthy of note during the year 2014 was the acquittal of Somali Pirates captured on the high seas, by the Intermediate Court on the ground that their constitutional rights were not respected at the time of their arrest, as they were not granted right to counsel and were not brought before a Court without undue delay. The Director of Public Prosecutions appealed against the judgment and the alleged pirates are still being detained in Mauritius. The accused persons were not caught in the act and claimed having been fishermen operating in the region at the time of their capture. The Courts in Mauritius are prepared to apply a strict interpretation of the Constitution to ensure that the rights of suspects are protected.

1.10 Reference may be made to decisions of the Judicial Committee of the Privy Council in two cases from Mauritius reaffirming the application of human rights principles (1) Sabapathee (2014) UKPC19 and(2) Dooharika (2014) UKPC11.

In the first case the JCPC reiterated the principle that sentences should not be so disproportionate as to violate Section 7 of the Constitution and thereby constitute inhuman and degrading punishment. The sentence for possession of cannabis for the
purpose of distribution was reduced from 3 years to 18 months, taking into account the circumstances of the appellant.

In the second case D was prosecuted for the offence of scandalising the Court and convicted to three months’ imprisonment. But since he was not allowed to give oral evidence where his good faith was in issue, the JCPC concluded that he had not received a fair trial as guaranteed by Section 10 of the Constitution. The appeal was allowed.

1.11 There is greater awareness of victims’ rights in the country, being a reaction to the general trend in the past where too much emphasis was laid on the rights of suspects, especially when they are most vulnerable – women, children or persons with disabilities have to be afforded greater protection and facilities whether during police investigations or in the course of a trial.

1.12 On the other hand little progress was made in 2014 on the Police and Criminal Evidence Bill which was intended to provide stronger guarantees to suspects and members of the public in their interaction with the police.
1.13 The Sub-Committee on Accreditation of the International Coordination Committee of National Human Rights Institutions has recommended that the NHRC of Mauritius should be reaccredited Status A in 2015.
CHAPTER II
JURISDICTION OF THE COMMISSION

2.1 For new legislation setting up of the three Divisions of the Commission, reference is made to the 2013 Annual Report (available on the website of the NHRC) – http://nhrc.govmu.org

1.1 On 3 August 2012 the National Assembly enacted three laws –


(2) The Police Complaints Act 2012

(3) The National Preventive Mechanism Act 2012

The new Acts were proclaimed in July 2013.

2.2 The functions of the Commission and the Divisions are at Annexes I, II and III.

2.3 We take the liberty to reproduce extracts from Chapter II of the 2013 Annual Report of the NHRC which continue to be of utmost relevance –

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-jurisdictional 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.

2.18 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

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.
CHAPTER III
POLICE COMPLAINTS DIVISION

3.1 The Police Complaints Division was set up in June 2014 under the Police Complaints Act 2012 which abolished the Complaints Investigation Bureau of the Police Force on the 30th of June 2013.

3.2 The Police Complaints Division is an independent body making its decisions independently of the police, government and complainants. It exists to increase public confidence in the police complaints system and investigates complaints and allegations of misconduct against the police. It is assisted by a full time secretariat to ensure that all complaints are thoroughly and impartially investigated.

3.3 Its Functions

• 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.

• To investigate the death of any person which occurred when the person was in police custody or as a result of police action.

• To advise on ways in which any police misconduct may be addressed and eliminated.

• 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.

- To develop close working relationship between police and community residents.

3.4 **Its Powers**

- To summon any person to answer any question or provide any information in connection with an investigation.

- To examine any relevant article, book, report or document.

- To verify, ascertain by oral examination any fact made by complainant.

- To visit any police station and/or prison pursuant to an investigation.

3.5 **Its Purpose and Aims**

- To promote better relations between the police and the public.

- To increase confidence in the Police Complaints Division.

- To improve awareness of the Police Complaints Division.

- To work with NGO’s concerning police misconduct.

- To improve public attitude towards the police and enhance the professionalism of the police.
3.6 **Complaints (See Annex VI)**

The majority of police officers conduct themselves in an appropriate and professional manner. The nature of police work and the number of contacts with the public inevitably gives rise to some complaints.

3.7 **When can a citizen make a complaint?**

1. When he has experienced inappropriate behaviour from a police officer. For instance, the police officer has been rude or aggressive.

2. When he has been adversely affected by the conduct of a police officer.

3. When a person has been assaulted or brutalised by a police officer.

4. When the death of any person has occurred in police custody or as result of police action.

3.8 **What the complaint should say**

- What happened
- When and where it happened
- What was done
- What was said
- Where the witnesses can be contacted
- What proof, if any, exists of any damage or injury

Unless there are exceptional circumstances, the complaint should be made within 12 months of the incident.
3.9 Evidence for reporting a complaint

- Record the time and place where the incident took place as accurately as possible.

- Record the identity of the police officers involved. If they are in uniform, take the identity numbers from their shoulder badges. If they are in a vehicle, record the vehicle registration number.

- Get the names and contact details of witnesses.

- If the incident has been recorded on CCTV. If anyone has been filming or taking photos at the time.

- If there is any injury, get a PF 58 and attend treatment at hospital. If injuries are visible, photograph them before the marks fade.

3.10 Categorisation of complaints

Complaints have been categorised under different headings at the Police Complaints Division such as alleged physical brutality, verbal abuse, police inaction (service delivery) and other miscellaneous complaints like protests against contraventions.

A list of names of police officers against whom complaints are made more than once and of police stations where police brutality is recurrent will be kept.

Complaints against the police may arise out of -

(1) The conduct of the police officer or

(2) The services provided by the police.
(1) **THE CONDUCT OF THE POLICE OFFICER**

(a) Complaints may include: Police siding with the adverse party, harassment on the part of the police officers, abuse of authority, for instance, where complainants have been unfairly booked (re conditions of vehicles and traffic offences), refusal of the police officers to take down the declarations of complainants at the police station and failing to investigate.

(b) **Verbal abuse**

(i) Verbal abuse arises often out of incidents where complainants are booked for road traffic offences. At times they are reprimanded in foul language by the police officers.

(ii) The police have recourse to verbal abuse so as to intimidate a suspect who has been arrested. This may occur during the interrogation of the suspects.

(iii) Police officers misbehave as they are drunk and cannot control their behaviour.

Use of abusive language is an insult and is therefore a criminal offence and if found guilty, the police officer can be fined to the maximum amount of Rs 10,000/- according to S296 of the Criminal Code.

(c) **Police brutality** or assault by Police Officer is the most common complaint
Article 4(2) of the Constitution allows the use of justifiable force to effect lawful arrest or to prevent the escape of a person lawfully detained and to suppress riot or insurrection or mutiny. The Constitution also prohibits the inhuman treatment or punishment of any person, including persons who are suspects, who are arrested or those under police custody. This provision obliges police officers to take utmost care to handle persons in their custody. The beating or intimidation of individuals by police is prohibited by law. The law only authorises police to use proportionate force to effect the arrest of the suspect.

Police officers are entrusted with the duty of protecting the public. Most officers do that. However, as in any profession, there are some officers who do not fulfil their responsibilities and instead make an abuse of their authority and use excessive force in situations that do not warrant it. Some examples of excessive force include:

- Physical force against a person who is already in police custody and is not resisting being in custody;
- Using force to intimidate a suspect or a witness into giving a statement

In the Mauritian context it is alleged that police officers have recourse to brutality in the following cases:

(i) When extracting confessions from suspects

    Suspects alleged that they have been forced to confess to crimes they did not commit. Police brutality
allegedly occurs when the police officers desperately need evidence which they are unable to get through normal investigation.

(ii) When a suspect refuses to sign certain documents or blank sheets of paper in a statement pad of the police which allegedly may contain a confession. Detainees are allegedly brutalised by police.

(iii) Pressure from the superior person or authority. When police officers are pressurised to finalise an investigation within a given time.

(iv) When the suspect is a habitual criminal.

**Police brutality vis a vis minors**

A few complaints emanate from minors who are subject to police brutality when they are arrested for minor offences or when they are suspects or when they try to run away from the police.

With regard to verbal abuse, concerns have been expressed by responsible parties regarding the foul language and rough approach of the police when dealing with minors. The Police have been lectured on this matter.

Further issues which need to be addressed regarding minors are –

- Should minors be handcuffed?
- At what precise time should their responsible parties be informed of the incident in which the minor is involved?
- Should minors be charged with the serious offence of assaulting a police officer causing effusion of blood when the injury may be merely a scratch?
- Should minors who are subject to police brutality be referred for counselling?

(2) THE SERVICES PROVIDED BY THE POLICE

(a) Excessive length of pre-trial detention

Some suspects cannot afford bail, in the meantime they are detained on a provisional charge until the main case is lodged.

The Police Complaints Division may query the reasons for such delays and for detainees to be deprived of an early trial. The explanations obtained for delays are various: for instance, the accomplices of suspects have to be found first and or they cannot be traced out or the medical report or report from Forensic Science Laboratory has not yet been obtained.

At times a Judge’s order for evidence on bank accounts or from telecommunication companies has to be obtained before proceeding with the case.

(b) Search warrant

The Police Complaints Division continues to receive complaints that search warrants are not shown to persons whose premises are searched.

Citizens have the right to know and check the contents of the search warrant.
(c) Refusal to take declaration or police inaction

Complainants express dissatisfaction with the response of the police to declarations that they have been victims. In such cases the Police Complaints Division call the enquiring officers and/or the officers in charge of the station to ensure that they carry out their duties with due diligence.

3.11 OTHER COMPLAINTS

(1) Warrant of arrest

Some citizens complained about circumstances in which a warrant of arrest was issued for nonappearance in court or non-payment of fines. The complainant is usually arrested in the early hours of the morning.

The Police Complaints Division recommends that warrants should not be issued outright but the police claim that they have no discretion in the matter when it is an order from the court. It is suggested that the police or usher should warn the suspects in the first instance and an arrest should be a measure of last resort.

For instance, in one case, a complainant was arrested in the very early hours and brought to station for non-payment of fine though he insisted that he had already settled the fine. He was presented in court at 15.00 hours to be informed he was wrongly arrested as he had already settled the fine.
Contraventions

The Police Complaints Division receives complaints that complainants have been booked unfairly. The Police Complaints Division cannot embark on an investigation as to whether road users had been justly or unjustly booked for traffic offences. It is for the Magistrate to decide when he hears the alleged offenders.

Private dispute

The Police Complaints Division cannot intervene into private dispute between members of the public and police officers who were not acting in the course of their duty. Furthermore, the Police Complaints Division cannot intervene in cases of civil nature.

What happens once the complaint has been investigated?

1 Conciliation

The PCD may hold a conciliation sitting to see if the complainant and the police officer may come to terms. Complainant may accept an apology from a police officer.

Since July 2014, the Police Complaints Division has held 14 conciliation sessions, out of which 4 have been successful.

In addition, conciliation obviates the need for a formal hearing.

2 Filing

The PCD may file a complaint if the subject matter is trivial, frivolous, vexatious or not made in good faith. At times, the complaint is also filed as the complainant does not wish to proceed further.
3. **Hearing**

The PCD may summon the complainant and his witnesses to depone. They are examined by the members of the Police Complaints Division. The police officers also depone and give their version of the incident. Complainants depone in the language they are most conversant with. There is no need to be represented by counsel in proceedings.

It is to be noted that the procedure at the hearing is investigatorial and **not** adversarial.

The complainant and the witnesses are not compelled to give evidence but whatever evidence they give may be used against them subsequently in both civil and criminal proceedings. They may refuse to give evidence which would incriminate them.

**Advantages of a hearing**

(i) The complainant has an opportunity to vent out his feelings and may derive satisfaction from having been heard.

(ii) The PCD after having heard all the parties can have a better picture of the case as the PCD would be in presence of the facts and contradictions of the case and has the opportunity to assess the credibility of the witnesses.

(iii) The PCD meets the police officers (e.g. the Brigade des Mineurs) to make them conscious of their responsibilities, of their abuse of authority and of their failure to assist when their intervention is required. They are also reminded that they are expected to take all
complaints seriously and to act in a fair and balanced way to remedy the situation.

(iv) The PCD makes citizens aware of the role of the PCD and of the difficult challenges a law enforcement officer has to meet.

3.13 **Possible outcomes**

If the complaint is upheld, the options for the Police Complaints Division are to make recommendations to the following institutions:

(i) **The Director of Public Prosecutions**

The Police Complaints Division may refer a complaint to Director of Public Prosecutions with recommendation that the police officers be prosecuted for a criminal offence.

Since July 2014, 6 cases have already been referred to the Director of Public Prosecutions.

They are prima facie cases of police brutality exerted upon complainants, one of whom was a minor, backed up by PF 58 and/or medical report. The police officers assaulted them with slaps, kicks, fisticuff blows, and even used a stick and a PVC pipe.

(ii) **The Disciplined Forces Service Commission**

The Police Complaints Division may refer a complaint to the Disciplined Forces Service Commission with a recommendation that disciplinary proceedings be taken against the police officer.
Since July 2014, one case has been referred to the Disciplined Forces Service Commission.

In this case, the police officer had acted in such an unbecoming way in a police station towards the complainant that his colleague police officer had to intervene to calm him down. Furthermore, he levelled an accusation of rogue and vagabond against the complainant which had never occurred, as no entry was recorded in the diary book.

(iii) The Attorney General

The Police Complaints Division may refer a complaint to the Attorney General with a recommendation that the complainant be granted compensation or relief.

Since July 2014, one case has been referred to the Attorney General, where the Police Complaints Division recommended that the complainant be compensated as his bicycle which was left for examination at a police station following an accident, could not be traced.
3.14 The PCD had also investigate complaints made at the CIB and transferred to the PCD.

<table>
<thead>
<tr>
<th></th>
<th>No. of Complaints</th>
<th>Disposed of (Filed)</th>
<th>Pending</th>
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<tbody>
<tr>
<td>Police Brutality</td>
<td>168</td>
<td>56</td>
<td>112</td>
</tr>
<tr>
<td>Verbal Abuse</td>
<td>48</td>
<td>29</td>
<td>19</td>
</tr>
<tr>
<td>Service Delivery</td>
<td>313</td>
<td>156</td>
<td>157</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>529</strong></td>
<td><strong>241</strong></td>
<td><strong>288</strong></td>
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</table>

No. of complaints from Rodrigues: 8
Cases referred to the DPP: 6
Cases referred to the DFSC: 1
Cases to the Attorney General: 1
3.15 **Visits effected upon complaints filed with the PCD**

<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Purpose</th>
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<tr>
<td>11 September 2014</td>
<td>Pope Hennessy Police Station</td>
<td>To gather information on police procedures, on conditions of detainees in cell, on the functions of the station orderly, the Brigade des Mineurs.</td>
</tr>
<tr>
<td>26 November 2014</td>
<td>Pope Hennessy Police Station</td>
<td>To follow up procedures related to warrant of arrest for non-payment of fines.</td>
</tr>
</tbody>
</table>

3.16 **Training by the PCD**

The PCD offered about 150 hours internship to two LLM students from Ethiopia and Nigeria from the Centre for Human Rights and Democratisation Africa, University of Pretoria.

3.17 In its National Policy Strategic Framework the Police Department lays much stress on the observance of human rights. The maintenance of law and order necessitates a considerable share of the national budget, some 8 billion rupees with a personnel of nearly 14,000 people. It is essential that the resources be put to maximum use. At the moment a single person, the Commissioner of Police, is responsible for a large array of activities spread among the different divisions of the Police i.e., normal police work at police stations in different areas, Criminal Investigation Division, Anti-Drug Smuggling Unit, Coastguard, Traffic Police, Special Mobile Force,
Very Important Persons Security Unit, Prosecution Division, Engineering Division, Police for Protection of the Environment, Emergency Response Service, Disaster Management etc. Although the CP is assisted by Deputies and Assistant Commissioners of Police, it may not be humanly possible for a single person to bear ultimate responsibility for the management of all these Divisions. The model of a Police Force which we inherited from colonial times has to be revisited.

3.18 It has been suggested before that regulation of traffic should fall outside the ambit of normal police activities. Many complaints against police arise out of road traffic contraventions. Members of the public dislike being booked for road traffic offences and protests give rise to incidents. The Police could concentrate their activities on combating crime and maintaining law and order.

3.19 There is also an urgent need for computerisation in the police force. A lot of time is spent on taking statements whereas if an acceptable format is used, that would save much time and effort.

3.20 The Police also needs a strong Inspectorate to discipline its members and to ensure that police officers abide by Standing Orders not only as a matter of internal discipline but also to regulate their conduct vis à vis members of the public.

3.21 The Police need a team of well-trained legal advisers to cope with modern developments in the law, be it in the field of criminal law, criminal procedure, the legal system, road traffic legislation, cyber laws and all other laws the breach of which results in the commission of an offence which may give rise to prosecution. Police prosecutors have done fairly
well up to now, have received on the job training and have had to cross swords with experienced members of the Bar. But it is of utmost importance that they should receive more formal training.

3.22 A fair number of complaints received at the level of the Commission concern family disputes or disputes among neighbours which necessitate police intervention. Ironically enough, the frequent outcome of an intervention is a complaint that the police have favoured one party. It is important that the police should win the respect of local people and that senior police officers should be able to mediate in such disputes and call the troublemakers to order if there is a breach of the peace.

NEW POWERS FOR THE PCD

3.23 The powers of the NHRC – PCD are too restricted. Although considerable time is spent on processing complaints, on investigation, and on hearing complainant’s witnesses and police officers, the PCD can in the end only make recommendations to the DPP and to the DFSC. The time has come to consider endowing the NHRC with certain disciplinary powers. The DFSC has under Section 91(2) of the Constitution delegated to the Commissioner of Police the power of disciplinary control in respect of police officers below the rank of Assistant Superintendent of Police. This should only apply to cases of misconduct within the force itself, but not as regards complaints from the public. Otherwise it would be tantamount to the police judging the police in relation to a complaint from a member of a public, which eventually gives rise to a perception of partiality.
3.24 In the Medical Council Act, the Medical Council is given the power to inflict warnings -

**Section 14. Disciplinary proceedings**

(1) Where after having carried out a preliminary investigation, the Council is satisfied that a registered person has committed -

(a) a breach of the Code of Practice;

(b) an act of fraud, dishonesty or negligence;

(c) an act of professional misconduct or malpractice; or

(d) any other act likely to bring the medical profession into disrepute, the Council may, subject to section 19, institute disciplinary proceedings against him”

(2) Notwithstanding subsection (1), where after an investigation under section 13 the Council considers that -

(a) there is prima facie evidence of negligence, incompetence, or grave misconduct by a registered person; and

(b) public interest requires that the registered person should instantly cease to practise medicine; the Council may suspend the registered person from the practice of medicine for a period not exceeding 6 months, and shall, in the case of a public officer in respect of whom it holds delegated power, report the suspension to the Public Service Commission for the Commission’s decision on any such suspension”.

19. Summary proceedings

Where, after having carried out a preliminary investigation and after giving a registered medical practitioner an opportunity to show cause why disciplinary action should not be taken against him, the Council is satisfied that the registered person has committed an act specified in section 14(1) which, in the opinion of the Council, constitutes a minor fault, it may inflict upon that person a warning or a severe warning.
3.25 Similarly, the NHRC could after a hearing give warnings to police officers in cases of minor assaults (e.g. a slap) or verbal abuse. This approach would serve a more useful purpose than sending the case to Court. Cases in Court unfortunately take too long to dispose of, since District Courts are overburdened with work.

3.26 Given the number of disciplinary cases within the Police Force there should be a unit set up permanently to deal expeditiously with such cases, as suspensions seem to last indefinitely while the suspended police officers are on full pay and become a burden to the taxpayer. It is proposed that a retired magistrate or an experienced barrister should chair disciplinary proceedings within the Police Department to expedite such matters. This could replace the Disciplinary Orderly Room.

3.27 It has also been proposed that there should be an effective itinerant islandwide Inspectorate within the Police Force led by an Assistant Commissioner of Police to inspect police stations and ensure that police officers conduct their duties properly.

3.28 **Recommendations**

**A. Amendment of the Police Complaints Act**

- To increase the powers of PCD so that it may issue warnings, severe warning or reprimands.

- To recommend counselling for offending police officers and victims of police brutality.
B. **Measures**

- A protocol to be established between the Office of the DPP and PCD so that the DPP and PCD are both aware of cases of police brutality and or verbal abuse which are connected with contravention cases.

C. **Sensitisation**

- To increase awareness of police officers with respect to human rights principles.

- To inform suspects of their right to Legal aid in certain cases, that is, to be assisted by a lawyer at the very initial stages of the enquiry.

- To make all possible efforts to eradicate completely police brutality.

- To issue a guide for complaints about the police and on police powers.

- To incorporate in the police Standing Orders through circular letters, recommendations made by the Police Complaints Division.

- To pursue efforts to provide specific human rights training to law enforcement and judicial officers on all aspects of human rights through lectures and workshops.

- To have more co-operation with NGO’s which can serve as
intermediaries between victims of violations and the PCD.

3.29 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 line of PACE in the UK) will make it compulsory for the police to record confessions on video.

See Annex VII SARPCO Code of Conduct for Mauritius Police

3.30 The NHRC reiterates a recommendation it has made in the past to the effect that the police should not arrest a person on the mere allegations of another person and that a purposeful enquiry should first be carried out to verify the allegations before any arrest is made.
CHAPTER IV
HUMAN RIGHTS DIVISION

4.1 The Human Rights Division deals with complaints about violation of the rights listed in Chapter II of the Constitution (Annex XI). In Mauritius such rights as freedom of conscience, freedom of expression, freedom of assembly and association, freedom to establish schools and freedom of movement are widely respected. There is no slavery or forced labour while there is protection from deprivation of property and for privacy of home and other property. The issue of the Biometric Card is now before the Supreme Court. As far as allegations of discrimination are concerned they are now dealt with by the Equal Opportunities Commission.

4.2 Complaints pertaining to maladministration, whether at central government level or local government level, are within the jurisdiction of the Ombudsman. The Ombudsperson for Children deals with alleged violations by the State of its obligations under the Convention on the Rights of the Child. Domestic violence falls within the purview of the Minister of Gender Equality while the Ministry of Social Security ensures that the rights of Persons with Disabilities are respected.

4.3 The Human Rights Division often has to redirect complaints to the above mentioned institutions. Nevertheless, it makes an attempt in the first instance to resolve certain disputes by conciliation and mediation as illustrated by the following examples. Otherwise it assists complainants by giving them information.
4.4 The Commission received a complaint from Mr and Mrs X that their daughter who was of age (Miss Y) had been taken away by force by Mr Z, a male acquaintance of hers, and that she was living with him and his relatives and that Miss Y was being denied the right to go out or to communicate with her relatives or any other person. Mr and Mrs X then learnt of the publication of the proposed civil marriage of Miss Y and Mr Z at the Civil Status of Curepipe and they objected to the celebration of the said marriage. Miss Y’s relatives sought assistance from the police and the CDU. They left no stone unturned in their attempts to meet or communicate with her but in vain. The Commission initiated an enquiry and interviewed the parties concerned. The enquiry revealed that Mr Z had caused the publication of his proposed civil marriage with Miss Y to be posted up at a Civil Status Office in a remote area and in so doing, they managed to contract civil marriage as well as religious marriage without the knowledge of Miss Y’s parents. Miss Y confirmed to the Commission during the interview that she was being deprived of her freedom of movement and that she was very unhappy and lived in fear. The Commission informed her of her fundamental rights. The Commission was subsequently informed by Miss Y’s parents that she managed to run away from Mr Z’s house and returned to them. Following this case, the Commission made recommendations to the Registrar of Civil Status that objections to proposed civil marriages under Section 22 of the Civil Status Act should officially be brought to the attention of to all the Civil Status Offices in order to avoid situations like the present one.
4.5 Mr B copied to the HRD a request addressed to the MOE and Ombudsperson for children that her daughter who had a particular health problem should be put in the class of teacher X who knows how to deal with children who suffers from this particular illness. The Commission wrote to the authorities concerned and followed up the case. Mr B’s request was acceded to.

4.6 The Administrative and Teaching Staff of a Government School complained of the negative and threatening manner in which the Head Mistress was running the school. The staff had to work in an atmosphere where they felt insecure and under constant pressure and stress. The Commission referred the matter to the Ministry of Education and was subsequently informed that the Headmistress had been transferred to another school.

4.7 Mrs J complained that her son did not qualify for a scholarship from the Tertiary Education Commission because the household income exceeded Rs 10,000 per month. In fact, the total income of the household (in 2013) was Rs 12,034 comprising solely her late husband’s Basic Retirement Pension for severely handicapped persons and her own pension benefits. The Commission recommended that to avoid unfairness and discrimination the authorities concerned should reconsider the criteria for the allocation of a scholarship and should exclude social benefits income when assessing the household income.
4.8 Following the amendment to the Criminal Appeal Act and the Protection of Human Rights Act in 2013, the Human Rights Division has since 2014 the power to refer a conviction by the Supreme Court to the same court for a review of the proceedings relating to the conviction.

4.9 Very few convictions in Mauritian Courts rest upon scientific evidence. The Police tend to rely on a great extent on confessions and the testimony of eyewitnesses.

4.10 In England a number of convictions were found to be unsafe because they rested upon scientific evidence which later proved to be unreliable. Well known examples concern DNA, bombs fabrication, and the baby shaking syndrome. Section 13 of the Criminal Justice Act 1995 in the UK which set up the Criminal Cases Review Commission stipulates as follows -

13 Conditions for making of references.

(1) A reference of a conviction, verdict, finding or sentence shall not be made under any of sections 9 to 12 unless—

(a) the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made,

(b) the Commission so consider—

(i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or

(ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and
(c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.

(2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it. (Underlining is ours.)

4.11 Furthermore the admission of fresh evidence is governed in England by Section 23 of the Criminal Appeal Act 1968 (as amended by the Criminal Appeal Act 1995 and the Criminal Justice and Immigration Act 2008, Sch. 8, para. 10).

(1) For the purposes of an appeal or an application for leave to appeal, under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interest of justice.

(a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;

(b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and

(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

(1A) The power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to –

(a) the Court;

(b) the appellant;

(c) the respondent.
(2) the Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to –

(a) whether the evidence appears to the Court to be capable of belief;

(b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and

(d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.

4.12 By virtue of the Criminal Justice Act 2003 of England, the double jeopardy rule was abolished and the Director of Public Prosecutions could rely on fresh and compelling evidence to apply to the Court in the case of an acquittal. When the Criminal Appeal Act of Mauritius was amended in 2013 it was the wording of the 2003 English Act which was adopted. However, the ambit of the 1995 Act in England was wider than our Act as it included the possibility of resorting to “exceptional circumstances”

4.13 Fresh and compelling evidence is defined in Section 19A of our Criminal Appeal Act -

(6) In this section –

“compelling evidence” means evidence which is

(a) reliable;

(b) substantial; and

(c) highly probative in the context of the issues in dispute at the trial;
“fresh evidence” means evidence which –

(a) was not adduced at the trial of the offence; and
(b) could not, with the exercise of reasonable diligence, have been adduced at the trial;

4.14 Where the evidence was available at the time of the trial and could have been adduced in favour of the defence without any difficulty, it would be difficult to consider it as fresh. Further, the evidence must be of such a probative nature that it goes to the central issue in the case, not to peripheral issues.

4.15 Were convicted persons to allege that it was the fault of their counsel that crucial evidence like alibis that would have disculpated them was not adduced, that would raise an unsurmountable difficulty.

4.16 As far as expert evidence is concerned, this also gives rise to a lot of dispute, as experts have the tendency to disagree and to challenge the opinions of their colleagues.

4.17 Two applications for reviews of criminal convictions by the Supreme Court were received in 2014. In the first case (Arson causing death) the applicants had a panel of legal advisers who were able to formulate the application on an English model. In the second case (Murder) the applicant was not assisted by Counsel. The Human Rights Division is carrying out an investigation in both cases. The applicants in the first case have also applied for special leave to appeal to the Judicial Committee of the Privy Council.
4.18 On a positive note the small number of applications may illustrate the fact that very few persons convicted by the Supreme Court are of the view that they have been unjustly convicted and may bear testimony to the fact that the judicial system functions smoothly.
CHAPTER V

NATIONAL PREVENTIVE MECHANISM DIVISION

Methodology of Work

5.1 The NPM Division, since its setting up in June 2014, regularly carries out unannounced visits to places of detention such as police cells, detention centres and mental health institutions.

- Individual interviews are carried out with detainees, detainees in police cells and at detention centres

- Relatives of detainees are met/interviewed

The NPM Division intervenes through –

(1) Letters to Commissioner of Prisons, Commissioner of Police, the DPP, Commission on Prerogative of Mercy, Master and Registrar, Parole Board, Ministry of Health & Quality of Life, Rehabilitation and Correctional Youth Centres, etc.

(2) Sensitization programmes being radio/television and newspapers.

- Sensitization programmes/campaigns aimed at secondary schools’ students, non-governmental organizations, police and prison officers including prison medical staff.

Recommendations are made to relevant authorities concerned to improve the conditions of detainees in places of detention when necessary.
Close follow-up and monitoring are carried out through site visits, meetings with the detainees and their parents/relatives.

- Information is compiled through contacts with NGOs, officials, detainees and parents, prior to investigations being carried out.

- The checklist for visits proposed by the Association for the Prevention of Torture is reproduced at Annex VIII.

5.2 The National Preventive Mechanism Division, since its setting up in June 2014, carries out regular visits to places of detention in accordance with the legislation in force. In 2014 some 60 visits were effected to police cells, prisons and detention centres including Rehabilitation Youth Centres (Boys and Girls), Correctional Youth Centre (Boys) as well as Rodrigues.

5.3 During the visits to prisons, the NPM Division makes it a point to visit the punishment cells or segregation units where prisoners are confined. The Division aims at ensuring that there is no abuse on the part of the prison authorities, that the detainees are not subjected to torture or any other form of inhuman treatment.

5.4 The Rehabilitation Youth Centre caters for both convicted and inmates on remand (boys and girls). The NPM Division noted with concern that rehabilitation of these inmates was not possible due to unavailability of a proper programme for their rehabilitation. These inmates are debarred from attending a regular schooling programme as well as from going outside the detention premises.

5.5 At the Correctional Youth Centre, there are both convicted and remand inmates cohabit. However, they are better catered for in terms of leisure and sports activities. The NPM Division strongly recommends that proper
rehabilitation programmes should be put into place for the benefit of these young inmates.

5.6 The visit to the Brown Sequard Mental Health Centre at Beau Bassin was most revealing. Nearly all those who escape from the Rehabilitation Youth Centre (Girls) are referred to the said hospital for treatment either for suicidal behaviour or gross misconduct. The confinement of the referred inmates into segregated wards at the hospital leaves much to be desired, due to non-aeration and a gloomy atmosphere. The NPM Division expressed strong concern at this inhuman treatment and the authorities promised to take immediate remedial actions. The situation is being closely monitored by the Human Rights Commission.

5.7 The National Preventive Mechanism Division, in early July 2014 and during its visits at the Beau Bassin Central Prisons (Male and Female) assessed the general conditions of living of the detainees. It was reported that some 600 prisoners had already been transferred to the newly built Eastern High Security Prison at Melrose to reduce overcrowding at Beau Bassin Prisons.

5.8 In July 2014, the prison population amounted to 2390 detainees including 142 foreigners (both those on remand and convicted as well as Somali pirates). At Beau Bassin detainees complained about their living conditions in their respective cells. These cells were not fitted with toilet facilities as the construction of the Beau Bassin Central Prisons dates back to the colonial era. The daily diet of the detainees was not to their satisfaction due to the supply of inadequate amounts of fish, chicken, rice, vegetables, butter, milk and sugar. Those suffering from HIV Aids protested against non-availability of additional protein and food though they are allowed a 20% increase in their daily diet. Some complained about their non-induction to the Harm Reduction Programme, i.e. Methadone distribution programme.
5.9 Concern was expressed on the imprisonment of foreigners, especially women with their children (some children above the age of five were not attending school). In some cases remission of sentence in favour of all eligible prisoners who put in extra hours of work and have a good conduct in prisons was not granted. Their condition was worsened due to the non-operation of the Parole Board. The Board needs to be reviewed and reconstituted.

5.10 Although the prison service provides round the clock medical services to the inmates, the latter seem to be unsatisfied. Some inmates have to wait for long hours before they are seen by the medical staff. Others are prescribed medicines that are not available at the prison’s pharmacy and same have to be bought by their relatives. However, some detainees’ relatives cannot afford to do so. All those suffering from complicated diseases are referred for treatment to the Jawaharlal Nehru Hospital. The prison hospital services are serviced by specialist doctors and dentists. The NPM Division assisted detainees who were in need of special medical attention either at the prison hospital or public hospitals. It intervened with the treating authorities and medical staff on humanitarian grounds so as to make appropriate medical treatment available as well as to avoid death in prison.

5.11 On the other hand the treatment of detainees referred for hospitalisation at the special ward at Jawaharlal Nehru Hospital was viewed with concern. These detainees were chained to their hospital beds, and were kept under constant watch of the Prison Guards for security purposes at that particular medical ward.

5.12 The National Preventive Mechanism Division expressed concern on the treatment inflicted upon detainees who were reported for gross misconduct and for flouting the orders of the Prison Officers. These detainees were charged by the Prison Authorities, and appeared before an Adjudicating Panel. If found guilty they were confined to punishment cell in inhumane
conditions. The National Preventive Mechanism Division protested against such detention and the Prison Authorities were compelled to reconsider this procedure by opting for a more humanitarian approach that is in line with the Optional Protocol to the Convention against Torture. The Adjudicating Panel consisted of Senior Staff of the Prison Services and same was unacceptable to NPM Division as they were “judge and party” at the same time. After meetings were held with the Commissioner of Prisons it was decided to expedite matters for the reconstitution and operation of the Board of Visitors.

5.13 Some 300 detainees were interviewed upon receipt of their complaints and during visits. Correspondence was exchanged between the Prison Authorities and the NPMD as well as the Foreign Embassies and Consuls. Parents and relatives of the detainees were contacted and assisted in their endeavours to address the complaints of the detainees. Nearly all hospitalised detainees were visited, their treating doctors consulted and their parents/relatives briefed on their conditions. The NPMD also facilitated contact visits of some ten detainees.

5.14 By law, remission is not available to persons who have been convicted of an offence under the Dangerous Drugs Act other than Section 34 or a sexual offence on a child or a handicapped person. This overall denial of remission in such cases is too harsh. This law must be amended. Parliament must consider legislating to reinstate remission for all detainees. Suggestions and recommendations to reinstate remission in the penal system have been made forcefully by civil society. Remission is an efficient incentive for prison officers. Convicts with extremely heavy sentences above 30 years can be difficult to handle. They feel distraught when facing heavy sentences and may react violently. In a country where sentencing is on the high side, remission is necessary. It encourages detainees to behave properly. Rehabilitation becomes easier. In June 2014, there were 389 detainees who were not eligible for remission. Many of these detainees claim to have no
incentive to work and to be productive because they cannot earn any remission. Since these convicts feel discriminated against, they create a tense atmosphere.

5.15 Some 80 detainees serving mandatory and life sentences for murder, manslaughter, rape or drug related cases have been interviewed with a view to seeking legal aid for a review of their sentence, following a Supreme Court judgment in June 2007 making mandatory sentences anti-constitutional. These detainees were briefed by the NPM Division on the procedures to be followed.

5.16 The majority of the prisoners complain about alleged non-computing of their remand period at the time of sentencing by Court. This issue was lengthily discussed at the Commission and the matter taken up with the concerned authority.

5.17 Since its setting up, the National Preventive Mechanism Division, has militated for the transfer of foreign prisoners serving long sentences to their home country. Some 142 foreigners of different nationalities are presently serving sentences in Mauritian jails. The transfer of foreign prisoners is a real challenge due to the fact that some countries have not yet signed any treaty for transfer of prisoners with the Government of Mauritius. Others are stuck with administrative, procedural or legal problems, in spite of the efforts of our Ministry of Foreign Affairs.

5.18 The Commission discussed with foreign embassies, consuls and other relevant authorities/organisations to facilitate the transfer of some foreign prisoners to their motherland. It is expected that some prisoners from African countries may leave soon.

5.19 As regards terminally ill detainees and exceptionally well behaved detainees, the NPM Division endeavours to refer these cases to the Commission on the
Prerogative of Mercy and Parole Board respectively for their consideration on the possibility of an early release of the detainees. However, the final decision rests with the Commission on the Prerogative of Mercy or the Parole Board.

5.20 With a view to making conditions in detention centres more human, the NPMD held various working sessions with the Commissioner of Police, Commissioner of Prisons and Non-Governmental Organisations. Some 25 working sessions were held with the Non-Governmental Organisations, Associations of Psychologists, Prisons Medical Staff, Chairman of the Bar Council, CEO of the Law Reform Commission and Diplomatic Corps. These discussions contributed a lot in facilitating the task of the NPMD as far as the implementation of the OPCAT is concerned.

5.21 Over and above sensitization programmes through TV, Radio and newspapers on the rights of detainees and their living conditions in the detention centres, the following have been organized/held:-

(i) More than 60 visits to Prisons, Detention Centres, Rehabilitation Youth Centres (Boys & Girls), Correctional Youth Centre (Boys) and police cells (including Rodrigues);

(ii) Some 25 working sessions with NGOs, Association of Psychologists, Prison Medical Staff, Chairman of Bar Council, CEO of Law Reforms Commission and other Diplomatic Corp;

(iii) More than 300 detainees were interviewed in prisons (both convicted and on remand);

(iv) Some 30 detainees were seen in police cells/detention centres.

(v) A Workshop for the training of Prisons Officers and staff of the NHRC on Human Rights was held on Friday 05 December 2014. Some 35 Prisons
Officers, 4 Officers of the RYC (Boys & Girls) and all staff of the NHRC attended the workshop.

5.22 **Recommendations**

The National Preventive Mechanism Division recommends the following:-

(i) The Prison Authorities should ensure that the female detainees’ children who are of school age should attend school and be able to lead a life which is as normal as possible in these circumstances;

(ii) Detainees who are accused of prisons default should be heard and punished by an Independent panel, instead of being charged and judged by the Prison Officers themselves;

(iii) Remission for drug traffickers and for a category of sexual offenders be given due consideration.

(iv) Since long sentences of imprisonment do not seem to act as a deterrent, a more appropriate sentencing policy must be devised. It is suggested that the Supreme Court should issue sentencing guidelines.

(v) When accused parties on remand are convicted and sentenced to imprisonment, it must be clearly explained to them to what extent the period on remand has been accounted for.
ANNEX I

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.
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.
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.
Human Rights Committee

Communication No. 1744/2007

Views adopted by the Committee at its 105th session (9–27 July 2012)

Submitted by: Devianand Narrain et al.* (represented by counsel, Rex Stephen and Nilen D. Vencadasmy)

Alleged victims: The authors

State party: Mauritius

Date of communication: 16 November 2007 (initial submission)

Document references: Special Rapporteur’s rule 97 decision, transmitted to the State party on 13 December 2007 (not issued in document form)

Date of adoption of Views: 27 July 2012

Subject matter: Requirement for prospective candidates of elections to the National Assembly to identify themselves as members of one of the four categories of the Mauritian population

Procedural issues: Non-exhaustion of domestic remedies; incompatibility with the provisions of the Covenant; abuse of the right of submission

Substantive issues: Right to take part in political activity; freedom of thought, conscience and religion; right to equality before the law

Articles of the Covenant: 18; 25; 26

Articles of the Optional Protocol: 3 and 5, paragraph 2 (b)

* Adrien Georges Laval Legallant; Jean François Chevathyan; Ian Harvey Jacob; Paveetree Dholah; Rolando Denis Marchand; Dany Sylvie Marie; Roody Yvan Pierre Muneean; and Ashok Kumar Subron.
Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (105th session) concerning

Communication No. 1744/2007**

Submitted by: Devianand Narraín et al. (represented by counsel, Rex Stephen and Nilen D. Vencadasmy)

Alleged victims: The authors

State party: Mauritius

Date of communication: 16 November 2007 (initial submission)

Date of admissibility decision: 6 October 2009

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 2012,

Having concluded its consideration of communication No. 1744/2007, submitted to the Human Rights Committee on behalf of Devianand Narraín et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the present communication, dated 16 November 2007, are Devianand Narraín (born in 1960), Adrien Georges Laval Legallant (born in 1960), Jean François Chevathyan (born in 1960), Ian Harvey Jacob (born in 1975), Paveetree Dholah (born in 1959), Rolando Denis Marchand (born in 1966), Dany Sylvie Marie (born in 1973), Roody Yvan Pierre Muneean (born in 1985) and Ashok Kumar Subron (born in 1963). They are all Mauritian citizens and members of a political party called Rezistans ek Alternativ. The authors claim to be victims of a violation by the State party of articles 18, 25 and 26 of the Covenant. They are represented by counsel, Rex Stephen and Nilen D. Vencadasmy.

** The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O’Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Kristér Thelin and Ms. Margo Waterval.
1.2 On 6 October 2009, at its ninety-seventh session, the Committee declared the communication admissible insofar as it raised issues under articles 25 and 26 of the Covenant.

The facts as presented by the authors

2.1 The authors are members of a registered political party called Rezistans Ek Alternativ (Resistance and Alternative) and in that capacity they presented their candidacies for the general election to the National Assembly held on 3 July 2005.

2.2 On 30 May 2005, the authors submitted their nomination papers to the electoral authority of their constituencies. Their nomination papers were duly filled in, except for item 5 of part II, according to which they were requested to declare to which one of the four communities of the Mauritian population they belonged to. The First Schedule to the Constitution establishes a four-fold categorization of the Mauritian population: Hindu; Muslim; Sino-Mauritian; or General Population, for those who do not appear, from their way of life, to belong to one of the three communities.1

2.3 The Constitution of the State party provides that the Assembly shall consist of 70 members.2 The First Schedule to the Constitution, in paragraph 3(1), creates an obligation on every candidate in any general election to declare “in such manner as may be prescribed which community he belongs to and that community shall be stated in a published notice of his nomination”. Moreover, paragraph 5 of the First Schedule to the Constitution holds that eight seats will be allocated under the “Best Loser System”. These eight seats will be distributed among the most successful candidate belonging to the appropriate community, as well as the most successful political party.3 Regulation 12, paragraphs 4 and 5, of the

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1 Paragraph 3 (4) of the First Schedule to the Constitution reads as follows: “For the purposes of this Schedule, the population of Mauritius shall be regarded as including a Hindu community, a Muslim community and Sino-Mauritian community; and every person who does not appear, from his way of life, to belong to one or other of those 3 communities shall be regarded as belonging to the General Population, which shall itself be regarded as a fourth community.”

2 According to the First Schedule to the Constitution, the 70 members of the National Assembly are elected as follows: (a) 62 members are returned on the basis of the principle of “first past the post” (20 constituencies returning three members each and one constituency in the autonomous region of the Island of Rodrigues returning two members); and (b) the remaining eight members are seats allocated under a mechanism known as the Best Loser System.

3 Paragraph 5 (3-4) of the First Schedule to the Constitution reads as follows: “(3) The first 4 of the 8 seats shall so far as is possible each be allocated to the most successful unreturned candidate, if any, who is a member of a party and who belongs to the appropriate community, regardless of which party he belongs to. (4) When the first 4 seats (or as many as possible of those seats) have been allocated, the number of such seats that have been allocated to persons who belong to parties, other than the most successful party, shall be ascertained and so far as is possible that number of seats out of the second 4 seats shall one by one be allocated to the most successful unreturned candidates (if any) belonging both to the most successful party and to the appropriate community or where there is no unreturned candidate of the appropriate community, to the most successful unreturned candidates belonging to the most successful party, irrespective of community.” Paragraph 5 (8) of the First Schedule to the Constitution: “The appropriate community means, in relation to the allocation of any of the 8 seats, the community that has an unreturned candidate available (being a person of the appropriate party, where the seat is one of the second 4 seats) and that would have the highest number of persons (as determined by reference to the results of the published 1972 official census of the whole population of Mauritius) in relation to the number of the seats in the Assembly held immediately before the allocation of the seat by persons belonging to that community (whether or not elected to represent constituencies or otherwise), where the seat was also held by a person belonging to that community: Provided that, if in relation to the allocation of any seat, 2 or more communities have the same number of persons as aforesaid preference shall be given to the
National Assembly Election Regulations 1968 provides that every candidate of a general election must make and subscribe to, in his nomination paper, inter alia, a declaration “as to which of the Hindu, Muslim, Sino-Mauritian or General Population he belongs”, and that in the event such a declaration is not made the nomination shall be deemed to be invalid.

2.4 In their nomination papers, the authors did not make the required declaration. They claim that they were, have always been, and still are, unable to categorize themselves in the prescribed compartments, i.e. as belonging either to the Hindu, Muslim, Sino-Mauritian or General Population community. They further claim that they were and still are unaware of the criteria “way of life”, as suggested by the First Schedule to the Constitution, that would qualify them to be or not to be of the Hindu, Muslim or Sino-Mauritian community. They remain consequently unable to decide whether they could classify themselves in the residual community called General Population, the more so that they were equally unaware of the criteria “way of life” that would qualify them to be or not to be in the General Population community. The authors add that since the population census of 1972, the four-fold categorization of the population has no longer been used for censuses.

2.5 On 30 May 2005, the authors’ nominations and candidatures were declared invalid on the ground of their failure to comply with regulation 12, paragraph 5, of the National Assembly Elections Regulations 1968.

2.6 On 10 June 2005, the Supreme Court ordered the electoral authorities to insert the authors’ names on the list of eligible candidates. The Supreme Court decided that regulation 12, paragraph 5, of the National Assembly Elections Regulations 1968 is repugnant to Section 1 of the Constitution proclaiming that Mauritius is a democratic State. The Supreme Court further held that the right to stand as a candidate at general elections is so fundamental for the existence of a true democracy that it cannot be tampered with, and that regulation 12, paragraph 5, of the National Assembly Elections Regulations 1968 had been unlawfully enacted. As a result, the authors could stand as candidates at the general election on 3 July 2005. However, none of them was successfully returned or eligible to be considered under the Best Loser System.

2.7 In the light of the Supreme Court decision of 10 June 2005 in favour of the authors, the Electoral Supervisory Commission started proceedings before the Supreme Court asking for direction as to how to apply the provisions of paragraph 3 of the First Schedule to the Constitution to prospective candidates who fail to declare on their nomination paper the communities to which they belong to. Counsel for the authors submitted an amicus curiae brief in these proceedings. On 10 November 2005, the Supreme Court ruled that there is a legal obligation for prospective candidates at general elections to declare on their nomination papers the communities to which they belong, failing which their nomination papers would be invalid.

2.8 The authors, who were not a party to the case, challenged the Supreme Court judgment of 10 November 2005 under a procedure known as tierce opposition. They claimed that this judgment infringed their constitutional rights. On 7 September 2006, the Supreme Court dismissed the authors’ application for tierce opposition. It held that the tierce opposition procedure does not apply in constitutional matters, and that the authors had not shown that they suffered real prejudice, actual or potential. It also noted that the authors could file an application for special leave to the Judicial Committee of the Privy Council against the Supreme Court’s determination in the 10 November 2005 ruling. On 25 September 2006, the authors sought from the Supreme Court leave to appeal to the Judicial community with an unreturned candidate who was more successful that the unreturned candidates of the other community or communities (that candidate and those other candidates being persons of the appropriate party, where the seat is one of the second 4 seats).”
Committee of the Privy Council. On 14 March 2007, the Supreme Court refused to grant leave to appeal, under section 81, paragraphs 1 (a) and 2 (a), of the Constitution, holding that the judgment of 7 September 2006 did not concern the interpretation of any provisions of the Constitution. It recalled that the applicants, in order to make an application by way of tierce opposition had to do so by an *action principale*, i.e. a plaint with summons, and had to show that they had suffered prejudice, actual or potential.

The complaint

3.1 The authors claim that regulation 12, paragraph 5, of the National Assembly Elections Regulations 1968, to the extent that it invalidates the nomination of a candidate to a general election who does not declare to which of the Hindu, Muslim, Sino-Mauritian or General Population communities he allegedly belongs, violates article 25 of the Covenant. They add that paragraph 3 (1) of the First Schedule to the Constitution, in imposing an obligation on a candidate to a general election to declare the “community” he is supposed to belong to as interpreted by the Supreme Court, also violates article 25. The authors submit that regulation 12, paragraph 5, of the National Assembly Elections Regulations 1968 and paragraph 3 (1) of the First Schedule to the Constitution, individually or cumulatively, violate article 25, inasmuch as they create objectively unreasonable and unjustifiable restrictions on their right to stand as candidates and be elected at general elections to the National Assembly.

3.2 The authors maintain that the criterion of a person’s way of life, which is the basis of the four-fold classification of the State party’s population, is not only vague and undetermined but is also totally unacceptable in a democratic political system. It cannot form the basis of a sanction, which leads to curtailing the authors’ rights under article 25. Compelling citizens to declare themselves as belonging to a specific community could lead to dangerous dynamics. They further maintain that the absence of categorization of candidates does not affect the operation of the Best Loser System, for which it was designed, as the only consequence for a candidate without categorization would be to lose his entitlement to be returned under that system.

3.3 The authors argue that by sanctioning persons who are unable or unwilling to categorize themselves on the basis of an arbitrary criterion, such as a person’s way of life, the law unjustifiably discriminates against them. They maintain that this would amount to a violation of article 26 of the Covenant.

3.4 The authors claim that the compulsory classification requested by the State party for purposes of elections to the National Assembly deprives them, in violation of article 18 of the Covenant, of their right to freedom of thought, conscience and religion.

State party’s observations on admissibility

4.1 On 22 April 2008, the State party requested that the admissibility of the communication be considered separately from the merits. It recalls that the authors were not prevented from standing as candidates for the general elections of June 2005. It considers that the communication should be declared inadmissible for the authors’ failure to exhaust all domestic remedies, for incompatibility with the provisions of the Covenant and for abuse of the right of submission.

4.2 The State party submits that the authors failed to exhaust domestic remedies, as they did not apply to the Supreme Court under section 17 of the Constitution, available for any person alleging that his fundamental rights or freedoms have been contravened. The State party explains that a Supreme Court decision under section 17 of the Constitution can thereafter be appealed to the Judicial Committee of the Privy Council. The State party recalls that the authors’ application by way of tierce opposition failed because this
procedure does not apply in constitutional matters and the authors failed to show that they suffered any real prejudice, actual or potential. It further recalls that the authors’ application to seek leave to appeal to the Judicial Committee of the Privy Council was dismissed on the same grounds.

4.3 The State party contends that the communication is incompatible with the provisions of the Covenant. It explains the rationale behind the complex election system, which is to guarantee the representation of all ethnic communities. Therefore, it believes that what is being sought in the present communication is itself incompatible with the provisions of the Covenant, since, in view of the multi-ethnic and multi-religious composition of the State party’s population, the abolition of the requirement for a prospective candidate to declare the community to which he belongs to could in fact result in discrimination on the grounds of race, religion, national or social origin. It also notes that the current election system is being reviewed by the Government. The Prime Minister has stated that he considers the Best Loser System to have outlived its usefulness, even though it has served well.

4.4 The State party argues that the communication amounts to an abuse of the right of submission. It recalls that the authors could stand as candidates at the general election in 2005 and were thus not denied that right. Moreover, they are not candidates for any pending election, i.e. there is no live issue before the Committee now.

Authors’ comments on the State party’s observations on admissibility

5.1 On 19 June 2008, the authors contested the State party’s observation on their failure to exhaust domestic remedies and underlined that an application under section 17 of the Constitution would have been futile. As the Committee concluded in Gobin v. Mauritius, in the absence of the incorporation of the provisions of the Covenant into national law, the domestic courts do not have the power to review the Constitution to ensure its compatibility with the Covenant. The authors further underline that the Supreme Court, in its rejection of the authors’ application for leave to appeal to the Judicial Committee of the Privy Council, itself held that the judgement did not concern the interpretation of any provisions of the Constitution.

5.2 The authors maintain that the State party implicitly admits to the inherent flaws and defects of the Best Loser System it seeks to defend. They argue that the Best Loser System does not afford fair and adequate representation, as the allocation of the eight additional seats in the National Assembly is based on census figures of 1972 and no longer reflects reality. They add that the imposition of classification for prospective candidates imposes an unreasonable restriction on them. The criterion which forms the basis of the classification is “way of life”, which is not defined by the Constitution or by law. It is vague, amorphous and cannot constitute the basis for determining the eligibility of a prospective candidate.

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6 See Carrimkhan v. Tin How Lew Chin and ors of 2000 (SCJ 264), in which a local court held that “way of life may depend on a series of factors – the way one dresses, the food one eats, the religion one practises, the music one listens to, the films one watches. … The issue further arises as to how the judge can determine the way of life of a citizen unless he becomes Big Brother in G. Orwell’s novel 1984 and watches how a citizen leads his private life. One may also change one’s way of life from one election to the other. Our attention was drawn to the fact that a way of life can also be dependent
5.3 The authors contest the State party’s argument that their communication is an abuse of the right of submission, inasmuch as their right to stand in the general elections of June 2005 was derived from a court decision, which was subsequently overruled.

**Additional observations by the State party**

6. On 5 August 2008, the State party submitted that the communication *Gobin v. Mauritius* is to be clearly distinguished from the present communication. In the present matter the authors allege violations of their fundamental rights pertaining to freedom of expression, religion, culture and conscience, which are guaranteed under sections 11 and 12 of the Constitution. The means for redress whenever fundamental rights are being or are likely to be contravened cannot be but by way of a claim under section 17 of the Constitution. Furthermore, following the refusal of leave to appeal to the Judicial Committee of the Privy Council in relation to the judgment of the Full Bench of the Supreme Court delivered on 7 September 2006, the authors did not avail themselves of a further remedy inasmuch as they did not apply for special leave to the Judicial Committee of the Privy Council as provided for under section 81, paragraph 5, of the Constitution.

**Decision of the Committee on admissibility**

7.1 On 6 October 2009, at its ninety-seventh session, the Committee considered the admissibility of the present communication.

7.2 The Committee noted the State party’s argument that the authors failed to exhaust domestic remedies, as they neither applied to the Supreme Court under section 17 of the Constitution, nor sought leave to appeal to the Judicial Committee of the Privy Council to address their claim pertaining to their freedom of thought, conscience and religion.

7.3 With regard to the authors’ claim under article 18 of the Covenant, the Committee observed that the State party’s Constitution contains a similar provision, and that claims alleging its violation can be raised before the Supreme Court and the Judicial Committee of the Privy Council, as noted by the State party. The Committee noted that the authors failed to lodge a constitutional complaint before the Supreme Court with regard to the alleged violation of their freedom of thought, conscience and religion, and concluded that the authors failed to exhaust domestic remedies to address their claim under article 18 of the Covenant. This claim is thus inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.4 With regard to the authors’ claims under articles 25 and 26 of the Covenant, the Committee considered that in the light of the State party’s Supreme Court decision of 10 November 2005 overruling its earlier decision in favour of the authors, of the constitutional provision about the division of the parliament seats according to affiliation to communities, and of the State party’s Supreme Court view holding that only the legislative branch can amend the Constitution, the authors did not have further domestic remedies available. Accordingly, the Committee found that article 5, paragraph 2 (b), of the Optional Protocol did not preclude its examination of this part of the communication.

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7 Footnote 4 above.

8 Section 81 of the Constitution establishes the procedure of appeal to the Judicial Committee. Paragraph 5 indicates that nothing in the section “shall affect any right of the Judicial Committee to grant special leave to appeal from the decision of any court in any civil or criminal matter”.

On class distinction, for a rich Hindu and a rich Sino-Mauritian may have a similar way of life, depending on their financial means, whereas a rich Hindu and a poor Hindu may lead altogether different ways of life.”
7.5 With regard to the State party’s claim that the communication is incompatible with
the provisions of the Covenant, the Committee recalled that the Optional Protocol provides
for a procedure under which individuals can claim that their rights set out in part III of the
Covenant, article 6 to 27 inclusive, have been violated. In the present communication, the
authors allege violations of articles 25 and 26 of the Covenant. Insofar as the facts of the
communication raise potential issues under these articles, the Committee considered the
claims compatible ratiocinate materiae with Covenant provisions and thus admissible.

7.6 The Committee further noted the State party’s contention that the authors raised a
hypothetical violation of articles 25 and 26 of the Covenant, as their rights were not
infringed during the last general election and they were not candidates in any pending
election. It also noted the authors’ argument claiming that the Supreme Court decision of 10
November 2005, insisting on the requirement of community affiliation, would effectively
bar them from running as candidates of forthcoming general elections. Considering the
authors’ effective participation in the parliamentary elections in 2005, the Committee noted
that they had not substantiated any past violation of their rights protected under the
Covenant. Nonetheless, considering the authors’ refusal to include themselves in any of the
community affiliations, the Committee concluded that in the light of the Supreme Court
ruling of 10 November 2005, the authors were effectively precluded from participating in
any future elections. It considered that the authors had sufficiently substantiated, for
purposes of admissibility, their status as victims and their claims under articles 25 and 26 of
the Covenant. It therefore declared the communication admissible insofar as it raised issues
under articles 25 and 26 of the Covenant.

State party’s observations on admissibility and merits

8.1 On 3 May 2010, the State party submitted its observations on the admissibility and
the merits. In accordance with rule 99, paragraph 4, of the Committee’s rules of procedures,
the State party requested that the admissibility be reviewed on the basis of its previous
submissions on admissibility.

8.2 On the merits, the State party submits that, pursuant to paragraph 3 (1) of the First
Schedule to the Constitution, there is a legal obligation on a candidate for general elections
to declare his community and that the candidate’s declaration does not merely serve to
determine his own eventual eligibility but it is required for the purposes of determining the
“appropriate community” in order to allocate the additional eight seats among the
unreturned candidates. The authors, by refusing to declare their community, are impeding
the democratic process provided for under the Constitution and preventing the Electoral
Supervisory Commission from performing its duty.

8.3 With regard to the concept of “way of life”, the State party argues that constitutions
are bound to be broad and that it is clear from paragraph 3 (4) of the First Schedule that
the General Population community was meant to be a residual category comprising those
who are neither Hindu, Muslim or Sino-Mauritian. The State party submits that, in the
circumstances that the mandatory nature of the declaration as to a candidate’s community
was to be understood as a restriction on a candidate’s right to stand for elections, this
restriction is justifiable based on objective and reasonable criteria and is neither arbitrary
nor discriminatory. Therefore, neither article 25 nor 26 of the Covenant are violated.

10 See footnote 1.
11 General comment No. 25, para. 15.
Authors’ comments on the State party’s observations

9.1 On 15 June 2010, the authors informed the Committee that general elections for the National Assembly were held on 5 May 2010. The authors’ political party, Rezistans ek Alternativ, contracted an alliance, which was named Platform Pou Enn Nouvo Konstitisyon: Sitwayennte, Egalite ek Ekolozi (PNK). A total of 60 candidates of the PNK did not declare their community in accordance with the provisions of paragraph 3 (4) of the First Schedule of the Constitution and their nomination papers were declared invalid. According to the figures published by the Electoral Supervisory Commission, out of 545 candidatures, 104 were declared invalid for lack of community declaration.

9.2 On 21 April 2010, the authors and other candidates of the PNK, as well as other citizens whose candidatures had been declared invalid, filed an application to the Supreme Court requesting that their names be inserted into the lists of candidates for the general election. On 30 April 2010, the Supreme Court in its judgement Dany Sylvie Marie and others v. The Electoral Commissioner and others (SCR 104032) dismissed the application on the ground that it was bound by the decision of the Full Bench of the Supreme Court dated 10 November 2005 in the Narrain case. Nevertheless, the single judge held that section 1 of the Constitution is the most authoritative provision of the Constitution and therefore all provisions of the Constitution must comply with section 1, which includes the right to stand as a candidate. This right should have precedence over the right to the allocation of best-loser seats, which is a protection afforded to minorities in the First Schedule. The judge endorsed the reasoning of Judge Balancy in Narrain and others v. The Electoral Commissioner and others of 2005 (SCJ 159), that disqualifying an otherwise qualified person from standing as a candidate on the sole ground that he failed to declare his community imposed an unreasonable and unjustifiable restriction on his fundamental right.

9.3 Regarding the State party’s observations on merits, the authors strongly object to the accusation that by refusing to declare their community they have deliberately impeded the democratic process and prevented the Electoral Supervisory Commission from performing its constitutional duty.

9.4 The authors comment on the State party’s observation that the candidate’s declaration as to community does not merely serve to determine the candidate’s own eventual eligibility but is also required for the purposes of determining the “appropriate community” in order to allocate the eight additional seats among the unreturned candidates (Best Loser System). They claim that the provision of the eight additional seats has not always been fulfilled. In 1982, 1991 and 1995, only four out of the eight nominations could be made and in 2010, the mechanism could only fill seven seats.

9.5 The authors submit that they do not dispute the constitutional status of the Best Loser System and that the system was devised to provide a balanced communal or ethnic representation in Parliament. However, they dispute that the criterion of classification “way of life” has any objective significance and that the system rests on population figures of 1972. Therefore, the authors submit that the system no longer fulfils its declared objective and is thus no longer vital to democracy.

9.6 With regard to the alleged violation of article 25 of the Covenant, the authors recall the Committee’s general comment No. 25 and reiterate that their disqualification to stand as candidates because of their failure to comply with an ethnic-based classification is neither objective nor reasonable.

9.7 As regards the alleged violation of article 26, the authors contend that their refusal to participate in a supplemental election system of the nomination of eight members cannot democratically justify their exclusion from the main electoral process. As a result, the
authors consider that they are being discriminated against because of their opinion, political or otherwise, in not classifying themselves under one of the four ethnic-based categories.

9.8 In view of the preceding comments, the authors find no justification in the State party’s invitation that the Committee review its decision on admissibility.

The parties’ further observations

10. On 11 October 2010, the State party submitted further observations and informed the Committee that the authors and other parties had, on 23 June 2010, applied to the Judicial Committee of the Privy Council for permission to appeal the Supreme Court judgment of 30 April 2010. This decision remains pending.

11. On 24 February 2011, the authors submitted further comments and confirmed that the authors and other candidates whose candidatures had been declared invalid applied to the Judicial Committee of the Privy Council for special leave to appeal against the Supreme Court decision Dany Sylvie Marie and others v. The Electoral Commissioner and others (SCR 104032). They submit that this matter is different from the communication submitted to the Committee, albeit dealing with the same substantial issue, i.e. the right of a Mauritian to stand as a candidate at general elections without having to submit to the requirement for communal classification. The matter is different inasmuch as the parties are different; the cause of action is different, the one before the Committee originates from the 2005 general elections, while the one pending before the Privy Council stems from the 2010 general elections; the communication before the Committee invokes violations of the Covenant, in particular article 25, which provisions are not expressly provided for under the Constitution and therefore not enforceable by national courts. The authors argue that a recurrence of a violation of the provisions of the Covenant during the general elections of 2010 while the authors’ communication was still under consideration by the Committee cannot invalidate the procedure which results from the previous violation during the 2005 general elections, even though domestic remedies are available to dispute the recurring violation.

12. On 14 June 2011, the State party submitted further observations on the authors’ comments of 24 February 2011. It states that its observations of 11 October 2010 were purely factual and that the authors’ allegation that it acted in “bad faith” is unwarranted. The State party notes that the authors admit that the present communication before the Committee deals with the same substantial issue as the one before the Judicial Committee of the Privy Council, irrespective of the different rights alleged to be infringed before the Committee and the Judicial Committee of the Privy Council.

13. On 31 January 2012, the authors informed the Committee that the Judicial Committee of the Privy Council had delivered its judgment in the matter of Dany Sylvie Marie and others v. The Electoral Commissioner and others, on 20 December 2011. The Council held that procedurally it had no jurisdiction to determine the matter and therefore refused the application for special leave. In the light of this pronouncement the authors contend that an aggrieved citizen whose candidature is refused for want of the “community” declaration is at a loss as regards the availability of any effective domestic legal remedy which will enable him or her to seek redress in an effective manner, inasmuch as: (a) any judge called upon in future to determine a complaint following the rejection of a candidacy shall be bound by the decision of the Full Bench in Electoral Supervisory Commission v. The Hon. Attorney General 2005 (SCJ 252); (b) the Judicial Committee of the Privy Council has held that the decision of such a judge is not subject to any appeal.
Issues and proceedings before the Committee

Review of the decision on admissibility

14.1 The Committee takes note of the State party’s request that, pursuant to article 99, paragraph 4, of its rules of procedure, it reconsider its admissibility decision of 6 October 2009 and find the communication inadmissible on the grounds that the authors have failed to exhaust domestic remedies, that the communication is incompatible with the provisions of the Covenant and that it constitutes an abuse of the right of submission. It further notes that the authors’ and other parties’ application to the Judicial Committee of the Privy Council remained pending at the time of the submission of its observations. It notes the authors’ arguments claiming that the matter before the Judicial Committee of the Privy Council is different from their communication before the Committee, as the parties are different, the issue before the Committee originated from the 2005 general elections and not from the 2010 elections and the provisions of the Covenant are not enforceable by national courts. It also notes the State party’s argument that despite the different rights invoked before the Committee and the Judicial Committee of the Privy Council, the cause of the violation appears to be the same, namely the requirement of communal classification. The Committee notes that the Supreme Court, in its decision of 30 April 2010, despite expressing some inclination to concur with the Supreme Court decision of 10 June 2005 in favor of the authors, rejected the authors’ and other parties’ application on the grounds that the court was bound to the conclusions of the Full Bench of the Supreme Court of 10 November 2005, which held that only the legislative branch can amend the Constitution.

14.2 The Committee further notes that in its judgement of 20 December 2011 the Judicial Committee of the Privy Council declared that it had no jurisdiction to determine the matter in the case of Dany Sylvie Marie and others v. The Electoral Commissioner and others. The Committee recalls its conclusion in its admissibility decision of 6 October 2009 and considers that the State party’s observations or arguments do not lead to a reconsideration of the Committee’s admissibility decision. Accordingly, the Committee reiterates that the communication is admissible, insofar as it raises issues under articles 25 and 26 of the Covenant, and proceeds to its examination on the merits.

Consideration of merits

15.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

15.2 The Committee notes the authors’ claim that they are unable to categorize themselves into any one of the four communities: Hindu, Muslim, Sino-Mauritian or General Population because the criterion “way of life”, which serves as the basis for the classification, is vague and not defined by law. It also notes that, given the authors’ unawareness of the criterion “way of life” under the First Schedule to the Constitution, they are unable to decide in which community they should classify themselves. It notes that the authors consider the imposition of classification for prospective candidates to constitute an unreasonable restriction on them. The Committee further takes note of the State party’s explanation that the rationale behind the complex election system is to guarantee the representation of all ethnic communities. It also notes the State party’s argument that a candidate may not voluntarily decline to make a declaration as to the community, since the candidate’s declaration is required for the purposes of determining the “appropriate community” in order to allocate the additional eight seats among unreturned candidates.

15.3 The Committee observes that the right to stand for election is regulated in the Constitution and in the First Schedule to the Constitution, which contains provisions on the Best Loser System. It also notes that the First Schedule refers to the 1972 official census
regarding the number of members in the four communities. It also notes the information provided by the State party to the effect that the system was originally devised with a view to providing a balanced communal or ethnic representation in Parliament.

15.4 With regard to the alleged violation of the authors’ right to stand for election, the Committee recalls its jurisprudence and general comment, namely that any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. Therefore, the Committee has to determine whether the mandatory requirement to declare a candidate’s community affiliation is based on objective, reasonable criteria, which are neither arbitrary nor discriminatory.

15.5 The Committee observes that in the absence of any classification, a candidate is effectively barred from standing for general elections. It notes the State party’s argument that the category General Population is the residual category comprising those who neither are Hindus, Muslims or Sino-Mauritians. According to the First Schedule to the Constitution, the additional eight seats under the Best Loser System are allocated giving regard to the “appropriate community”, with reliance on population figures of the 1972 census. However, the Committee notes that community affiliation has not been the subject of a census since 1972. The Committee therefore finds, 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.

15.6 In the light of this conclusion, the Committee decides not to examine the communication under article 26 of the Covenant.

16. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the rights of the authors under article 25 (b) of the Covenant.

17. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including compensation in the form of reimbursement of any legal expenses incurred in the litigation of the case, to update the 1972 census with regard to community affiliation and to reconsider whether the community-based electoral system is still necessary. The State party is under an obligation to avoid similar violations in the future.

18. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to

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13 General comment No. 25, para. 15.
receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the Committee’s Views and to have them widely disseminated in the official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]
THE CONSTITUTION (DECLARATION OF COMMUNITY) (TEMPORARY PROVISIONS) ACT 2014

Act No. 3 of 2014

Government Gazette of Mauritius No. 64 of 17 July 2014

I assent

RAJKESWUR PURRYAG

14 July 2014
President of the Republic

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ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Application of Act
4. Declaration as to community not mandatory

An Act
To make special provision as to the declaration of community by a candidate at the next general election

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Constitution (Declaration of Community) (Temporary Provisions) Act 2014.
2. Interpretation

In this Act -
"additional seats" means the seats to be allocated by the Electoral Supervisory Commission under paragraph 5 of the First Schedule to the Constitution.

3. Application of Act

This Act shall only apply to the first general election after the commencement of this Act.

4. Declaration as to community not mandatory

(1) Notwithstanding paragraph 3 of the First Schedule to the Constitution, a candidate at the next general election may elect not to declare the community to which he belongs.

(2) (a) Where a candidate at that election has not declared his community, he shall be deemed to have opted not to be considered for the purpose of the allocation of additional seats and no additional seat shall be allocated to him.

(b) (i) Where a candidate has not declared his community and is returned as member, the Electoral Supervisory Commission shall, for the sole purposes of determining the appropriate community and allocating additional seats, proceed on the basis of the average number of returned members belonging to each community at all general elections held since 1976.

(ii) In the event that no candidate belonging to a community has been returned as member to represent a constituency and the allocation of additional seats pursuant to subparagraph (i) will result in no additional seat being allocated to any available unreturned candidate belonging to that community, the first additional seat required to be allocated shall be allocated to the most successful unreturned candidate belonging to that community and belonging to a party.

(c) Where all candidates who are returned as members have declared their
community, the allocation of additional seats shall be effected under paragraph 5 of the First Schedule to the Constitution.

Passed by the National Assembly on the eleventh day of July two thousand and fourteen.

B. S. Lotun (Mrs)

Clerk of the National Assembly

This is to certify that the Constitution (Declaration of Community) (Temporary Provisions) Bill (No. V of 2014) was passed by the National Assembly at the above sitting and was, at the final voting, carried by a majority of sixty three votes in favour thereof out of the sixty nine members of the Assembly, in compliance with the requirements of section 47 of the Constitution.

Dated this 14th day of July 2014.

Abdool Razack M. A. Peeroo, SC, GOSK

Speaker
The process of PCD investigation into a complaint

**Initial action taken by the PCD**
- Letter written to complainant that complaint has been received.
- Start to gather evidence
  - OB/DB entries
  - Statements from witnesses and police officers involved
  - Status of any case related to the complaint
  - Medical report or PF 58
  - Analysing CCTV footage if any
  - Other documents and records

**Liaison with:**
- Police Station
- DPP
- Enquiring Officers
- Hospital

**Once investigation completed**

**Filing**
Subject matter is trivial, frivolous, vexatious or not made in good faith. Complainant does not wish to go further.

**Conciliation**
To see if complainant and police officer may come to terms.

**Hearing**
- Complainant
- Witnesses
- Police officers
- Inquiring officers

**If complaint is upheld**
**Options for recommendation**

**D.P.P**
For police officer involved to be prosecuted for a criminal offence.

**Attorney General**
The complainant to be granted compensation or relief.

**Disciplined Forces Service Commission**
Disciplinary proceedings be taken against the police officer.

**Complainant is informed of outcome of case by letter from PCD.**
MAURITIUS POLICE FORCE

SARPCCO

Code of Conduct

for

Mauritius Police Officials
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Vision of the Mauritius Police Force</td>
<td>1</td>
</tr>
<tr>
<td>3. Core Values of the Mauritius Police Force</td>
<td>4</td>
</tr>
<tr>
<td>4. Policing Charter</td>
<td>5</td>
</tr>
<tr>
<td>5. SARPCCO Code of Conduct for Police Officials</td>
<td>6-10</td>
</tr>
<tr>
<td>6. How SARPCCO Code of Conduct relates with the Mauritius Police Force</td>
<td>11</td>
</tr>
</tbody>
</table>
MAURITIUS POLICE FORCE

Vision of the Mauritius Police Force

To make of the Mauritius Police Force, a strong and credible organization capable of delivering an efficient and effective policing service to the community thereby meeting public needs and expectations.

Mission Statement of the Mauritius Police Force

We, in the Mauritius Police Force, have taken the Oath of Allegiance to the country and the public to faithfully execute and perform all duties incumbent on us under any office in the Force to which we may be appointed, in the preservation of peace and the prevention and detection of all offences and all other duties as required of us by Law, without fear or favour, affection or ill-will. We apply the Law firmly but fairly and politely, and we must be seen to do so.

We must be compassionate, courteous and patient in the execution of our duties and pay due respect to the fundamental rights and freedoms of the citizens of the State of Mauritius as-enshrined in our Constitution. We must show calmness, restraint and impartiality in the exercise of our functions and use only such force as is necessary to carry out our lawful duty.
We must always bear it in mind that we are first and foremost, serving the public, and in so doing, responding to their legitimate aspirations through our action. We must accept well-founded criticism as a catalyst for change.

With a view to guiding the development of a dynamic organization in a constantly changing environment where demand and expectations will ebb and flow, it will be our intention to:

1. Remain a visible, predominantly unarmed, approachable Police Service in order to provide a reassuring presence across the country;

2. Increase consultation with the public and their representatives; to inform and to respond to their views and their particulars needs, as far as we can bearing in mind that the budgets will inevitably not allow us to do everything that the public wants and therefore we need to;

3. Establish a clear view of the relative importance of policing tasks and improve our performance in those areas of police activity which are identified for priority attention.
4. Maintain a range of specialist services which, in support of our general policing style, reflect the changing and dynamic demands of those national responsibilities we presently bear.

5. Achieve a sufficiency and disposition of personnel to make us more effective in the delivery of our service and to realize the full potential of all individuals within the Force, promoting professionalism together with high standards of personal conduct. All personnel must be well-trained, led and managed. We will strive improve internal communications.

6. Ensure adequate technical and other appropriate support for our workforce. Investment here must be sustained and have, as its twin goals, the greater effectiveness of staff and the provision of better working conditions for them; and finally

7. Give a high quality service to all our customers, particularly the public, delivered in a way that represents good value for money. This requires exacting self-scrutiny of our performance, against agreed standards, through inspection and review procedures. We will continue to promote good practice; if we are wrong and grievances are justified, we will accept our mistakes, and provide remedies.
CORE VALUES OF THE MAURITIUS POLICE FORCE

- Protect everyone’s right and to be impartial, respectful, open and accountable to the community.
- Provide a responsible, effective and high-quality service with honesty and integrity.
- Use our resources in the best possible way – Value for money.
- Value human life, respect the dignity of each individual and render our service with courtesy and civility.
- Fight crime both by preventing and detecting violations of the law in consultation with the community.
- Confidentiality
- Team Spirit
- Develop skills of all members through equal opportunity and work as a team.
- Use of minimum force when absolutely necessary.
- Neutrality: We take initiatives but never take sides.
- Voluntary Service: We work round the clock but never for personal gain.
- Universality: We respect the sovereignty of other nations but our work knows no boundaries.
- Discipline.
POLICING CHARTER

The objectives of the Policing Charter are to:

- Uphold the law fairly & firmly
- Prevent crime – to apprehend those who break the law
- Protect the community
- Act with common sense, integrity and sound judgement

The Policing Charter fosters co-operation between the Public and Police. It describes the importance of fighting crime in partnership. All information which are obtained are dealt with confidentiality. The community is advised on preventive measures to combat crime. The Police on their part, have pledged to attend to incidents requiring immediate response within 15 minutes.
Twelve member states of the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) have signed a code of conduct for police officials, at the Zimbabwean resort town of Victoria Falls on 17 September 2002.

All police forces / services are expected to relate to their customers in the spirit of this Code of Conduct.

Preamble

We, the Chiefs of Police of the:

- Republic of Angola;
- Republic of Botswana;
- Kingdom of Lesotho;
- Republic of Malawi;
- Republic of Mauritius;
- Republic of Mozambique;
- Republic of Namibia;
- Republic of South Africa;
- Kingdom of Swaziland;
- United Republic of Tanzania;
- Republic of Zambia; and the
- Republic of Zimbabwe

As members of the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO).
**Guided** by the following principles:- respect for all human life; reverence for the law; integrity; service excellence and respect for property rights;

**Recognizing** that ethical standards, in particular human rights norms, are an important tool in the professionalization of police forces / services everywhere and in SARPCCO members countries;

**Desirous** of integrating human rights in SARPCCO police training and practices, in line with the values and ideals of SARPCCO;

**Considering** that it is desirable that police officers have the active moral and physical support of the public they are serving;

**Aware** of the need to disseminate best practices and strengthen respect for human rights in SARPCCO member countries;

**Reaffirming** the commitment to a high degree of professionalism in serving the public;
HEREBY AGREE AS FOLLOWS:

Respect for all human life

Article 1 RESPECT FOR HUMAN RIGHTS
In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold all human rights for all persons.

Article 2 NON-DISCRIMINATION
Police officials shall treat all persons fairly and equally and avoid any form of discrimination.

Article 3 USE OF FORCE
Police officials may only use force when strictly necessary and to the extent required for the performance of their duties adhering to national legislation and practices.

Article 4 TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT
No police official, under any circumstances, shall inflict, instigate or tolerate any act of torture or other cruel inhuman or degrading treatment or punishment to any person.

Article 5 PROTECTION OF PERSONS IN CUSTODY
Police officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.
ARTICLE 6   VICTIMS OF CRIME

All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary.

Reverence for the law

Article 7   RESPECT FOR THE RULE OF LAW AND CODE OF CONDUCT

Police officials shall respect and uphold the rule of law and the present Code of Conduct

Integrity

Article 8   TRUSTWORTHINESS

The public demands that the integrity of police officials be above reproach. Police officials shall, therefore behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undercut the public confidence in a Police Force/Service.

Article 9   CORRUPTION AND ABUSE OF POWER

Police Officials shall not commit or attempt to commit any acts of corruption or abuse of power. They shall rigorously oppose and combat all such acts.
Police officials shall not accept any gifts, presents, subscriptions, favours, gratuities or promises that could be interpreted as seeking to cause the police officials to act or to refrain from acting or performing official responsibilities in any manner other than required by law.

**SERVICE EXCELLENCE**

**Article 10 PERFORMANCE OF DUTIES**

Police officials shall at all times fulfil the duties imposed upon them by law, in a manner consistent with the high degree of responsibility and integrity required by their profession.

**Article 11 PROFESSIONAL CONDUCT**

Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

**Article 12 CONFIDENTIALITY**

Matters of a confidential nature in the possession of Police Officials shall be kept confidential, unless the performance of duty and need of justice strictly require otherwise.

**Respect for Property Rights**

**Article 13 PROPERTY RIGHTS**

In the performance of their duties, police officials shall respect and protect all property rights. This includes the economical use of public resources.
How SRPCCOO Code of Conduct relates with the Mauritius Police Force Values.

<table>
<thead>
<tr>
<th>SARPCCO</th>
<th>MPF</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Respect for all Human Rights</td>
<td>• Respect for all Human Rights</td>
</tr>
<tr>
<td>• Support for victims of crime</td>
<td>• Treat victims in a professional, sensitive and caring manner</td>
</tr>
<tr>
<td>• Protection from Torture, Cruel, Unhuman, or Degrading Treatment</td>
<td>• Treat persons in police custody with civility</td>
</tr>
<tr>
<td>• Protection of Persons in police custody</td>
<td>• Protection of Persons in police custody</td>
</tr>
<tr>
<td>• Respect for property</td>
<td>• Respect for property</td>
</tr>
<tr>
<td>• Non-discrimination</td>
<td>• Protect everyone’s right and be impartial</td>
</tr>
<tr>
<td>• Use of Force when strictly necessary</td>
<td>• Use of Minimum Force when absolutely necessary</td>
</tr>
<tr>
<td>• Performance of duties with high degree of responsibility</td>
<td>• Provide high quality of service</td>
</tr>
<tr>
<td>• Respect for Rule of Law</td>
<td>• Respect for Rule of Law</td>
</tr>
<tr>
<td>• Professional conduct</td>
<td>• Professional conduct</td>
</tr>
<tr>
<td>• No Corruption &amp; Abuse of Power</td>
<td>• No Corruption &amp; Abuse of Power</td>
</tr>
<tr>
<td>• Honesty</td>
<td>• Honesty</td>
</tr>
<tr>
<td>• Confidentiality</td>
<td>• Confidentiality</td>
</tr>
<tr>
<td>• Integrity</td>
<td>• Integrity</td>
</tr>
</tbody>
</table>
CHECKLIST

TREATMENT

11 Allegations of torture and ill-treatment
11 Use of force or other means of restraint
• Use of solitary confinement

PROTECTION MEASURES

Informing detainees
11 Information upon arrival
• Possibility to inform a third person
• Accessibility of the internal rules and procedures

Disciplinary procedure and sanctions
11 Brief description of the procedure
11 Composition of the disciplinary authority
• Possibilities for appeal, including with representation
11 Types of sanction and frequency (proportionality)
11 Examination by a doctor upon arrest
• Statistics of sanctions by type and reasons
:1 Disciplinary cells
Complaint and inspection procedures

- Existence of complaints and inspection procedures
  - Independence of the procedures
  - Accessibility of the procedures (easy and effective access"

Separation of categories of detainee

Registers

IIVIATERIAL CONDITIONS

Capacity and occupancy of the establishment (at the time of the visit)

- Number of detainees by category
- of foreign nationals
- Breakdown by sex and age

Cells (by geographical sections)

- Size and occupancy levels / effective average number per cell
- Material conditions: lighting, ventilation, furniture, sanitary facilities
  - Hygiene conditions

Food

- Meals (quality, quantity, variety, frequency)
- Special dietary regimes (for medical, cultural, or religious reasons)
Personal hygiene

- showers (number; cleanliness, state of repair, frequency for working detainees, for others)
- sanitary facilities (inside cells, outside, access, cleanliness)
- bedding (quality, cleanliness, frequency of change)
- possibility of laundry

REGIME AND ACTIVITIES

Administration of time

- Time spent in the cell daily
- Time spent for daily exercise
- Time spent daily working
- Time spent daily outside the cell
- Time used for sports per week
- Time used for other activities

Activities offered

- Work: access to work; type of work; % of detainees working; obligation to work; remuneration; social coverage; description of the working premises
- Education: access to studies, types of studies offered (literacy and numeracy, high school, vocational, university studies), frequency of courses. Organisers of courses, teaching staff, % of detainees studying, description of the school rooms
- Leisure: types of leisure activity, access, description of leisure rooms and sport facilities: library
Religious activities: religious representatives (religions represented, conditions of access; frequency and duration of visits); religious services (access, premises); opportunity to follow religious practices such as washing and diet.

Contacts with the outside world

Visits: access, frequency, conditions for having visits, duration and regularity of visits, visits by relatives/children/spouses, description of visit rooms

Correspondence and parcels: frequency, censorship

Telephone conversations: frequency, conditions, foreign nationals

MEDICAL SERVICES

Access to medical care

Medical examination upon entry

Procedure for accessing medical care

Infirmary: number of beds, equipment, medication

Number of inmates receiving treatment

Medical staff

Number and availability of doctors, nurses, psychiatrists and psychologists, other personnel
PRISON STAFF

- Number of staff (by categories)
  a Relationship between guards and detainees; relationship between management and the detainees
  b Training of the staff (basic and ongoing)
## STATISTICS 2014

### COMPLAINTS TO THE NHRC FROM 01.01.2014 TO 31.12.2014

<table>
<thead>
<tr>
<th>Division</th>
<th>No. of complaints</th>
<th>Disposed of</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(1). Human Rights Division</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review of Convictions by Supreme Court</td>
<td>1 case (4 convicted detainees)</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Ministry/Department</td>
<td>13</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Parastatal Bodies</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Judiciary</td>
<td>3</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>DPP</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>45</td>
<td>28</td>
<td>17</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>67</strong></td>
<td><strong>45</strong></td>
<td><strong>22</strong></td>
</tr>
<tr>
<td><strong>(2). Police Complaints Division</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police Brutality</td>
<td>168</td>
<td>56</td>
<td>112</td>
</tr>
<tr>
<td>Verbal Abuse</td>
<td>48</td>
<td>29</td>
<td>19</td>
</tr>
<tr>
<td>Service Delivery</td>
<td>313</td>
<td>156</td>
<td>157</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>529</strong></td>
<td><strong>241</strong></td>
<td><strong>288</strong></td>
</tr>
<tr>
<td><strong>(3). National Preventive Mechanism Division</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prisons</td>
<td>150</td>
<td>110</td>
<td>40</td>
</tr>
<tr>
<td>Police Cell</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>152</strong></td>
<td><strong>112</strong></td>
<td><strong>40</strong></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>748</strong></td>
<td><strong>398</strong></td>
<td><strong>350</strong></td>
</tr>
</tbody>
</table>
ANNEX X

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

<table>
<thead>
<tr>
<th>No.</th>
<th>Instrument</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The International Covenant on Civil and Political Rights 1966 (CCPR)</td>
<td>12 December 1973</td>
</tr>
<tr>
<td>1A.</td>
<td>Optional Protocol 1976</td>
<td></td>
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<tr>
<td>4A.</td>
<td>Optional Protocol – 2008</td>
<td></td>
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<tr>
<td>5.</td>
<td>The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT) – 9 December 1992</td>
<td></td>
</tr>
<tr>
<td>5A.</td>
<td>The Optional Protocol to CAT 2005</td>
<td></td>
</tr>
<tr>
<td>6A.</td>
<td>Optional Protocol to CRC on the sale of children, child prostitution and child pornography – May 2011</td>
<td></td>
</tr>
<tr>
<td>6B.</td>
<td>Optional Protocol to CRC on the involvement of children in armed conflict – February 2009</td>
<td></td>
</tr>
<tr>
<td>6C.</td>
<td>Optional Protocol to CRC on communications – signature in 2012</td>
<td></td>
</tr>
<tr>
<td>7A.</td>
<td>Optional Protocol signed September 2007</td>
<td></td>
</tr>
</tbody>
</table>
The NHRC can only enquire into violations of the human rights listed in Chapter II of the Constitution -

- 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