March 2019

His Excellency
Mr. Paramasiven Vyapoory G.O.S.K.
Ag. President
Republic of Mauritius
State House
REDUIT

Your Excellency.

In compliance with Section 11 of the Protection of Human Rights Act 1998
I have the honour to submit to you the Annual Report of the National Human
Rights Commission of Mauritius for the period
1 January 2018 to 31 December 2018.

Yours faithfully,

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

COMPOSITION AS AT 31 DECEMBER 2018

Chairperson
Mr. Dheerujlall Baramlall SEETULSINGH, S. C.

Human Rights Division

Deputy Chairperson
Mrs Marie Lourdes Lee Ying LAM HUNG

Members
Mr. Samioullah LAUTHAN
Mr. Jacques Jonathan RAVAT

National Preventive Mechanism Division

Deputy Chairperson
Mr. Mohamed Idbal TORABALLY

Members
Mrs Namrata GAYA-TEELUCKDHARRY
Mr. Joseph Gabriel Michel VIEILLESSE

Police Complaints Division (Up to 14 April 2018)

Deputy Chairperson
Mrs Marie Lourdes Lee Ying LAM HUNG

Members
Mrs Marie Desiree Ariane OXENHAM
Dr. Satiss GOWRY
<table>
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<tr>
<td>Deputy Permanent Secretary</td>
<td>Mrs Nalini PAYNEEANDEE</td>
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<td>Office Management Executive</td>
<td>Mrs Gaitry HASOWA</td>
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<tr>
<td>Human Resource Executive</td>
<td>Miss Roumishka GOOLJAR</td>
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<td>Financial Officer/SFO</td>
<td>Mrs Tanooja PAHLADI</td>
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<td>Mrs Feryale RAWAT</td>
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<td>Mrs Youn Lung LAI CHEK</td>
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<td>Miss Prayogeeta RAMDHAREE</td>
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<td>Barrister at Law</td>
<td>Ms Diksha Lumbini BEEHARRY</td>
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<td>Mr. Nivish Varma CHUMMUN</td>
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<td></td>
<td>Ms Yohinivaani CHETALEE</td>
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<td></td>
<td>Ms Reema Tareshwaree CAMALAPEN</td>
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<td>Mr. Parveen Lord SEEBUN</td>
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<td>Human Rights Officer (EU Project)</td>
<td>Mrs Marie Ange BAULACKY</td>
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<td></td>
<td>Ms Heyashi GUNESH</td>
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<td>Ms Loveena SAW SUNGKUR</td>
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<td>Management Support Officer / Human Rights Officer</td>
<td>Mrs Moi Lin LEUNG FOR SANG</td>
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<td>Mr. Kamdev PATANDIN</td>
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<td></td>
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CHAPTER I

INTRODUCTION

THE NATIONAL HUMAN RIGHTS COMMISSION

The structure of the NHRC underwent a radical change in April 2018 with the creation of an Independent Police Complaints Commission (IPCC). The IPCC took over the mandate of the Police Complaints Division (PCD) of the NHRC. Cases pending before the PCD were transferred to the new IPCC including a case of the death in police custody of a suspect alleged to be involved in dealing in synthetic drugs.

1. OVERVIEW

“Human Rights” under the Protection of Human Right Act as subsequently amended, are the rights protected under Chapter II of the Constitution of Mauritius. These rights are mainly civil and political rights. Although in 2018 we celebrated the fiftieth anniversary of our Constitution, it was not possible to avail of the opportunity to make even a partial overhaul of our supreme law to include therein second generation rights, which are the rights to education, health, housing, social security, right to work, not to speak of third generation rights (right to clean water, right to development, right to a clean environment). The right to life may in certain situations encompass economic, social and cultural rights: a denial of the right to health or the right to a shelter or the right to social aid may, for example, put at risk the life of a person, but this is not always the case.
2. **THE WELFARE STATE**

To a large extent, the provisions of the Welfare State in Mauritius afford second and third generation rights to Mauritian Citizens already. Any maladministration in the provision of such rights falls within the jurisdiction of the Ombudsman under Section 96 of the Constitution. Furthermore the different Ministries which administer economic and social rights have their own complaint mechanism. The Ministry of Health has a mechanism to deal with allegations of medical negligence. The Ministry of Social Security deals with old age pensions, social aid and compensation for incapacities. It has set up a Medical Tribunal to grant a hearing to claimants. The Ministry for Gender Equality has a Family Protection Unit to look into cases of domestic violence and a Child Development Unit to enforce laws protecting children.

The Ministry of Labour has a Labour Inspectorate to enforce the Employment Rights Act and the Employment Relations Act. Labour Inspectors are also empowered to take cases before the Industrial Court in cases where employers are alleged to have violated the rights of workers. The Employment Relations Tribunal and the Mediation and Conciliation Commission hear disputes between employers and employees. A Special Unit caters for the protection of migrant workers who might be exploited by recruiting agents and dishonest employers. The State legislates every year to fix the quantum of additional remuneration to workers after giving a hearing to employers and to trade unions. A National Remuneration Board fixes the wages of various categories of employees. In 2017 a law was enacted to fix the minimum wage in Mauritius.

The Ministry of Social Integration has the task of combatting absolute poverty, with the aim of attaining one of the major Sustainable Development Goals before 2030. The
State has also put into place a Citizens Support Unit (CSU) under the aegis of the Prime Minister’s Office to attend to all kinds of complaints which can range from the bad state of roads or an inadequate water supply to the non-payment of pensions.

Corporate Social responsibility is now a reality in Mauritius with funds being channeled through the Ministry to help NGOs such as those which shelter women in distress, orphans and children who have been abandoned by their parents.

Thus there exists a full range of measures to protect economic and social rights in the country.

3. **SPECIFIC ISSUES**

3.1 **Electoral Reform**

The matter of compulsory declaration of Community by candidates for general elections which has been criticized by the Human Rights Committee of the United Nations will however have to be attended to before the next General Elections. The subject of electoral reform has been debated at length but has still not garnered a sufficient majority within the National Assembly to enable amending the Constitution. The latest attempt was made in December 2018. There is consensus on a stronger representation of women in the National Assembly or on the fielding of at least one female candidate on 3 candidates in each constituency by each party but no agreement on the modification of the best loser system prescribed in the First Schedule of the Constitution and on the issue of proportional representation. Each political party has its own views on this issue.
3.2 *The Ministry for Human Rights*

2017 had witnessed the setting up of a full-fledged Ministry for Human Rights under the leadership of the Attorney General. The latter has personally appeared before the Treaty Bodies to defend the human rights record of Mauritius and before the troika of Ambassadors in Geneva to present the report of Mauritius for the Universal Periodic Review. The Ministry was also very active in managing the National Mechanism for Reporting and Follow up (NMRF) to ensure that different Ministries contribute in a timely manner for the drawing up of Reports and subsequently for the necessary follow up to the Concluding Observations of Treaty Bodies and the Recommendations of the UPR.

3.3 *Treaty Bodies and UPR*

The reports submitted by Mauritius under the Convention on the Elimination of Racial Discrimination and the Convention of the Elimination of all forms of discrimination against Women to the respective Treaty Bodies, were examined by the Committee on the Elimination of Racial Discrimination and the CEDAW Committee. The Concluding Observations of the two Committees represent an outsider’s overview of the human rights situation in Mauritius and are appended to our present Report for the purpose of dissemination.

Mauritius also underwent examination under the Universal Periodic Review which exercise was completed in March 2019. Although the report of Mauritius under the International Covenant on Economic, Social and Cultural Rights (submitted in 2016) was examined in February 2019, the Concluding Observations of the ESCR Committee and the Recommendations made by the Human Rights Council under the UPR are attached
to this year’s NHRC Report, being given that our Report is submitted to the President of the Republic by 31 March 2019. It is deemed more reasonable to inform the public about these two documents at present instead of waiting for the NHRC 2019 Report in March 2020.

3.4  Migrant Workers

The Ministry of Human Rights is launching a brochure to inform migrant workers about their rights. Some of the workers are victims of dishonest recruiting agents in their country of origin. Others are not given proper accommodation and conditions of employment over here. Such matters are reported to the Labour Inspectorate for necessary action. A few foreigners come to Mauritius as students and then take up employment illegally.

3.5  Climate Change and Environment

The effects of climate change do not spare Mauritius and create environmental problems. Proper drainage to avoid accumulation of water after flash floods is important to ensure the right to a safe environment.

The number of vehicles is consistently rising in Mauritius. More and more people can afford to run their own car. An improved public transport system like the Metro Express now being built will decrease the use of cars and reduce pollution. The Police de l’Environnement must be properly equipped to carry out its functions and must have more officers to enforce the law. Too often the responsibility is shared among different authorities so that people do not know where to lodge complaints.
4. **JUGE D’APPLICATION DES PEINES**

The Commission of Enquiry on Drugs which reported in 2018 suggested that the system of Juge d’application des Peines on the French model (as provided under the French Code Penal and the French Code de Procedure Penale) should be set up in Mauritius to follow up on the sentencing of convicted offenders and to look into remission of sentence and other issues. However the reactivation of the Board of Visitors in 2018 to look into issues of discipline in prison and other matters is more likely to be useful in the Mauritian context that the complex system in France.

5. **EU PROJECT**

The joint National Human Rights Commission/European Union Project for the promotion of Human Rights has been a success and is further described in the Annual Report. The funding from the European Union for a period of 4 years has been a welcome source of income.

6. **COMPENDIUM**

In 2017 a Compendium containing the Concluding Observations of Treaty Bodies on the periodic Reports of Mauritius was published with funding from the regional Office of the High Commissioner for Human Rights in Pretoria. An updated version will be published in 2019 to comply with the recommendations of Treaty Bodies that their Observations should be widely disseminated. It is hoped that a version in French will also be published.
7. **RODRIGUES**

The NHRC plans to hold sessions of training of trainers in Human Rights in Rodrigues to create more awareness of Human Rights issues.

8. **WOMEN’S RIGHTS**

The CEDAW Committee recommends that Mauritius should adopt temporary special measures prescribed in the Convention to promote women’s rights. A Gender Equality Bill will be submitted to Parliament. Domestic Violence and other types of violence against women remain a problem in Mauritius. It has been recommended that the Commission on the Prerogative of Mercy should not grant reductions of sentence to the perpetrators of such crimes of gender-based violence. There were strong protests from women’s organisations when the Commission reduced the sentence of a rapist thus causing him to be released. On his release he was caught committing another offence of gender based violence.

9. **ELDERLY AGE PERSONS**

The rights of Elderly Persons have to be protected. A valid suggestion which has been made is to have an Ombudsperson for Elderly persons who could also provide a useful Mediation and Conciliation Service. Elderly Persons benefit from old age pension and other advantages like free transport which are not readily available in many developing countries. According to a survey carried out by a local NGO on behalf of the Global Alliance for rights of Elderly People (GAROP) 42 per cent of Elderly persons live within the larger family, 29 per cent live with a spouse, 9 per cent live alone and one per cent live in a home.
10. LEGISLATION ENACTED IN 2018 WHICH PROMOTE HUMAN RIGHTS

(a) The Judicial and Legal Provisions Act (Act No. 3 of 2018) now provides that a Court, when imposing sentence, shall give full credit to the convicted person for the time he spent in custody by deducting that time from the term of imprisonment or penal servitude imposed. There was formerly a discretion to deduct eighty per cent or the full time spent on remand. The Institute for Judicial and Legal Studies has also been entrusted to make recommendations to the Chief Justice on much needed sentencing guidelines to bring more uniformity in sentencing. The Act also makes provision for Courts to conduct a hearing on sentence after convicting an accused party. The same Act consolidates the offence of “Stirring up racial hatred” under section 282 of the Criminal Code by including transmitting through the internet material which is threatening, abusive or insulting with intent to stir up contempt or hatred against any section of the public distinguished by race, caste, place of origin, political opinion, colour, creed or sex.

(b) The Human Tissue (Removal, Preservation and Transplant) Act (Act No. 5 of 2018) has not yet been proclaimed. It purports to establish a legal framework for the above under appropriate medical supervision. It makes provision for a person to give consent for donation of any tissue from his body during his lifetime and if he has not done so, for his relatives to give such consent after he dies.
(c) The Road Traffic Act (Amendment) Act 2018 (Act No. 12 of 2018) makes provision for the imposition of harsher penalties on drivers of vehicles in view of the number of road accidents in the country to preserve safety and the right to life.

(d) The Special Education Needs Authority Act of 2018 (Act No. 18 of 2018) provides that the Authority shall provide guidelines for the design and development of curriculum for Special education needs and for the harmonization and promotion of programmes and policies for the education and holistic development of person with special education needs in line with the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

(e) The Mauritius Family Planning and Welfare Association Act 2018 (Act No. 20 of 2018) entrusts the Association with objectives of crucial importance which would promote human rights apart from promoting awareness on planned parenthood with a view to maintaining the fertility rate at a reasonable level in Mauritius –

(a) promote family welfare, healthy ageing, good health and social integration through effective family planning services by addressing the need for sexual and reproductive health and rights in the community through information, education and advocacy;
(b) work for the advancement of the rights of women, men and young persons with a view to enabling them to make free and informed choices regarding their sexual and reproductive health and rights;

(c) provide sexual and reproductive health and rights information and services, including sex education and marriage counselling, specially to the youth and to vulnerable groups; and

(d) set up a network of youth friendly services with particular emphasis on addressing issues related to unwanted teenage pregnancy.
CHAPTER II

HUMAN RIGHTS DIVISION

1. WHAT IS THE HUMAN RIGHTS DIVISION (HRD) AND WHAT IT DOES?

The HRD is one of the two divisions of the National Human Rights Commission, NHRC.

Its main function is as per the Protection of Human Rights Act, to enquire into written complaints regarding violations of human rights listed in Chapter II of the Constitution and as per the Criminal Appeal (Amendment) Act 2013, to act as a body for the purpose of referring to the Supreme Court the review of criminal convictions by that court in cases where convicted persons could adduce fresh and compelling evidence to challenge their convictions.

2. COMPLAINTS

The complaint should say what happened, when and where it happened and who was involved. The HRD can only investigate into the complaint which must contain these 3 elements:

- An allegation of unfair treatment by a Public body;
- Grounds: Breaches of rights under Chapter II of the Constitution which are as follows:-
  - 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

By a public body as defined by S 2 of the Protection of Human Rights Act: which can be a Ministry or Government Department, a local authority, a statutory corporation and any other company, partnership or other entity of which the Government or an agency of the Government is, by the holding of shares or some other financial input or in any other manner, in a position to influence the policy or decisions, for instance, Air Mauritius, State Bank of Mauritius and Mauritius Telecom.
2.1 **Who can make a complaint?**

Any person who feels that any of the human rights enshrined in Chapter II of the Constitution has been violated or is likely to be violated by the act or omission of a public officer or employee of a public body or by a third party who knows of such violation on behalf of the affected person.

*The complaint is confidential.*

*The time limit to report a complaint must be within 2 years as from date of the act or omission.*

*There are no costs involved when a complaint is lodged. In fact at the seat of the NHRC, assistance is provided to the complainant to formulate his complaint whether in English, French or Kreo.*

2.2 **Types of complaints**

The complaints received were varied, ranging from right to safe environment, right of elderly persons, right to a pension linked to right to life.

Common issues were about the human rights implications of local authority decisions and policies as well as government policies. They involved noise pollution such as barking of dogs, access to parking lots, registration of birth and entitlement to pension, etc.
The HRD can consider and act on the broader human rights issues under Chapter II of the Constitution. This may involve providing information or guidance on these issues or encouraging policy and practice that reflect human rights standards.
3. **COMPLAINT PROCESS**

Our goal is to successfully resolve the complaint as soon as possible.

<table>
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<th>INVESTIGATION</th>
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<tr>
<td>• In writing</td>
<td>• Complaint is opened.</td>
<td>After investigations into the complaint, the Division can make such decisions:</td>
</tr>
<tr>
<td>• In person</td>
<td>• Inquire into facts that is on written statement of the complainant.</td>
<td>• Can set aside the complaint if it is frivolous or vexatious.</td>
</tr>
<tr>
<td>• By e-mail address/mail address</td>
<td>• The respondent can be asked for specific information or a detailed response to the complaint.</td>
<td></td>
</tr>
<tr>
<td>• By fax no.</td>
<td>• Ask for any relevant documents.</td>
<td>• Attempt to resolve the complaint by conciliation.</td>
</tr>
<tr>
<td>• Can download the complaint form via the webpage of the Commission.</td>
<td>• Call all parties concerned for a hearing/mediation.</td>
<td>• Refer the complaint to the appropriate authority, for instance, to the Ombudsman, the Equal Opportunities Commission, etc.</td>
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<td></td>
<td>• Visit the locus if need be.</td>
<td>• Take any decision deemed appropriate.</td>
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*N.B: In Rodrigues, complaints form may be collected at the office of the Island Chief Executive, Port Mathurin, and forwarded to the NHRC.*

The complainant is notified of the receipt of the complaint.

*N.B: A complainant may wish to withdraw his complaint and must inform the NHRC accordingly.*

*N.B: The complainant is always informed of the outcome of the complaint.*
3.1 Statistics 2018

In 2018, the HRD received 216 complaints (a rise of 20% from 2017 when 180 complaints were received).

3.2 Online

There are not many instances of people registering complaints through the Commission’s email. The HRD will undertake steps to sensitis the public familiar with the internet to use online system as it is quicker and more practical.

3.3 Referral service

The HRD provides a referral service for complaints to a more appropriate agency for assistance where it is not empowered to intervene.

Equal Opportunities Commission

Mr. A was offered appointment as Office Auxiliary/ Senior Office Auxiliary in a temporary capacity in November 2017, following an interview conducted by the Ministry of Civil Service and Administrative Reforms held in August 2017. Mr. A complained that he was dismissed from work by the Ministry of Civil Service and Administrative Reforms because he was sentenced to perform 150 hours of Community Service Order after having pleaded guilty to a charge of ‘aiding and abetting’ in the commission of Larceny. Following investigation, the complainant was informed that the complaint should be addressed to the Equal Opportunities Commission.
**Disciplined Forces Service Commission**

Mr. M reckoned 10 years of service in the Mauritius Police Force and was posted at ERS. He alleged he suffered discrimination and unjustified transfer in September 2017. He was further subject to discrimination and was not allowed to take any casual leave by the ERS Western Division. Since this matter concerned an internal police administrative issue, the Human Rights Division was not in a position to intervene. The complaint was referred to the Disciplined Forces Service Commission (DFSC).

**Civil Status Office and the Passport and Immigration Office**

An anonymous complainant alleged that the owners of a restaurant in Quatre Bornes were indulging in illegal activities and that the sources of funds of the restaurant was through human trafficking and fake marriages. The HRD referred the complaint to the Civil Status Office and the Passport and Immigration Office.

### 3.4 Conciliation service

The HRD conciliation process allows people to discuss human rights complaints in a fair, open and constructive way. It includes offering assistance so that the matter can be resolved independently; providing parties with information or undertaking mediation between parties.

In the following cases the HRD was successful:

- The National Transport Authority (“NTA”) officer booked the complainant because according to him, the latter had parked his car on a single yellow line
in front of his garage. The complainant protested and the Traffic Management Unit confirmed that in fact, the said yellow line was covered with black paint. Both parties agreed in the presence of the HRD that there had been a misunderstanding and the NTA agreed to strike out the contravention.

- Following a complaint of the parents of a child suffering from Down syndrome, currently in Grade 5 in a mainstream primary school, the HRD conducted a mediation between the parents and the headmistress, in presence of the psychologist whose evaluation report was in favour of the child. Thereafter the headmistress undertook to ensure that the child will henceforth participate in all outings organised by the school and to provide for a carer when she had to move within the school premises and a support teacher to help her in academic studies.

- A complaint was received against an Office Management Executive (“OME”), accused of abuse of power and rudeness towards the general workers of a Ministry. Through the intervention of the HRD, the Assistant Manager of Human Resources was able to restore harmony between the general workers and the management.

- A worker at the hospital complained that he had not obtained his salary for months for reasons he could not understand. On the very day of the hearing at the Commission, the representative of the Ministry of Health and Quality
of Life informed the worker that his salary had been credited to his account that very morning.

- Mr. L requested the District Council to asphalt the unpaved lane near his residence but a few neighbours objected and refused to sign the petition. Upon investigation and enquiry, the District Council informed the Commission that the road had just been declared public and consequently the road could be asphalted upon availability of funds.

- Miss P owns and works in a snack. She alleged she was harassed by a Police officer who visited her snack frequently. The Police Officer was summoned by the HRD and he accepted that he often called at the premises of the complainant. He was lectured on the need to respect Miss P.

### 3.5 Complaints disposed of

In 2018, the HRD disposed of 152 complaints. 80% of these complaints were resolved or partially resolved through the provision of guidance and information, facilitating self-help, referral to a more appropriate agency or reaching agreements through mediation.

**Delayed enquiry**

Dr. J made a complaint against Mr. M at the Police for a case of *issuing cheque without provision* and *embezzlement*. He was unaware of the outcome of the complaint and was also accused by the Police of making false and malicious allegations against Mr. M. Following investigation, the HRD was appraised of the fact that the enquiry was
completed and the case was sent to the DPP’s office for advice. Dr. J was informed accordingly.

**Compulsory Acquisition of Land**

Mrs. S and two other complainants represented by a Property Valuer challenged the procedures for compulsory acquisition and the compensation attributed by the Ministry of Housing and Lands. According to the complainants, the sum proposed to them was considerably lower than the actual value of the land. Under Section 8 of the Land Acquisition Act, the Government has jurisdiction to acquire compulsorily any land. It is a procedural step for the matter to be referred to the Board of Assessment for the determination of the compensation amount. The Ministry’s version was that the complainants had already accepted the compensation. The complainants should appeal to the Supreme Court.

**Non delivery of parcel**

Mr. T purchased protein powder from E-Bay which the Post Office refused to deliver to him. He was told that the product contained a drug and he could not get his parcel. The contents of the parcel were subjected to a toxicology screening. It was confirmed by the Pharmacy Board that “HEMP” is a derivative of Cannabis and that it is a prohibited substance under Part (1) of the First Schedule to the Dangerous Drugs Act 2000. Mr. T was informed accordingly.
Sentencing by District Magistrate

Mr. D was fined for 2 contraventions before the District Court of Rose Hill. He paid the fines on 15 August 2017. On 16 October 2018, he received a letter from the Police stating that he had to appear before the Court on 25 October 2018 for the same offence. He did not have the opportunity to give an explanation in Court as to the paid fines. He was sentenced to pay fines for the same 2 contraventions. The NHRC brought the matter to the attention of the Master and Registrar of the Supreme Court. Subsequently, the NHRC was informed that the District Court of Rose Hill would apply to write off the fines imposed on Mr. D on 25 October 2018 and there would be no warrant of arrest issued against him.

DFSC Case

Mr. B alleged that the promotion of Cadet Inspector in the Police Force was being conducted unfairly and with overt favouritism, in as much as he felt discriminated, being an inhabitant of a particular constituency. Since the promotion exercise is a decision of the DFSC, the Human Rights Division could not intervene.

Identity Card

Mr. M was denied the renewal of his passport by the Passport and Immigration Office since he did not have the new biometric Identity Card. Since it is a statutory requirement to produce an Identity Card upon application of a passport, the complaint could not be entertained by the HRD. The case was filed accordingly.
**Nepalese Students**

An NGO made a complaint on behalf of two Nepalese students in Mauritius. They claimed they were victims of a bogus Training Institution. They wished to obtain a special leave to remain in Mauritius. The CCID enquired into the case of swindling. However, the DPP’s office had advised no further action. The NHRC could not intervene in a decision by the DPP as per the Protection of Human Rights Act.

**Delay to lodge a case**

Mrs. K is the widow of late Mr. K who was murdered by one Mr. D in 2008. She complained about the delay in lodging the case. After a preliminary enquiry held before the District Magistrate of Rivière du Rempart, the matter was referred to the Assizes. Upon query from the Commission, the office of the DPP informed that a charge of ‘wounds and blows causing death but without intention to kill’ was lodged against Mr. D. As at December 2018, the case was before the Intermediate Court to be fixed for trial.

**3.6 Pending cases**

The number of pending cases for the year of 2018 amount to 64. The reasons are varied: some issues are awaiting judgment of the Court or the decisions of local authorities and Ministries while some are still under investigation in view of the fact that they were received in December 2018.
3.7 Hearings

Some 70 hearings were held.

For the purpose of investigation, the HRD called the representatives of the District and Municipal councils some 16 times, the Police and the *Police de l’environnement* 19 times, the representatives of different ministries about 36 times, the representative of the National Transport Authority 4 times, the Medical Council and the Attorney General’ Office twice respectively and as for the school, the hospital and the Animal Welfare Unit once respectively.

<table>
<thead>
<tr>
<th>SN</th>
<th>Categories</th>
<th>Number of Complaints</th>
<th>Disposed</th>
<th>Pending</th>
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<tr>
<td>1</td>
<td>Ministries and Government Departments</td>
<td>59</td>
<td>43</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>Judiciary</td>
<td>14</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>Director of Public Prosecutions</td>
<td>6</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Parastatal Bodies</td>
<td>5</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>5</td>
<td>Miscellaneous Complaints</td>
<td>132</td>
<td>95</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>216</strong></td>
<td><strong>152</strong></td>
<td><strong>64</strong></td>
</tr>
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</table>
4. **KEY ACHIEVEMENTS IN 2018**

This section provides a summary of some of the HRD’s key achievements.

4.1 *Right to the issue of a birth certificate*

Birth registration and the possession of a birth certificate as proof of registration has long been recognised as a fundamental human right. The birth certificate allows an individual to make claims of nationality, benefit from government schemes, open a bank account, work, travel, get a driving licence or a marriage certificate and vote.

In one case, a lady aged 25 who could not obtain a birth certificate, could not get married civilly and could not declare her three children at the Civil Status Office (They were declared by the father only).

The HRD was able to thoroughly check the medical records of the SSR hospital and found out that her birth was duly recorded. This valuable information was passed on to the Ministère Public which acted upon same to give favourable conclusions to the District Court of Flacq which ordered the issue of her birth certificate.

*Same Birth certificate used by two cousins*

Only one of two cousins, born during the same week and living in the same area, was issued with a birth certificate. Both used the same certificate. The cousin who
misused the birth certificate had passed away and consequently his widow could not obtain the widow’s pension.

The surviving cousin who was considered as “dead” by the Civil Status Office did not benefit from any old age pension though he had already attained the age of 60.

According to investigation conducted into the hospital records, the HRD found out that there were indeed two babies born bearing the same name and surname but with two different medical files and two different addresses.

This problem re: “identification” could only be solved by having recourse to the Supreme Court because as per article 323 of the Code Civil, a “commencement de preuve par écrit” is needed for the Ministère Public to give favourable conclusions on the application. A Judge is the only one empowered to pronounce on the issue.

In this case, the HRD could only request the Supreme Court to give priority to his case so that it can be disposed of quickly. The HRD advised the widow of the deceased cousin to contact the benefit section of the Ministry of Social Security, National Solidarity and Environment and Sustainable Development and apply for an ad hoc pension pending the decision of the Supreme Court.
Entitlement to pension, pending case before the Supreme Court

The complainant, upon retirement from the public service contacted the Ministry of Social Security, National Solidarity and Environment and Sustainable Development for pension benefit. It was then that he found out that there was another person using his name, his identification card number and even his birth certificate. Later on the other person who was misusing his birth certificate passed away. A case was lodged at the Supreme Court.

The HRD called the representative of the Ministry of Social Security, National Solidarity and Environment and Sustainable Development to find out if the complainant could obtain his old age pension and free bus pass, pending his application for tardy declaration before the Supreme Court. Upon the advice of the HRD, the complainant contacted the benefit section of the Ministry of Social Security, National Solidarity and Environment and Sustainable Development where a fast track application for an ad hoc pension can be submitted.

4.2 Right to freedom of movement

Mobility improvements can go a long way in changing the lives of persons with disabilities for the better. “You have to think of transport as an equalizer, a catalyst that facilitates access to many other sectors,” stated Charlotte McClain-Nhlapo, the World Bank’s Global Advisor on Disability.
Transportation plays an extremely important role in enabling persons with disabilities to travel and live independently. It brings important opportunities in education, employment, health care, housing, and community life within the reach of every individual with disability.

A group of persons with disabilities lodged a complaint at the HRD averring that they could not get access to the parking lots which had been earmarked for their sole use more particularly in Port Louis and Rose Hill. Following meetings with the Divisional Commanders of the Police, the Traffic Branch, the National Transport Authority, the Traffic Management and Road Safety Unit and the Chief Officer of the Disability Unit, the HRD was able to restore the use of these parking lots to the satisfaction of the lawful users. The Police and the Road traffic branch were proactive and booked users who were using the reserved parking lots and in some cases, had even had recourse to clamps. This police intervention was aired on national television. At the police station of Pope Hennessy, the officer-in-charge provided a book where all checks by any police officer re: “disabled parking lots” had to be noted down.

On being advised of the complaint, the shopping centres at Bagatelle and Rose Hill indicated a willingness to resolve the matter and did install chain links around the reserved parking lots and provided the mobile number of the security officer for any assistance.
Access to public buses by persons with disabilities

Access to a large proportion of buses remain incredibly difficult to use for passengers with disabilities, turning even the shortest trip into a logistical nightmare.

With greater demand for transport infrastructure and services, now is the time to make sure that accessible transport becomes the rule rather than the exception.

Awareness of disability is growing and mentalities are changing. “Overall, it has become easier for us to make a case for accessible transport, as our clients understand that, if you want to create sustainable communities, you need to include everyone,” noted Ramón Muñoz-Raskin, Senior Urban Transport Specialist at the World Bank.

Recently a group of persons with disabilities lodged a complaint as they faced much difficulty in travelling by buses as the seats allocated to them were not properly earmarked. Furthermore, the seats provided for them were not safe at all as they were not protected by handrails and/or partitions in case there is bus frontal collision or sudden application of brakes. Consequently the HRD members proceeded to Victoria bus station to inspect the state of the buses re accessibility. Some bus conductors stated that it was not easy to convince the general public to leave the priority seats reserved for the persons with disabilities.
4.3 Right to an environment free of noise pollution

Noise pollution is one of the most overlooked pollutions that could be detrimental to health of the society. According to the World Health Organization, noise is an underestimated threat that can cause a number of short and long-term health problems, such as sleep disturbance, cardiovascular effects, and poorer work and school performance.

There are no specific human rights laws relating to noise, but excessive noise pollution can be in breach of our Constitution, article 4 - Right to life, article 7 - Protection from inhuman treatment and article 9 - Protection for privacy of home.

Noise might come from car horns, sirens, barking dogs, noisy neighbours, loud music, and noise from sprayers, generator, or any number of other sources. Noise is tricky to deal with because, unlike water or air pollution, it leaves no traces behind in the environment. When people complain about evening construction noise or barking of dogs it can take some time for the Ministry of Health and Quality of Life or the Police de l’environnement to send an inspector to the site - by which time, the noise has probably stopped. Nevertheless, the HRD did intervene successfully in a few cases.

Noise from a generator

The complainant’s neighbour was operating a noisy generator, which was found next to the bedroom of the complainant. This extreme noise affected the health of the complainant so much that she had to see a psychiatrist. The Police de l’environnement informed the HRD that they felt powerless in view of the fact that they do not own any apparatus to assess the level of noise caused by the generator. The HRD found that as per the Town and Country Planning Act and the Building Control Act and further as per
section 3(3) (c) of the Electricity Act, a permit is required for the operation of a generator above 400 kW. Through the intervention of the HRD, the President of the District Council of Rivière du Rempart sent a letter to the neighbour asking him to produce a copy of this permit and if not, legal action will be taken against him. A follow-up is being made with the District Council.

**Noise from barking of dogs**

Quite a number of complaints have been received regarding the barking of dogs, for instance, one complainant had to move his bedroom to the far end of his house in order to avoid the noise of barking dogs.

In another case, the complainant stated that his neighbour was breeding 6 dogs and that the kennel was found next to his boundary. In fact, the neighbour had a dog breeder’s permit but there was no need to have his dogs registered, according to Animal Welfare Act. The dogs barking night and day caused him unrest and consequently he had made several complaints to Rose Belle Police Station. Following a meeting with the HRD, the officers of the Animal Welfare Unit of the Ministry of Agro Industry and Food Security and the Mauritius Society for Animal Welfare (“MSAW”) visited the locus and removed 4 dogs and had the kennel moved further from the complainant’s house.

It has been observed that whenever the HRD called the officers of the *Police de l’Environnement* and the Animal Welfare Unit, they would visit the complainants just before the date of the hearing. The officers of the *Police de l’Environnement* stated that whenever they went to the locus, either the barking had stopped or they could not
evaluate as to whether the barking “unreasonably interferes with the peace, comfort and convenience of another person” as per the Environment Protection (Control of noise) Regulations 2008. Consequently, the Police de l’Environnement felt powerless vis-a-vis such recurrent problem and could not contravene the dog owners in most cases. It is to be underlined here that any Police Officer at any station can intervene in a case of barking of dogs.

In view of the various problems arising from the barking of dogs, the HRD made various recommendations, for instance, dogs should be registered and the number of dogs raised in a house must be restricted with the aim of improving the quality of life of our citizens.

4.4 Water effluent from septic tank

The issue of waste water collection and disposal is crucial and should be adequately addressed to ensure that the waste water produced does not create pollution.

In a case before the HRD, Mrs. X complained that effluent water emanating from a septic tank shared by both neighbours flowed into her property. She brought same to the attention of the sanitary department of the Ministry of Health and Quality of Life and the Municipal Council of Vacoas-Phoenix.

Through investigation, the HRD found out that the neighbour’s house was built on the septic tank which was not connected to any sewage system. In view of the fact that
the complainant’s house was found on a lower ground than that of the neighbour, effluents from the septic tank flowed towards Mrs. X’s premises. The sanitary department of the Ministry of Health and Quality of Life ordered the neighbour to have the existing septic tank emptied on a regular basis in view of the fact that a new septic tank cannot be constructed due to lack of space.

4.5 Rights of elderly persons

The Universal Declaration of Human Rights states that “all human beings are born free and equal in dignity and rights”. This equality does not change with age: Older men and women have the same rights as people younger than ourselves. In Mauritius there were 219,520 people above 60 as at December 2018.

Right to be safe and free from violence

An old age couple complained of being ill-treated by their daughter-in-law. The HRD summoned the officer-in-charge of Elderly Persons’ Protection Unit to do the needful. The HRD was in presence of a ‘constat’ made by a private usher averring that the couple is living in a state of extreme poverty. The HRD referred the ‘constat’ to the Elderly Persons’ Protection Unit to report the outcome as soon as possible.

4.6 Medical negligence cases

Medical negligence occurs where an act or omission by a health care provider falls, in delivering treatment, below the accepted standard of practice in the medical community, causing injury or death to the patient.
Human Rights issues in relation to medical negligence are very complex. Article 3 of the Constitution, deals with an individual’s right to life. This includes a positive duty of the State to take appropriate steps to safeguard life. Hospitals are state controlled bodies, and, as such, they have a duty to protect an individual’s right to life.

Generally speaking, a number of areas of medical practice can be linked to Human Rights under Article 7 of the Constitution, which deals with the right to protection from inhuman treatment. This is an unqualified right and it is not possible for the public authority to violate it for any reason.

In 2018, two complainants (a couple) filed a complaint to the HRD, stating that they were consistently told at the hospital after examination by doctors that the lady would have twin baby girls. But on the day of the delivery on 16 March 2018, only one baby was delivered. They alleged that there must have been another baby and wanted to know what had happened. They made an official complaint to the hospital. A Fact Finding Committee (FFC) chaired by a Senior Officer from the Attorney General’s Office was set up at the request of the Ministry of Health and Quality of Life. The FFC after enquiry concluded that the first examining doctor had made a mistake and that during subsequent examinations the mistake was not rectified. Action was taken against the culprits.

In another case, the complainant averred that a Medical Doctor in a public hospital failed to identify the real medical problem and performed a surgery which led to the
demise of her husband. The HRD enquired into the status of the case at the level of the Ministry of Health and Quality of Life to find out if same had been referred to the Medical Council. The HRD is still awaiting the outcome of the case.
5. **RECOMMENDATIONS**

The aim of making recommendations is to promote greater application of Human Rights standards in law, policy and practice.

**Recommendations made by Human Rights Division**

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<thead>
<tr>
<th>SN</th>
<th>Problem</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>1</td>
<td>Parking bays for persons with disabilities</td>
<td>The badges issued by the Disability Unit of the Ministry of Social Security, National Solidarity and Environment and Sustainable Development, should be time restricted, so that persons with disabilities can have access to the limited number of parking bays available. To consider, after consulting the State Law Office, making the misuse of badges allocated to persons with disabilities a criminal offence, to prevent disabled persons from using copies of badges or allowing their friends to benefit from the parking facilities. To consider after consultation with the Ministry of Public Infrastructure and Land Transport to amend the definition of “road” as per the Road Traffic Act 2016 (section 2) so as to include the parking bays provided by the shopping malls where the monitoring is at the discretion of the car park owner and to amend the Road Traffic (Paid Parking regulations) GN 52/2002 Part III so that the colour used be blue henceforth, instead of black and white to be in line with international regulatory norms.</td>
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<td>2</td>
<td>Unregistered babies</td>
<td>That the Ministry of Health and Quality of Life informs on a weekly basis of births of all new born babies taking place at any hospital to the Registrar of the Civil Status Office;</td>
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<tr>
<td>SN</td>
<td>Problem</td>
<td>Recommendations</td>
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<td>That the form of notification of birth be issued in triplicate, one for the Ministry of Health and Quality of Life, one for the Civil Status Office and one for the responsible parent; That the form of notification includes two addresses, both for the mother and the father of the child, especially if they live apart and not to mention “parents” as the mother may not have a husband or a partner; As for fake names and addresses given this can be circumvented on making it mandatory for the parents to produce their National Identity cards and a proof of address before the delivery date.</td>
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<td>3</td>
<td>Rights for passengers with disabilities</td>
<td>To establish procedures for those who are in possession of disability parking permits issued in other countries, to obtain a valid Mauritian parking permit from the Disability Unit of the Ministry of Social Security, National Solidarity and Environment and Sustainable Development. To provide passengers with disabilities with assistance cards and/or badges which read as follows “I am deaf”, “I am blind”, “I have hidden disability” so that it is easier for them to travel by bus.</td>
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<td>4</td>
<td>Noise measurement methods and equipment</td>
<td>To provide the personnel of the <em>Police de l’environnement</em> with noise measurement apparatus/equipment and also appropriate training so that they can cope with noise problems more efficiently and they do not have to rely on the Engineering Unit of the Ministry of Health and Quality of Life on a permanent basis.</td>
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<tr>
<td>SN</td>
<td>Problem</td>
<td>Recommendations</td>
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<td>5</td>
<td>Public and private buses</td>
<td>To indicate clearly the priority seats for persons with disabilities in all the buses by means of stickers written “for the disabled” or else by painting the reserved priority seats in a different colour. To delete the words ‘Autrement Capable’ whenever they appear in buses, to be replaced by the words ‘Persons with Disabilities’ or ‘Personnes en situation de handicap’.</td>
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<td>6</td>
<td>Medical negligence cases</td>
<td>Section 46A (2) of the Public Service Commission (PSC) Regulations 2010 stipulates the following:- “The statutory disciplinary body, to which the PSC has delegated its powers, shall forthwith inform the PSC and, where the relevant responsible officer has not himself so informed the statutory disciplinary body, the relevant responsible officer, of any prima facie act of professional misconduct, malpractice, fraud, dishonesty, negligence or act constituting a breach of any applicable code of practice or ethics.” In view of the above, before the Medical Council initiates any investigation and thereafter disciplinary action against any public medical officer for any case of medical negligence, the case has to be referred to it by the Ministry of Health and Quality of Life. In this context, it is recommended that the PSC Regulations be amended to empower the Medical Council on its own to expeditiously and judiciously investigate into all cases of medical negligence, private as well as public ones.</td>
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<td>7</td>
<td>Barking of Dogs</td>
<td>To amend Regulation 2 (b) of the Environment Protection (Standards for noise) Regulation 1997 by including in the definition of “neighbourhood noise” that of an animal.</td>
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<td>SN</td>
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<td>Thus the noise measurement methods and equipment used shall be applicable and will be those approved by the enforcing agencies.</td>
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<td>Noise exposure limits (schedule regulation 3)</td>
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<td></td>
<td>Neighbourhood noise</td>
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<td></td>
<td></td>
<td>07.00 – 18.00 60 dB(A)</td>
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<td></td>
<td></td>
<td>18.00 – 21.00 55 dB(A)</td>
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<td></td>
<td></td>
<td>21.00 – 7.00 50 dB(A)</td>
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<td>8</td>
<td>Noise Pollution</td>
<td>The Animal Welfare Act 2013</td>
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<td>To fix the date of the coming into operation of Section 31 (Part V) control of dogs re: to make registration of dogs compulsory.</td>
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<td>Under Section 45 (2) (d) to make regulations to limit the number of animals that may be kept on any land or premises.</td>
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<td>9</td>
<td>Elderly Persons</td>
<td>Mauritius to consider ratifying the Protocol to the African Charter of Human and People’s Rights on the Rights of Older Persons.</td>
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<td>Section 16 of the Constitution be amended and to include ‘age’ among the criteria for Protection from Discrimination.</td>
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<td>To consider whether section 9 of the Protection of Elderly Persons Act should be proclaimed for the issue of Protection Orders in favour of elderly persons given the number of complaints reported to the Elderly Persons’ Protection Unit.</td>
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</tbody>
</table>
6. **HUMAN RIGHTS EDUCATION**

To strengthen and broaden its Human Rights education reach, the HRD is delivering Human Rights informative sessions through the 35 Citizen Advice Bureaux every Tuesday throughout the country. Furthermore, talks are being given to certain groups such as the persons with disabilities. Sensitisation campaign is also carried out on radio where the public can receive replies on any query or question raised.

7. **HUMAN RIGHTS TRAINING**

Training has been provided to the staff. Two pamphlets regarding “Recording of complaints and Handling of complaints” have been issued. The staff of the HRD also had the opportunity of following training locally by attending workshops and abroad, for instance, on issues such as Regional Capacity Strengthening for National Human Rights Institutions, Human Rights Institutions in the SADC Region and Commonwealth Africa High-level Regional Dialogue on Strengthening Equality and Equal Protection of the Laws that Discriminate.
CHAPTER III

APPLICATION FOR REVIEW OF CASES

The Human Rights Division of the NHRC is empowered under Section 4 A of the Protection of Human Rights Act to consider application for reviews of convictions in Supreme Court Cases. The applicant must adduce fresh and compelling evidence before the NHRC to enable the NHRC to refer the case to the Supreme Court.

No such case was presented to the NHRC in the year 2018. Two applicants claimed that they had been trapped by the Police to make confessions. Such a claim has to be canvassed at the time of the trial on the evidence available at the time. These applicants had no fresh evidence to adduce on the issue.

The NHRC is not able to entertain applications for review of convictions by the Intermediate Court.
CHAPTER IV

NATIONAL PREVENTIVE MECHANISM DIVISION

1. NATURE, ROLE AND SCOPE OF THE NPMD

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international human rights treaty that was adopted by the United Nations on 18 December 2002. Its main objective was to provide mechanisms for the protection of the basic human rights of persons who are or maybe deprived of their liberty “by virtue of an order given by a public authority or at its instigation or with its acquiescence”.

At the international level, OPCAT established the Sub-Committee for the Prevention of Torture (SPT) whose role is to visit places of detention in each of the States which ratify the treaty (State Parties) and to make recommendations to the State Parties concerning the prevention of ill-treatment. At the national level OPCAT requires State Parties to put in place a National Preventive Mechanism (NPM) the role of which also is to visit places of detention in order to regularly examine the treatment of detainees and to make recommendations to the relevant authorities so as to improve the conditions of detention of detainees and ensure that they comply with the relevant norms of the United Nations. On 21 June 2005 Mauritius acceded to the OPCAT. The NHRC was designated as the NPM for Mauritius. In 2012 Parliament enacted the National Preventive Mechanism Act (NPMA 2012) which provided for the establishment of the National Preventive Mechanism Division (NPMD) of the National Human Rights Commission (N.H.R.C). The NPMD was set up in 2014.
Since its establishment in 2014, the NPMD (Mauritius) has been entrusted with the statutory duty to act as a watchdog and ensure that detainees in prisons, police cells, detention centres, Correctional Youth Centre(s) (C.Y.C) and Rehabilitation Youth Centre(s) (R.Y.C) are treated with humanity and with respect for the inherent dignity of the human person.

In pursuance of the above objectives, the NPMD regularly visits places of detention of its own volition or following complaints made by detainees directly or through third parties. After thorough investigation, the NPMD makes appropriate recommendations to the relevant authorities.
2. **PRISONS**

The National Preventive Mechanism Division (NPMD), since its setting up in June 2014, regularly examines the treatment of people deprived of their liberty in places of detention.

In 2018, the NPMD carried out 68 visits to prisons. There are 11 penal institutions in the Republic of Mauritius. They are namely Central Prison (Beau Bassin), New Wing Prison (Beau Bassin), Eastern High Security Prison (Melrose), La Bastille Prison (Phoenix), Petit Verger Prison, Richelieu Open Prison, Grand River North West Remand Prison, Women Prison (Beau Bassin), Open Prison for Women, Barkly Special Prison for Women and Rodrigues Prison.

The NPMD aims at ensuring that there is no abuse on the part of the prison authorities and that the detainees are not subjected to torture or any other form of inhuman treatment. To that effect, the NPMD makes relevant recommendations to the Commissioner of Prisons, the Commissioner of Police and the Ministry of Defence and Rodrigues.

2.1 **Death in Prison**

In 2018, eighteen detainees in prisons died of natural causes. The causes of death ranged from Septicemia, Asthma, Bio Cardio infarction and Renal Failure. There were two cases of suicide in prison.

(1) **Death in prison of detainee J.D.I.**

On 16 June 2018 at about 0815hrs, while checking the cells, a Prison Officer found that cell 59 of Landing III of Block B of New Wing Prison was blocked. The Officer in Charge of the Block was immediately informed and the officers
forced open the door. On entering the cell, they found remand detainee J.D.I. inanimate on the floor. Senior Prison Officers were informed of the incident. On examination by a Hospital Officer, the detainee was ‘pulseless’, blood pressure not recordable and both pupils were fixed and dilated. Prison Medical Officer, Doctor B, was informed accordingly. At 0935hrs, after examination by Doctor B, detainee J.D.I. was declared dead. Police officers from Barkly Police Station, SOCO Officers and the Police Medical Officer called for investigation. The cause of death was ‘Asphyxia due to Hanging’.

(2) Death in prison of detainee M.J.Z

On 05 October 2018, the National Preventive Mechanism Division was informed of the death of detainee M.J.Z. who was on remand at Grand River North West Remand Prison (GRNW Remand Prison). M.J.Z. was found dead in Cell No. 13 with a thin rope around his neck and a cloth covering his face. On the same day, the NPMD effected a site visit at GRNW Remand Prison.

2.1.2 Findings

In the course of their visit, the findings were as follows: -

Cell No. 13

As cell No.13 was sealed, the NPMD with the help of a wooden stool noticed that cell No. 13 had two main ligature points: -

(1) The open window, which has vertical iron bars; and
(2) The metal frame bunk bed.

The NPMD found out that the bunk bed had only one mattress and that the white linen bed sheet was on the bedside. There was no pillow. On top of the bunk bed, there
was a box of butter make ‘Tara’, a packet of chocolate biscuits namely ‘Gaufrette’, a tissue roll, a detainee's ID card and a roll-on make ‘Axe’.

On the lower bunk bed, there was a used white linen bed sheet and a copy of the Bible with the writings facing the cell door. Next to the bunk bed, there was an empty bucket of paint make ‘Permoglaze’, which appeared to be empty. The window behind the bunk bed was kept open by means of a wooden stick and an orange plastic lighter. On the window seal were found cigarette butts, a folded aluminum foil and a small piece of black electrical wire.

**CCTV cameras**

There were no CCTV cameras inside the cell. CCTV cameras in Landing 1 and 2 of Block A were placed at both ends of the corridor, at the entrance of the Block A and in the recreational yard.

**Block Patrol Schedule**

The block patrol schedule for Block A indicated that patrol checks were carried out at 2030hrs, 2230hrs, 0030hrs, 0230hrs and 0430hrs respectively. According to the sentry logbook, the prison officers on night duty did check the cell corridors.

**The spy holes of the cell doors**

The spy holes fitted on the cell doors are very small and cannot allow the person on the inside of the corridor to have a wide view of the cell.

**Detainee on remand- Clothing**

The NPMD found out that M.J.Z. was a detainee on remand and he was allowed to wear his own clothes.
Interview

The detainees from adjacent cells namely cell Nos. 10, 11, and 12 could not be interviewed at the time of the NPMD’s visit, as they were having a group therapy with the prison psychologist.

2.1.3 Observations

The medico-legal report revealed that the cause of death was “Asphyxia by hanging”.

It is essential that the prison authorities provide an acceptable level of care to a detainee. The question that arises in this case is whether all reasonable steps were taken to ensure the safety and welfare of detainee M.J.Z?

Any item of clothing can be used as ligature. Unfortunately, M.J.Z. had the means of forming a ligature by using the cloth and was able to use the bunk bed as the hanging point. Restricting access to the means of suicide is a key element of suicide prevention efforts. In the case of M.J.Z., the fact that he had access to the rope and cloth seems to suggest a failure in the exercise of ensuring that before the detainee gets access to his cell, he is deprived of such items as would facilitate the taking of his own life or cause self-harm.

Accessibility of hanging point

Ideally a safe cell would be a cell that does not consist of any hanging point. Unfortunately cell No. 13 where M.J.Z. was detained, had many hanging points, such as, the bunk bed and the metal bars of the window.
**Lack of proper monitoring through the CCTV**

CCTV should be both for monitoring the welfare of detainees and for the prevention and detection of crime, that is in alerting staff to in time when detainees are about to harm themselves or attempting to commit suicide. Unfortunately, there were no cameras in cell No. 13.

**Lack of extra vigilance**

Patrol are carried out every 2 hours. In fact, patrol should be carried out at shorter intervals to detect any attempt of suicide or any suspicious behavior.

**Assessment by medical officer**

M.J.Z. has been seen upon admission by the welfare officer and not by a medical officer. This is in breach of Section 2 of the Prison Standing Order No. 10 which stipulates that:

“Every prisoner shall be examined as soon as possible after his admission by the Medical Officer, and the Officer in Charge of the prison shall carefully, observe whether any prisoner, either on entering the prison or afterwards, is diseased in mind or body, and shall set apart anyone in such a state for special medical examination”.

It also appears to be in breach of Rule 30 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which states:

“A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:
(c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment.”

2.1.4 Recommendations

A report of the findings, observations and recommendations of the NPMD was submitted to the Commissioner of Prisons, the Commissioner of Police and the Ministry of Defence and Rodrigues. This procedure is in line with Section 4 (c) of the National Preventive Mechanism Act, which stipulates that the functions of the Division shall be: (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”.

Based on information gathered during the NPMD’s visit, as well as documents received from the prison, the NPMD made the following recommendations to prevent similar incidents from occurring in the near future:

1. To provide a safe cell by removing any ligature point.
2. To replace the bunk bed which is made of iron bars.
3. To affix metal grills on cell windows.
4. To review the opening of all cell windows by means of a wooden stick.
5. To enlarge the cell doors’ spy holes.
6. To increase the frequency of patrol in the cellblocks if CCTV camera is not available.
7. To ensure that any detainee upon admission is seen by a medical officer in order to assess his physical and mental state.
8. To conduct vigilant inspection in cells to ensure that objects such as, cigarettes butts, aluminium foil, plastic lighter and electrical wire are not found on the cell window sill.

The NPMD has been informed that recommendations no.7 and no.8 have already been implemented.

2.2 Infrastructure

The NPMD visited the association yards, the kitchens, storerooms, washrooms, medical facilities, individual cells and dormitories in the prisons to assess whether the prisons’ infrastructure is in line with human rights norms. It ought to be noted that since most of the prisons were constructed back in Colonial times, renovation works have been an ongoing process.

In Petit Verger Prison, the toilet facilities in Yard A have been renovated following recommendations made by the NPMD. Moreover a new kitchen facility has recently been opened, making sure that essential Health and Safety measures are respected and at the same time, improving the rehabilitation process of the inmates working in the kitchen.

The toilet facilities at the Central Prison must be improved. There are only four toilets for a population of 250 prisoners per association yard. The NPMD recommended that remedial action be taken as soon as possible. However, the NPMD was given to understand that it may take some time as procurement procedures have to be followed for new constructions.

The Yard C of GRNW Remand Prison had a problem with its sanitary equipment. There were six toilets in the yard and three of them were completely out of order. The two others were in state of disrepair with one not even having a door. The NPMD
recommended that the sanitary equipment be repaired urgently. This recommendation was implemented immediately. Yard C now has eight toilets in the association yard and all of them have closets for minimal privacy.

In respect of the punishment cells in Richelieu Open Prison, the NPMD noted that the five rooms were dull, dirty and neglected. The NPMD recommended that the area be renovated. However, the NPMD was informed that those punishment cells are rarely used. Nonetheless, the NPMD maintained its recommendations for renovation. The NPMD also recommended that access to medical services be improved by extending the time nursing officers spent in Richelieu Open Prison. In respect of detainees’ welfare, the NPMD also recommended that more welfare officers be recruited.

2.3 Pre-Release Institutions

On the issue of rehabilitation, the NPMD noted that institutions such as Richelieu Open Prison, Petit Verger Prison and Beau Bassin Open Prison for Women are pre-release institutions. The rehabilitation work done within these prisons has a serious bearing on the reintegration of the ex-detainees. Since it is important that time and resources invested in the vocational training of ex-detainees be fruitful, the NPMD is of the view that the way forward would involve working more closely with civil society. As such, a strong link may be built with employment agencies to facilitate the recruitment of ex-detainees. It is well known that there exists a strong relationship between the increase in the rate of recidivism and the inability of ex-detainees to find employment. Most employers require the production of a certificate of character from applicants. This requirement has been a constraint to rehabilitation and reinsertion of ex-detainees within the society. The NPMD has recommended that a Workshop on ‘Best Practices for rehabilitation of detainees’ be organised between NGOs such as
KINOUETE and PASSERELLE, the Prison Officers and the National Human Rights Commission. The workshop is scheduled to be organised in 2019.

2.4 Food

In 2018, the NPMD received some complaints from detainees about the quality and quantity of food. Several unannounced visits were made by the NPMD to enquire into the complaints. During each visit in the prisons, a taste check is performed and the food weighed. In 2018, the NPMD found out that the distribution of food was according to human rights norms, except for a health and safety aspect in Richelieu Open Prison.

During a visit of Richelieu Open Prison, the NPMD noted that the kitchen was clean. The space dedicated to cooking and serving detainees was reasonably spacious. Moreover, well balanced meals were served.

At EHSP Melrose, the NPMD was favourably impressed by the efficiency, cleanliness and organization of the kitchen. The food was weighed and tested and it was in accordance with human rights norms. The NPMD also found that the detainees benefit from courses in pastry making. The certificate given to them serves them well after discharge. Regarding the serving of the meal in the geriatric ward, the NPMD found that the organization of food preparation and service delivery were done professionally at the EHSP.

2.5 Meeting with Relevant Stakeholders

Meetings were organised by the National Preventive Mechanism Division in collaboration with the Commissioner of Prisons, Senior Prison Officers and the Prison Welfare Officers to reinforce the work and collaboration amongst the several stakeholders. The aim was to improve the treatment and conditions of persons deprived
of their liberty in places of detention. The importance of CAT, OPCAT, Nelson Mandela Rules, Istanbul Protocol and Bangkok Protocol was discussed.

2.6 Fire Safety Issues

Following a visit to Barkly Special Prisons for Women, which accommodates 12 segregation cells, the NPMD noted that a fire had recently broken out in the prison. The Government Fire Services had intervened rapidly to extinguish the fire. However, the NPMD also found out that there were no fire extinguishers at the Prison. The NPMD recommended that all places of detention must be equipped with fire extinguishers, in order to deal with a fire outbreak before it gets out of hand and before the Fire Services arrive. The NPMD also noticed that the cells were satisfactory for the inmates. It also applied to food which was served to the detainees at the time of NPMD’s visit.

2.7 Miscellaneous

Following a visit to Women Prison, the NPMD received a complaint about insufficient babies’ nappies for mothers with babies in prison. The NPMD requested the Officer in Charge to intervene quickly. At the end of 2018, there were three mothers with babies at the Mother and Child Unit. Subsequently, they stated that they were satisfied with the number of nappies issued for their babies.
3. **DETENTION CENTRES**

The National Preventive Mechanism Division (NPMD) of the National Human Rights Commission (NHRC) visited detention centres on various occasions to attend to complaints received at the NHRC and to look into the conditions of detention.

3.1 *The Metropolitan Detention Centre*

The Metropolitan Detention Centre, also commonly known as ‘Alcatraz’ was visited by the NPMD on two occasions in the year 2018. This Detention Centre is known for being an old colonial building, where the first floor is made of wooden planks, thus encouraging the proliferation of insects.

The recommendations made by the NPMD have been successfully implemented, for instance, the proper operation of all CCTV cameras in the whole building, in all the cells, including the masking exercise which has been conducted on 05 November 2018 for the cameras viewing the shower units and toilets, while taking into consideration the privacy of the detainees. Three toilets have been converted into ‘European’ style toilets and there is a permanent supply of water. The debugging is continuously being carried out by the Pest Control Unit of the Ministry of Health.

The first floor of the Detention Centre is being renovated and in the near future the entire building will be renovated. The walls have been freshly painted, the wooden planks have been cleaned thoroughly and are in better condition, the cells have been cleaned by the Pest Control Unit, additional lightings have been placed in the corridor of the first floor and a new extractor has been fixed on the first floor, thus allowing proper air ventilation. The NPMD is following closely the renovation of the Metropolitan Detention Centre.
3.2 Vacoas Detention Centre

The Division visited Vacoas Detention Centre twice in 2018. The female cells have been operational since 18 August 2018. It was observed that all the amenities and infrastructure for the female cells were constructed in line with Human Rights Norms and that the recommendations made by the NPMD have been respected. Recommendations were sent to the Commissioner of Police so as to improve its conditions, such as the fixing of an air extractor at the end of the corridor for the male cells. The polycarbonates sheets were removed on the cells’ doors so as to enable better circulation of air.

Moreover, following recommendations made in 2018 concerning the ligature points in the washroom, same have been renovated. For instance, the water taps in the shower units have been fixed in lower positions, to prevent any detainee from using this as a ligature point.

The NPMD also found out that both the male and female cells are cleaner and in better condition, as recommended by the NPMD. Furthermore, the NPMD recommended a prompt action to replace the fire detectors which were not operational during our visit in June 2018. Since there is a single exit door, it should be ensured that the fire detectors are permanently in working order. The NPMD made a follow-up on this recommendation and was informed that the fire detectors are still not operational. The NPMD aims to monitor closely this recommendation.

3.3 Moka Detention Centre

During visits in June 2018 at Moka Detention Centre, the Division observed that the female cells were in satisfactory condition and conformed to human rights norms.
However, the absence of an air extractor fan created a stuffy atmosphere in the male cells. The cells appear dark due to insufficient lighting.

The infrastructure of Moka Detention Centre is such that it deprives both detainees and police officers of natural light and air ventilation. The NPMD recommended that an air extractor be installed to allow adequate air ventilation. Same recommendation has already been brought to the attention of the police authorities.

3.4 Le Chaland Immigration Detention Centre

During the NPMD’s visit on 02 March 2018, the team noticed the poor conditions of the building and sent a letter to the concerned authorities, but in vain. On 16 November 2018, the team again visited the Detention Centre and reported the deplorable and unhygienic conditions of the building. It was a priority to provide acceptable basic living conditions and facilities to detainees. The NPMD made recommendations, amongst which, the installation of CCTV cameras in the building and its premises, to use the whole building as a Detention Centre, since only the first floor is occupied by the Police and Passport Immigration Office. The ground floor is used by the National Coast Guard. This recommendation will solve the problem of overcrowding at Le Chaland Detention Centre. It was further proposed to provide adequate mattresses which will be periodically changed, to remove the broken fans which were affixed to the walls and to replace with those in working conditions.

The Division recommended that Le Chaland Detention Centre temporarily ceased its operation until the building be renovated, so as to meet the required standard. Indeed, the NPMD was informed by the Commissioner of Police of the temporary closure of the building for renovation.
The United Nations Standard Minimum Rules of the Treatment of Prisoners, covering specific needs of detainees, such as clothing, bedding, food, personal hygiene, medical services, exercise and sport, book and religious worship are also relevant to the detention of migrants. (United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by the 1st UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1995).

The UN Special Rapporteur on the human rights of migrants, Jorge Bustamante, in his 2010 report stated that “Migration-related detention centres should not bear similarities to prison-like conditions”. (Report of the Special Rapporteur on the Human Rights of migrants, 4th August 2010, op.cit, para.87, (a), (c) and (d).

3.5 The Mauritius Revenue Authority (MRA) Detention Centre

In June 2018, the MRA requested the collaboration of the National Preventive Mechanism Division concerning a project of opening a detention centre for drug related offenders. On 12 June 2018, a meeting was conducted between the officers of the MRA and the NPMD.

The detention centre will be completed by December 2019. The MRA wished to ensure that the construction and infrastructure of the detention centre and its cells be in conformity with international human rights standards.
4. POLICE CELLS

The NPMD regularly examines the treatment of people deprived of their liberty in police cells. These persons are suspects arrested by the police and remanded to police custody by the Court. After the visit, the NPMD makes recommendations to the Commissioner of Police with the aim of improving the treatment and conditions of the detainees. All Police Stations form part of a sub category called Divisions which is under the charge of a Divisional Commander who reports to the Commissioner of Police. Not all police stations have police cells. Those stations accommodating police cells that are operational must follow human rights norms and aim at improving the treatment and conditions of detention of detainees. An overview of the main issues arising consists of improving general cleanliness, maintenance in most cellblock in those stations and removal of ligature points in the cells. Since the NPMD was informed that there was no shortage of police attendants, the NPMD expects significant improvements in the maintenance and cleanliness of cellblocks. In 2018, the major innovation in the police cells has been the installation of CCTV cameras in all police stations. As previously recommended by the NPMD, this recent would reinforce the protection of people deprived of their liberty.

4.1 Port Louis Division

This Division includes Pope Hennessy Police Station, Vallee Pitot Police Station, Plaine Verte Police Station, Roche Bois Police Station, Pailles Police Station and La Tour Koenig Police Station. The NPMD made some specific recommendations regarding these police stations.

- Pope Hennessy Police Station consists of five cells and sanitary facilities, that includes toilets and bathrooms. Following a visit, the NPMD recommended
that the shower water pipe in the bathroom be removed and encased in the wall itself. The NPMD recommended that water taps be replaced by push buttons. Those two changes are essential to make the cells as ‘suicide free’ as possible. Moreover, the NPMD recommended the installation of additional to improve ventilation in the cellblock during summer. It ought to be noted that NPMD’s recommendation in 2017 to make the cells as suicide free as possible has greatly been enhanced by the installation of CCTV camera and the permanent posting of a sentry examining the CCTV footages.

- Vallee Pitot Police Station has two cells and sanitary facilities. The NPMD found that the police station is a rented building being used as a Police Station. Since the infrastructure is very old, dirty and poorly designed, the NPMD has recommended a follow-up on the proposal to construct a new station near Rajcoomar Gajadhur Street in Vallee Pitot. In the meantime, the NPMD recommended that a concrete bed replace the wooden beds in the cells. This will avoid the proliferation of bugs in the cells. The NPMD recommended that the frequency of debugging campaign be increased with the aim of providing a safe environment for detainees and on duty police officers. It ought to be noted that NMPD’s recommendation in 2017 to conduct a meeting with the relevant stakeholders to clear out issues about overcrowding in cell was implemented.

- Plaine Verte Police Station has three cells and sanitary facilities. The NPMD noted that previous recommendations to carry out regular debugging campaigns and to keeping the sanitary facilities in relatively clean conditions have not been implemented. Urgent remedial actions were recommended. A
regular schedule as to the cleaning and replacement of mattresses has also been recommended.

- Roche Bois Police Station has three cells and sanitary facilities. The NPMD recommended that the electrical system in the cellblock be repaired urgently. Loose electrical wires hanging in the cellblock are a serious hazard. Additionally, the NPMD recommended that the cellblock be painted with light colours to improve lighting issues and be cleaned more regularly.

- Pailles Police Station has three cells and sanitary facilities. The NPMD noted that the cells were too close to the charge room. This may affect police enquiry and poses a risk for unsolicited communication with any member of the public visiting the Station. The NPMD recommended that the design of the Station be revisited and the possibility of restructuring the Station be contemplated. Moreover, since there has been regular water shortage in the area, including at the station, the NPMD has recommended that a meeting with the CWA and relevant stakeholders take place to find an optimum solution.

- La Tour Koenig Police Station has four cells and three of them are operational. The cells are mainly reserved for female detainees. The NPMD was informed that the unused cell would be converted into a CCTV monitoring room, which can be accessed only by the on-duty female police officer. The NPMD recommended that the toilet and washroom in the cellblock be repainted. Additionally, the NPMD found out that a black foam mattress was installed on the walls of the enquiry room to prevent detainees from self-inflicting injuries. There are also other several other innovations such as a basic DNA Collection Lab and a children playground outside. This allows the children and parents in
the neighbourhood to organize periodic activities on events such as road safety involving the local police. The police officers and the administrative team were commended for their good work and setting up the benchmark as to innovative ideas.

In connection with the Port Louis Division, the NPMD forwarded the above-mentioned recommendations to the Commissioner of Police.

4.2 Northern Division

This Division includes Piton Police Station, Goodlands Police Station, Poudre D’Or Police Station, Riviere du Rempart Police Station, Trou Aux Biches Police Stations, Pointe Aux Canonniers Police Station.

- Piton Police Station has four cells and sanitary facilities. The NPMD recommended urgent renovation works. There was water leakage in the ceiling of the corridor, which runs in front of the cells. Water was seeping from the ceiling to the ground and accumulated in the corridor. This situation is a serious health hazard for both detainees and police officers. Additionally, the NPMD recommended that the cells be repainted and numbered. The NPMD also recommended that the sanitary wares be changed to “European Style” to cater for elderly and disabled detainees. The ‘imposte’ in the washroom is not provided with cover and it may be used as ligature point for anyone having suicidal tendencies. The NPMD requested urgent remedial action.

- Poudre D’Or Police Station has recently been relocated to a new building. It has one cell, which is operational. However, there are ligature points in the washroom. The tap in the shower unit poses a risk of hanging for anyone
having suicidal tendencies. The NPMD found that there was, in fact, an attempt to commit suicide by a female detainee in 2018. Fortunately, the women police officer on duty reacted efficiently and stopped the detainee. Remedial actions were recommended by the NPMD.

➢ Rivière du Rempart Police Station has six cells. The NPMD recommended that the cellblock be painted in lighter colour to improve lighting during the day. Some loose electrical wires were found hanging from the washroom. The NPMD recommended that they be removed immediately to reduce the risk of suicide.

➢ Trou Aux Biches Police Stations has five cells. It has one block reserved for male detainees and the other one for female detainees. The NPMD noted the glass block in the cell had been repaired, the walls have been repainted and the washroom have been repaired, as recommended in 2017. However, an air extractor in the female block has not be installed as previously recommended.

During the visit, the NPMD team commended the initiative of Woman Police Chief Inspector for supplying reading extracts from a novel to the two detainees in the cells. Such positive action goes a long way towards improving the treatment and conditions of detention of persons deprived of their liberty.

➢ Pointe Aux Canonniers Police Station accommodates five cells, four for male detainees and one for a female detainee. In 2017, the NPMD had recommended that the female cell be operational. This has been implemented. At present, the main
recommendation is that the ventilation system in the female cell blocks be improved by fixing an air extractor.

The NPMD has forwarded the above-mentioned recommendations to the Commissioner of Police and has requested him to inform the NPMD as and when the recommendations aiming of improving the treatment and conditions of detainees are implemented.

4.3 Southern Division

The NPMD visited the Southern Police Stations, at Rivière des Anguilles, Rose-Belle, Grand-Bois, Chemin Grenier, L’escaier, Camp Diable and Bel Ombre. Several recommendations were made in regard to the infrastructure of the cells. They included the installations of additional extractors in the cell corridors, of additional neon lights in the existing fittings, fresh coats of paint, amongst others.

As far as Camp Diable police station is concerned, the NPMD recommended that the police station be shifted to a new building, since same was being rented. The NPMD was informed that the police station will be shifted to a new building. The NPMD made a follow-up and was informed that the new police station has already been constructed.

The NPMD requested the closure of L’escalier police station, in as much as it was unfit for detention. During a visit in 2018, the NPMD noted that the cells were not operational and that five places had already been spotted for the construction of a new police station at L’escalier.
4.4 Western Division

In 2018, the NPMD conducted the visits in the Western Division and noted the implementation of the previous recommendations made in 2017. These included for instance, Bambous police station, where the Police Technical Unit has repaired the water pump and made new electrical installations.

Additional extractors and lightings have also been installed at Rivière Noire and Coromandel Police Stations.

On this note, the Division highlights Rule 13 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which stipulates:

“All accommodation provided for the use of prisoners...shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.

The NPMD also intervened for Rose-Hill police station. During a recent visit, the NPMD noted significant issues which should be dealt with expeditiously. These included, amongst others, the broken padlocks of the cells, as a result of which, both detainees and police officers were at risk. Leakage from the water tank also required urgent action as this was leading to visible patches of discoloration on the walls and was causing musty smells in the cells. Overcrowding was also another problem faced by Rose-Hill police station.

Recommendations were sent to the police authorities and the NPMD requested further collaboration in improving the conditions of detention. The NPMD was informed
by the Police Technical Unit that the required improvements will be made in the coming months, in order to improve the state of Rose-Hill Police Station.

4.5 Central Division

The National Preventive Mechanism Division conducted visits in the police stations of the Central Division. The NPMD took note of the previous recommendations made in 2017, which have been successfully implemented. These include the recommendations at Midlands and Curepipe Police Stations for the installations of bulbs in the existing light fittings, so as to provide adequate light in the cells and cell corridors.

The recommendations made by the Division in 2017 at Vacoas Police Station have also been implemented; for instance, to change the water pipes in the shower units and to use a fresh coat of anti-moisture paint in the shower units and toilets.

4.6 Eastern Division

Recommendations were made by the Division in 2017 to eliminate any ligature points in the cells, washrooms and to any other access points for detainees. During a visit at Bel Air Police Station in 2018, the NPMD took note of the shower head and water pipes which are of Polyvinyl Chloride (PVC) thus, preventing any risk or attempt to suicide from detainees.

Some recommendations in the Eastern Division remain pending, such as to provide toilets of ‘European’ style which will benefit detainees suffering from disabilities and the provision of extractors for the circulation of adequate air. Such recommendations are closely monitored by the Division through visits effected on a regular basis.
5. **MASKING EXERCISE**

Closed Circuit Television Surveillance (CCTV) system is being implemented in a phased manner in all police cells and detention centres following a Government policy decision in 2016.

However, camera surveillance of the cells, bathrooms and toilets in places of detention may give rise to issues concerning the right to privacy of the detainee.

The NPMD believes that limitations to the right to privacy of the detainee albeit for security reasons should nonetheless respect human dignity.

**Relevant statutory provisions/legislations in this context include the following:**

- **Article 9 of the Mauritian Constitution is entitled “Protection of privacy of home and other property”** and Article 9(1) provides that:
  
  “Except with his own consent no person shall be subject to the search of his own person or his property or the entry by others on his premises”.

  There is no express reference to right to privacy of the individual in our Constitution but same is subject to the interpretation of the Supreme Court which can choose to adopt either a restrictive or more generous approach on the matter.

  International instruments such as Article 12 the Universal Declaration of Human Rights 1948 and article 8 of the European Convention on Human Rights make a more specific reference to an individual’s right to privacy.
• Article 12 of the Universal Declaration of Human Rights 1948 states that:
  “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

• Article 8 of the European Convention on Human Rights reads as follows:

  Right to respect for private and family life -

  “1. Everyone has the right to respect for his private and family life, his home and his correspondence.’

  2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.”

In the case of Szafrański v. Poland, the European Court of Human Rights found that the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy to the applicant (detainee) and therefore had violated Article 8 where the Applicant had to use a toilet in the presence of other inmates and was thus deprived of a basic level of privacy in everyday life.
No specific reference is made to cameral surveillance but still the same reasoning can be extrapolated to filming of the detainee i.e. being subjected to other people’s scrutiny namely police officers, whilst using the commodities.

Right to privacy is guaranteed by Article 22 *Chapitre troisième* of the Mauritian Civil Code which reads as follows:

“Du respect de la vie privée
22. Chacun a droit au respect de sa vie privée.

Les juridictions compétentes peuvent, sans préjudice de la réparation du dommage subi, prescrire toutes mesures, telles que séquestre, saisie et autres, propres à empêcher ou faire cesser une atteinte à l’intimité de la vie privée”.

The Civil Code makes specific reference to “respect de sa vie privée” and “l’intimité de la vie privée”.

Therefore, exposing a detainee’s private body parts in a camera footage would amount to a direct interference with or flouting of his right to privacy and “respect de la vie privée”.

In addition, the viewing of a detainee using bathroom and toilet facilities would amount to cruel, inhuman and degrading treatment.

Since CCTV surveillance in places of detention would constitute a serious threat to detainees’ right to privacy as well as amount to cruel, inhuman and degrading treatment, the NPMD has been diligent to react by adopting a novel and proactive approach on that issue.
NPMD teams consisting of members and investigators have visited the CCTV monitoring rooms of each police station and detention centres in order to carry out masking exercises of the cameras showing specifically images of the bathrooms and toilets. This masking exercise consists in drawing fixed black spots on the camera image in order to hide male and female private body parts whilst they are using bathroom and toilet facilities. Emphasis has to be laid on the fact that the NPMD has had to strike a balance between security of the detainee himself, law enforcement and privacy of the individual whilst determining the position and extent of the masking.

This masking exercise has been possible with the prompt and efficient collaboration of the Commissioner of Police and the Technical Unit in charge of CCTV operation.
Masking exercise of CCTV Surveillance has been carried out in the following places of detention:

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<td>2</td>
<td>05.09.18</td>
<td>Flacq Police Station</td>
</tr>
<tr>
<td>3</td>
<td>05.11.18</td>
<td>Metropolitan Detention Centre</td>
</tr>
<tr>
<td>4</td>
<td>05.11.18</td>
<td>La Tour Koenig Police Station</td>
</tr>
<tr>
<td>5</td>
<td>06.11.18</td>
<td>Trou D’eau Douce Police Station</td>
</tr>
<tr>
<td>6</td>
<td>09.11.18</td>
<td>Vacoas Detention Centre</td>
</tr>
<tr>
<td>7</td>
<td>14.11.18</td>
<td>Pointe aux Cannoniers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Not been able to carry out masking exercise for security reasons)</td>
</tr>
<tr>
<td>8</td>
<td>14.11.18</td>
<td>Trou aux Biches Police Station</td>
</tr>
<tr>
<td>9</td>
<td>16.11.18</td>
<td>Rivière des Anguilles Police Station</td>
</tr>
<tr>
<td>10</td>
<td>16.11.18</td>
<td>Airport Police Station</td>
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</tbody>
</table>

An issue arose at Pointe aux Cannoniers Police Station where NPMD was not able to carry out the said masking exercise due to the awkward positioning of the camera and monitoring screen of the CCTV Surveillance. A letter has been sent to the Commissioner of Police in order to resolve the matter.

CCTV masking exercise has not yet been conducted in all police cells and detention centres of the island. The NPMD is following up on the matter so as to continue safeguarding male and female detainees’ right to privacy and protecting them from cruel, inhuman and degrading treatment.
6. REHABILITATION YOUTH CENTRES (RYC) AND CORRECTIONAL YOUTH CENTRES (CYC)

Although both institutions fall under the purview of the NPMD as far as treatment is concerned, it is important to distinguish the two population groups. While one group is entrusted to the State through the RYC upon the oath of the parent in front of the court that the child is beyond control, the other is sent to CYC after committing an offence. Consequently, the content of the program during the detention should bear a difference.

6.1. Rehabilitation Youth Centres (Boys and Girls)

As far back as 2011, during the review for the Periodic Report for the Convention on the Rights of the Child, it was recommended that “the State Party abolish the possibility for parents to place a child in an institution on the basis of an oath before a juvenile court. The Committee also recommends that the State Party provide families who have difficulties in the upbringing of children with necessary support and counselling services”. The issue of “child beyond control” is clearly a behavioural one and as such would be rehabilitated more effectively within the family setting. This would also reinforce the parents’ capacity to face challenges linked to adolescence and puberty which is a growing concern.

During the visits at the RYC Boys and Girls, the team noted that inmates were deprived of educational facilities. The right to education is stipulated in Article 28 of the United Nations Convention on the Rights of the Children (UNHCR). Under the Education Act, education is compulsory for all children up to the age of 16. Since February 2018, the Division has in several correspondence recommended that
appropriate academic classes be set up and the appointment of relevant staff to all the inmates.

There is no secondary level education for the inmates at the RYC. Thus, they are unable to take part in the national examinations of Grade 9.

The recruitment of secondary teachers should be considered urgently by the Ministry of Education. Most of the children have extreme academic difficulties. They should be given the necessary and similar educational facilities as other children in the society, so as to allow them to find a job after their discharge. Juvenile detention, be it at the RYC or at the CYC, interrupts young people’s education. Once incarcerated, children have a hard time returning to school.

Many boys at the RYC are illiterate. Some do not even know how to write their names. The detention facility should provide an educational program which meets the needs of each juvenile based on his or her age, level of ability, previous educational experience and interest.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 Dec 1990), makes specific reference to the rehabilitation of juveniles in detention centres. Article 12 stipulates that the deprivation of liberty should be effected in conditions and circumstances which ensure respect for human rights and juveniles. Indeed, the inmates should be guaranteed the benefit of meaningful activities and programs, which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility, thus encouraging those attitudes and skills that will assist them in adopting their potential as members of the society.
Upon an enquiry at the RYC and CYC (Girls), the Division found out that there was a lack of adequate sanitation. The girls may lack the materials and privacy needed to manage their menstruation. More attention should be paid to those girls who do not receive any visits and have to rely upon donations from individuals or NGOs to replenish their underwear. The NPMD talked to the administration of both institutions and necessary action was taken thereafter.

It should be noted that the atmosphere at the RYC, particularly at the girls’ section has improved during the past few years when there were frequent unrests. This is due to the reduction in the average number of inmates from 25 to 15 and to the support of NGOs to bring in vocational training, sports and family support in collaboration with Government and private institutions.

The process of sentencing for the inmates of RYC is criticised in as much as, Section 18 of the Juvenile Offenders Act 1935 provides that the Court may order that an uncontrollable juvenile be detained in the relevant institution until he or she attains the age of 18. Indeed, the Division has seen such cases at the RYC, whereby the children have been detained at the age of 14 or 15 years and are still in the same institution till they reach 18 years old.

In such situation, if the parents wish to get back their child, they need to consult the probation officer who upon reliable reasons, will report same to the Magistrate. The parents will need to apply to the Magistrate, who will reassess the case and will give his or her consent or not. If such option fails, the parents need to apply to the Commission for the Prerogative of Mercy, as per Section 24 of the Juvenile Offenders Act. The Division points out such practice, which only delays the release of the child and causes more deterioration to his or her education. Instead, there should be a review process,
which allows the Magistrate to consider a case to case basis after each six months. Such assessment will allow an earlier release of the child.

6.2. **Correctional Youth Centres (Boys and Girls)**

Upon a visit at the CYC (Boys) in April 2018, the NPMD highlighted the deplorable state of the detention centre. The Division noticed that Hall A of the CYC Boys consisted of four urinals and washrooms, which were dirty, there was no lighting system and a lack of ventilation. The second Hall, namely Hall N was in a much better condition. It is essential to improve the conditions of confinement, so as to ensure that the small number of youths who still require secure detention be treated safely, legally and humanely.

The Division found that there are no CCTV cameras at the CYC Boys and Girls and has made recommendations on several occasions for the installation of CCTV cameras at the CYC Boys and Girls.

7. **Brown Sequard Mental Health Care Centre (BSMHCC)**

In 2018, the National Preventive Mechanism Division visited the BSMHCC. The wards are in appropriate condition for the patients and it was noticed that hygiene was well maintained. The NPMD recommended installation of CCTV cameras in the wards. Frequent inspection by the staff is mandatory, but not as effective as a permanent monitoring through the cameras.

Following the recommendations made by the NPMD, the team was later informed that action was being initiated for the provision of CCTV cameras at the Brown Sequard Mental Health Care Centre (BSMHCC).
After visiting the isolation rooms in the wards, including the high security wards, the NPMD recommended that the isolation rooms should have padded floor which will reduce the risks if a patient falls or slips, considering the fact that once placed in the isolation room, a patient becomes very disturbed and violent. In the same vein, the team recommended that the foam on the walls of the isolation rooms should be thicker and uniform, with no cracks or open seams.

8. **TALKS AT CITIZENS ADVICE BUREAU (CAB)**

Talks were conducted by the team of the National Preventive Mechanism Division (NPMD) of the National Human Rights Commission (NHRC) at 35 CABs around the island, with the aim to sensitise the public on the role and functions of the NPMD.
CHAPTER V
POLICE COMPLAINTS DIVISION

The Police Complaints Division (PCD) was one of the three Divisions of the National Human Rights Commission until May 2018. With the setting up of the Independent Police Complaints Commission (IPCC) under the IPCC Act all complaints pending before the PCD were transferred to the IPCC.

Statistics are as at Annex

1. THE STRIP AND SEARCH CASE

The PCD had to deal with a major case where a suspect was subjected to strip and search. Its Report and Findings were as follows:

A. Introduction

Following the complaint of Mr DG made on 29th January 2018 at Curepipe police station about police brutality, the Police Complaints Division of the National Human Rights Commission carried out an investigation pursuant to section 4 (a) of the Police Complaints Act 2012 which stipulates:-

“To investigate any complaint by any person, or on his behalf, against any act, conduct or omission of a police officer in the performance of his duty.”

The aims of this independent investigation into this serious complaint against the police are namely:

• To provide an unbiased outlook on the circumstances surrounding the incident;
• To establish if there has been any misconduct on the part of the police; and
To make recommendations, so as to prevent such incidents from recurring.

The Police Complaints Division analysed the relevant extracts of the occurrence and diary books of the different police units namely those of Terre Rouge, Eau Coulée and Curepipe CID as well as Moka and Curepipe police stations, the statements of all police officers involved, the statements of Mr DG and those of his witnesses, the visiting books, the layout, the photographs and the medical reports.

The Police Complaints Division interviewed about 16 witnesses including police officers of CID Terre Rouge and CID Curepipe, the police officers in charge, Mr DG, Mr PG and the witnesses as well as the doctors who examined him. The interviews were conducted from 7th February 2018 until the 22nd February 2018 and were vital for the investigation process. It is relevant to note that Me G, the first Counsel of Mr DG did not attend the Police Complaints Division for a hearing on 9th February 2018 though he was duly called.

B. Undisputed Facts

On Friday 26th January 2018 at about 03.00 in virtue of a search warrant no 57/17, a search was carried out at the residence of Mr DG, who was thereafter arrested. At 6.19 he and his brother Mr PG were taken to CID Curepipe and at 7.41 they were brought to CID Terre Rouge where they were interrogated. At 17.45 they were picked up from Moka Police station by CID Curepipe officers to be taken to CID Curepipe for further inquiry. On their way, Mr DG and PG were handcuffed and seated at the back of the Nissan car RM 05.

At about 18.30 they were brought to the first floor of the Curepipe CID building. Mr PG and Mr DG were then sent to different rooms for interrogation. In the interrogation room, Mr DG, who was handcuffed and footcuffed, was strip-searched by
CID Curepipe officers. At 19.28 when he had put on his clothes, he had an interview with his lawyer. Upon the instructions of SP F, he was detained in Curepipe police cell.

On 27th January 2018 he appeared before the Bail and Remand Court of Port-Louis where Me G withdrew as counsel for Mr DG as he could be a potential witness for the defence.

On 28th January 2018 at Jawaharlal Nehru hospital at 00.53, Dr RB examined Mr DG who complained of pain.

On 29th January 2018 Mr DG was brought to Curepipe District Court where he was remanded to cell until 2nd February 2018.

On 30th January 2018 at Brown Sequard Hospital (BSH) at 17.05, Dr RS, the psychiatrist examined Mr DG as he complained of being depressed and having suicidal tendencies. He was admitted at Brown Sequard hospital and got discharged on the 2nd February 2018.

On 2nd February, Mr DG appeared before the Curepipe District Court where he was released unconditionally.

C. Analysis

Following the complaint made by Mr DG on 29th January 2018, the Police Complaints Division is called upon to investigate into these two issues: Police brutality and strip-search.

D. Police Brutality

Before analysing the evidence in hand, it is apposite to define police brutality.
Police brutality is the abuse of authority through the unwarranted infliction of excessive force by police officers while performing their duties.

Police officers play a central role in the law enforcement system community. They hold a unique position in society, with powers to interfere in the lives of the public, and responsibilities to act independently to uphold the law and not to break it. For police officers to assault a citizen and/or a detainee, it is an inexcusable misconduct.

Article 4(2) of our Constitution allows the use of justifiable force to effect lawful arrest or to prevent escape of a person lawfully detained and to suppress riot. The law authorises the police to use proportionate force to effect the arrest of a person.

To determine whether Mr DG has suffered from police brutality, the Police Complaints Division has examined the events chronologically as per the entries of the diary books, the medical reports, the statements of Mr DG, Mr PG and of his witnesses, as well as the statements of the police officers.

Diary books and medical reports

It is relevant to indicate that the undisputed evidence on record reveals that the entries in the diary books as per Annex A, made no mention of marks of violence since Mr DG’s arrest on 26th January 2018 until his release on 2nd February 2018. It is to be stressed that Mr DG made an official complaint on 29th January 2018 at 00.22, even though the alleged beating took place on the 26th January 2018.

On 27th January 2018 at 15.40 when he was brought back from the Bail and Remand Court, Mr DG stated that he was having a fair treatment as per DB entry no. 26 of Eau Coulée CID.
It is to be highlighted that on 27\textsuperscript{th} January 2018 at 23.12 as per DB entry no. 181, the five counsels informed police that their client Mr DG “is feeling pain in his ears and head” but no reference was made as to the causes of such pain. There is no nexus between his pain and the alleged police assault.

Medical reports

Dr RB who examined Mr DG on the 28\textsuperscript{th} January at 00.53 at Jawaharlall Nehru Hospital, Rose Belle stated that he found no mark of injury on him and that Mr DG appeared normal. Mr DG did not deem it fit to show his right ribs to the doctor and to mention the alleged use of an electric torch taser by CID officers.

On 30\textsuperscript{th} January 2018 at 17.20, Dr RS examined Mr DG at Brown Sequard hospital, since the latter complained of being depressed and having suicidal tendencies.

Statements of Mr DG and Mr PG

Mr DG gave three contradictory statements namely on the 27\textsuperscript{th} January 2018, 28\textsuperscript{th} January 2018 and 22\textsuperscript{nd} February 2018. In the first statement which he gave after the alleged beating and before he attended the Bail and Remand Court he did not mention the ill-treatment he suffered at the hands of the CID officers. He was also at variance with the three statements regarding the room he met his lawyer, on the intervention of a police officer to stop beating him, on the number of times he was seen naked by DWPI N, and on the way he was made to drink an excessive amount of water.

Mr PG gave two inconsistent statements, namely on the issue of his presence and the time when Mr DG was stripped searched, about the number of CID officers present
in the room when they were interrogated, and the place where he was when he heard Mr DG screaming. He is not a truthful witness the more so, when he wanted us to believe that he did not know Mr YL, who is in fact the cousin of his sister-in-law. Furthermore, he did not question Mr DG about the alleged beating which had just taken place when he saw the latter coming from the enquiry room on his way to Curepipe police cell.

In addition, Mr DG’s version does not corroborate that of Mr PG concerning the time the strip-search was carried out and the presence of DWPI N as soon as they were brought into the interrogation room. Her presence cannot be substantiated because according to written evidence, DB entry no 57 indicates that DWPI N only reached the station at 19.15 and DB entry no. 45, she was out of office since 17.08. Her absence at that time was even confirmed by DPS J who had to brief her of the strip-search upon her return and by DPC S, who did not see her at the CID Office.

**Statements of Mrs RG and Mrs MP**

There are sufficient indications to show that Mrs RG and Mrs MP are not telling the truth concerning the assault. Though they were within the premises of CID Curepipe whilst Mr DG and Mr PG were on the first floor, Mrs MP averred that she heard someone shouting from upstairs, ‘zot p batter’, she implored a police officer who was downstairs to stop the beating, whereas Mrs RG heard her husband shouting, “ayo, pa batter”. Yet, they did not report the alleged beating to Me G, who was present at that time at the CID office and to whom they talked. Instead, Mrs MP thought that it was fit to mention the assault to a police officer. As for Mrs RG, she stated that just after the alleged beating, her husband was limping on his way to the police cell due to a past medical intervention on his foot, and did not refer to any police violence.

**Findings**
Due to the various inconsistencies in the statements of Mr DG and those of his witnesses, we cannot attach due weight to their statements. We were not impressed with their versions relating to police brutality, which are most implausible.

As for the police officers, we found that they were straightforward, confident and plausible witnesses as they gave a consistent version. They deposed in a cogent and coherent manner, and came across as witnesses of truth. We find no reason to doubt their versions which are a true account of what has happened.

We are of the opinion that the versions of the police officers are more straightforward and truthful in the teeth of Mr DG’s incoherent version and those of his witnesses.

We also find that there was no evidence at all to show that violence had been inflicted by any police officer on Mr DG. It is to be highlighted that all the entries in the diary books as per Annex A indicate no marks of violence on Mr DG. As for the medical reports, Dr RB and Dr RS make no mention of any injury.

It is relevant to note that Me G who on the 27th January 2018 stated at the Bail and Remand Court that he had “real evidence about Mr DG being ill-treated and tortured”, chose not to attend the Police Complaints Division though duly requested and thereby did not give any evidence about “the real evidence”.

In the light of the above, we conclude that at no time did the police officers exert any brutality on Mr DG between the time of his arrest and that of his release.
E. Strip-Search

E1 What is ‘strip-search’?

The term ‘strip-search’ means a search in which a detainee removes all his garments. Strip-search is one of the three different types of body search, which cover also pat or frisk searches and body-cavity searches.

This type of inspection is highly invasive and is usually carried out by police officers to prevent smuggling of drugs, weapons or other contraband. There should be factors that would give rise to a suspicion that the detainee possessed/concealed contraband.

Owing to its intrusive nature, body search is an infringement of a person’s privacy and should therefore only be resorted to and when strictly necessary and in a manner that respects the detainee’s dignity. All types of bodily search can be intimidating and degrading and the more intrusive the method, the stronger the feeling of invasion will be.

Source: Penal Reform International Body searches

E2 What are the main standards?

Strip-search can be humiliating as it involves the exposure of the intimate part of the body.

As a general rule, cruel, inhuman or degrading treatment is prohibited in our Constitution.

Section 7 of the Constitution of Mauritius provides that no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.
It is crucial that a detainee be treated fairly at the police station.

*Both the Constitution and the Judges’ Rules* refer to a number of rights which the detainee is entitled to namely the reasons for his arrest and detention, the right to consult a legal representative of his own choice and his right to silence amongst others.

**E3 Did the strip-search take place?**

It is appropriate here to mention that in his second statement, Mr DG mentioned that he was strip-searched at the first floor of CID Curepipe on two occasions, that is, in the morning of 26th January 2018 about 4.30 whereby he was naked for thirty minutes in the presence of ten police officers and, in the evening between 18.30 to 19.28.

From the outset, we do not believe that the first strip-search took place, because he did not identify any of these ten police officers who were present, and his version is not corroborated at all by any independent witness. Furthermore, Mr DG could not have stayed thirty minutes naked because Mr PG maintained that it was only after five to ten minutes that Mr DG was brought down into the car to be then escorted to CID Terre Rouge. It is to be underlined that Mr DG never related that strip search to Mr PG who was present at the CID Curepipe at that time and who spent the whole day with him. Mr PG even added that there was no incident to report that morning.

However, it remains undisputed that the second strip-search in the evening did take place as DPC R and DPC A have acknowledged in their statements of 27th January 2018, that they were the ones who carried out the strip-search of Mr DG under the instructions of DPS J at CID office on the 26th January 2018.
They related consistently about the details of the search. They averred that they had to uncuff Mr DG’s hands and feet at least four times during the whole procedure, and that Mr DG indeed remained naked whilst handcuffed and footcuffed. They narrated that while DPC R was examining thoroughly Mr DG’s three pieces of clothing namely his T shirt, his boxer and his short, they heard a noise emanating from the main enquiry door and did not notice anything disturbing.

DPS J on his part confirmed that he gave such instructions for the search to be conducted and that he himself even pulled all the curtains to ensure privacy. The police officers stressed on the fact that Mr DG gave “an informed consent” to such a search.

They justified the strip-search upon Mr DG at that time because they had taken him over from a different investigative unit, that is CID Terre Rouge, and that he may have concealed incriminating items, including weapons, or he may bear injuries.

**E4 Was the strip-search carried out in privacy?**

The inevitable consequence of a strip-search is the serious infringement of one’s privacy and personal dignity.

Privacy is one of the most important factors to consider when selecting an interrogation area and/or an area for strip-search. Suspects should feel they can confide in the police officer, and that they have a right to privacy in a law enforcement room.

At this juncture, it is relevant to describe the physical layout of the interrogation room where the alleged strip-search took place.

On the 12th and 22nd February 2018, we had the opportunity of visiting the locus in question, whose relevance merits comments.
(a) **Location of the interrogation room**

The main interrogation room is found on the first floor of the CID Curepipe building. To gain access to this room, one has to go to the rear of the old building and climb a staircase. At the end of the staircase, there is a door on the left which leads to the three enquiry rooms while the right hand side leads directly to the administrative rooms.

On the door found on the left, there are two warning notices affixed in English: ‘**NO ADMITTANCE W/O AUTHORISATION, KNOCK AND WAIT**’ and ‘**Strictly no admittance, NO ENTRY**’. Once opened, there is a corridor which leads to an open inquiry room which is found between two smaller enquiry rooms which have doors.

A store which is under lock and key, is used to keep exhibits and is found in the main enquiry room.

It is most appropriate to note that, as confirmed by the police officers at the time of the strip-search, the said left door was not under lock and key and the locking apparatus most commonly known as “targette” which is inside, was out of order.

Therefore, it is obvious that at that moment anyone would have been able to access the enquiry room and thereby having a direct view over what is happening. So being, we observe that unauthorised and unnecessary access to that room could have been ensured just by locking the left door.

(b) **Description of the room**

From the corridor, the main enquiry room has two windows with curtains on its right hand side which give onto the public road whilst on the left hand side, there is a window and a door which gives on to a small balcony, equipped with two sinks. It must
be highlighted that the very presence of doors and windows decrease the desired sense of privacy even if two of the windows are covered with curtains.

The room contains three large office tables, four chairs, a wooden bench and a blue plastic chair. It is obvious that the place, occupied by the wooden bench can be seen the very moment one opens the main door.

The room looks spacious but not conducive at all for interrogation as far as the panel walls, the doors and windows, the lighting and the furniture are concerned. From our observation, this room does not suggest an environment of privacy at all.

(c) Noise

It is obvious that the whole building is not soundproof since all the rooms are interconnected and are separated only by wooden panels and open ceilings which do not reduce the echo. The doors and the windows of the interrogation room were not acoustic. The rooms are not insulated and most conversations can be heard. In addition, whatever noise made in the enquiry room can be heard by the personnel of the administrative block.

According to the evidence on record, it is clear that Mr DG did not have the minimum privacy as the access door of the enquiry room was not even under lock and key and the “targette” which was inside was broken. The room is not insulated and therefore not sound proof. In addition, the strip-search could have been observed by a third party.

E5 Findings

A strip-search no doubt affects a person’s dignity. It is a very intrusive search and thus, a higher degree of justification is required in order to support the high degree of
interference with the freedom and dignity of a person. The onus is on the police to justify such strip-search.

We are of the opinion that the strip-search of Mr DG has no ‘raison d’être’, and that the police officers have failed in justifying such strip-search for the following reasons:

- It would have been sufficient to carry out a pat or frisk search on Mr DG, a suspect of larceny, instead of the intrusive and humiliating strip search. There is no indication that there was a “Pat down” search on Mr DG.
- Mr DG had been arrested over a warrant for larceny breaking and subjected to a strip-search even though there is nothing about his case which would lead police to believe that he had anything dangerous or prohibited on his person.
- The strip search should be incidental to the arrest. If the police officers had reasonable cause to carry out the strip-search, Mr DG should be strip-searched in the very morning upon his arrest on the 26th January 2018 and not later in the evening, as has been the case.
- Again it would have been more logical if the Curepipe CID officers conducted the strip-search at Moka police station at the time when they took him over from a different investigative unit. There again, the need did not arise as the diary book entry indicates that he bore no injuries at that moment.
- DPC R and DPC A could not have been independent in their findings regarding the strip-search as Mr DG had always been in their custody. They took him at the Moka police station where it is noted that he had no mark
of violence, travelled with him in the same car and took him directly the first floor of CID office for the strip-search. If they had direct evidence as per injuries on his body, they would not have revealed same as they were themselves to be blamed because Mr DG had always been in their custody.

• The decision for a strip-search to be conducted upon Mr DG emanated from only one person, DPS J who did not give any plausible justification for the search.

**What about the Standing Orders?**

Under section 6 of the Police Act 1974, standing orders are issued and they are instructions and administrative directions governing the Mauritius Police Force and they must be strictly complied with by all police officers. These standing orders are intended to standardise procedures in the way members of the Force discharge their functions.

*Chapter 12 of the standing orders of the Mauritius Police force, 133 Detainees and accused parties 11 Care and treatment of detainees stipulates that: “27. Police are not to strip a detainee unless s/he so requests to show his or her injuries. In case s/he bears any injury a declaration will be recorded and a PF 58 issued”.*

• There is no record of any request from Mr DG to strip him regarding his injuries.

• *Chapter XI1 of police standing orders under section 133 sub section 1 safe custody of detainees.*
Subsection 4 stipulates “Before a detainee is committed to cell, she must be asked to remove all of her properties and then thoroughly searched in privacy....”

- Mr DG was not yet committed to cell at the time the strip-search was conducted. It is to be underlined that on 26th January 2018, Mr DG was strip-searched at Curepipe CID between the time he was brought to CID Curepipe office and the time he met his lawyer, Me G and it was only at 20.02 that SP F instructed that he would be detained at Curepipe police cell.

What about The Mauritian law?

The Mauritian law allows for body search in certain specific cases for instance.

Under the Police Act, where the police suspects that a person has unlawfully in his possession any dangerous drug or any property obtained by means of an offence or any article used or likely to be used in the commission of an offence, a police officer not below the rank of Assistant Superintendent can call upon a Government medical officer, or other medical practitioner, to make such examination of the person of an alleged offence as the circumstances of the case require.

Under the Dangerous Drugs Act, where the Magistrate is satisfied by information on oath from a police officer not below the rank of superintendent of police that a person is reasonably suspected of having concealed any dangerous drug inside his body, he may make an order for that person to be submitted to such medical examination including x-ray or other tests as may be necessary to detect the substance and such medical treatment as may be considered appropriate in the circumstances.
Under the Dangerous Drugs Act, any police officer or customs officer may at the point of entry into Mauritius carry out body searches and searches of luggage if he has reason to suspect that the person seeking to enter Mauritius may be involved in the commission of an offence under the Act.

It should be noted here that the body search upon Mr DG does not fall under any of the specific laws as mentioned above since he was arrested in relation to a case of larceny.

F. Conclusion

Police Brutality

After having examined all the relevant evidences including the statements of Mr DG and of all the witnesses, the diary book entries, the medical reports of Drs RB and RS as well as the layout of the interrogation room, we have duly applied our mind as to the circumstances of the complaint, and we are of the considered view that at no time there has been any police brutality exerted on Mr DG.

Strip Search

From the evidence on record, we find that the strip-search conducted on Mr DG was not carried in a reasonable way but rather in a very humiliating manner as there was infringement to his privacy and dignity.

Mr DG remained naked for an unnecessary length of time in an unlocked room whilst being handcuffed and footcuffed.

We find that the police officers did not take reasonable care to protect Mr DG’s right to privacy since they did not carry out the search as quickly as reasonably practicable because they had time to uncuff both his hands and feet at least four times
and to stop the exercise of checking his clothes to find if the access door of the main enquiry room was being opened and closed.

We find also that the use of footcuffs must be humiliating, the more so, when Mr DG was naked.

The rationale of using footcuffs is in cases where there is a serious and evident danger to the detainee or to police officers, and/or to prevent running and effective physical resistance. The police justified the use of footcuffs upon Mr DG four times when he was naked because the latter was violent and hitting the table. If ever the police is to be believed that he was violent at that time, this would constitute adequate objective grounds for handcuffing only. To be footcuffed whilst being naked is not justified as Mr DG could not have run away at that time.

Furthermore, if Mr DG was violent, he should not have been uncuffed at both hands and feet when he was visited by his lawyer, Me G, just after the strip search.

In view of the above, we are of the opinion that the police officers conducted a strip-search upon Mr DG in a most humiliating manner, that is disrespectful of the inherent human dignity and privacy of the person. Though being a pre-trial detainee, he should have been treated with humanity and dignity.

In the light of all the foregoing reasons, the Police Complaints Division find that DPC R, DPC A and DPS J had conducted upon Mr DG, a search in an excessive and humiliating manner. The three CID police officers, as mentioned above failed to correctly follow the standing orders of the Mauritius Police Force as stated below:

(1) **Breach of standing orders**
First schedule

Discipline the code

Any police officer commits an offence against discipline if he is guilty of:

(1) **Discreditable conduct if he acts:**

(iii) any manner reasonably likely to bring discredit on the reputation of the Force, or causes any injury to the DFSC in any way.

We find that DPC R and DPC A are in breach of the above standing order as they conducted the strip-search in a most humiliating and degrading manner.

DPS J is also in breach as he gave instructions to conduct the strip search and did not ensure if the strip-search was conducted in a reasonable manner.

(2) **Breach of standing orders**

First schedule

Discipline code

Any police officer who commits an offence against discipline if he is guilty of (4) **neglect of duty** if he(viii) omits to make any necessary entry in any official book or document

Furthermore, we also find that DPS J is in breach of the above standing order as he did not insert the necessary entries in the diary book, the time and the details of the strip-search and who were the officers present at that time.

Disciplinary proceedings

Pursuant to section 14 (1) (b) (ii) of the Police Complaints Act 2012, the Police Complaints Division refers the matter to the Disciplined Forces Service Commission
with a recommendation that disciplinary proceedings be taken against the police officers namely DPC R, DPC A and DPS J.

G. Recommendations

One of the functions of the Police Complaints Division as per the Police Complaints Act 2012 is “to advise on ways in which police misconduct may be addressed and eliminated”. They are as follows:

**Standing orders**

- The standing orders should include circumstances under which a strip search can be carried out and authorised by whom. There must be a register where the officer-in-charge records the time and the details of the strip including the names of the persons present, and any details of anything seized from him. In addition, there must be a comprehensive written policy and accompanying procedures governing body searches.

- As per section 133 subsection 4 in Chapter X11 of the standing orders, ‘thorough’ in “thorough search” has to be defined and in what circumstances it can be carried out.

- The standing orders should mention clearly in what circumstances a person can be handcuffed because Chapter 12 of the standing orders - section 13 only stipulates “Detainees will normally be handcuffed when not in cell”.

- The standing orders should mention when footcuffs can be used.

- A secured place should be identified for the safe keeping of handcuffs and footcuffs and a register to record their use.

- All necessary actions taken by the police should imperatively be inserted in the diary book.
• All entries for night visits at police stations and/or posts between midnight and 06.00 a.m. must be recorded in red and this must be complied with.

**Body Search**
• Body search should be carried out within the parameters of the law and should respect human rights.
• Statutory rules should be provided as to how, why and when body search should be effected.
• To mitigate the humiliation of nudity, strip-search can be carried out in two distinct steps known as a top and tail, which means that the detainee strips the top half of his body and is searched. The detainee puts back his clothing and the same process is repeated for the lower half of his body. It can also be conducted in a less overt manner as part of an intake process, for example, a mandatory shower with a change of clothes.
• The police may have recourse to a dog sniffer if they have reasonable grounds to suspect that a detainee has illegal drugs in his possession.
• Whenever there is a body search on a detainee who is transferred to a different investigative unit, this must be communicated to the transfeeree.

**Interrogation Room**
• A properly set-up room for interrogation purposes only is to be envisaged. It has to be private and sound proof.
• All interviews should be monitored by video cameras.

**Training**
• There should be more training to police officers on ways to provide better care to suspects and/or detainees.
• Police officers must be trained and knowledgeable on the issue of body search in order to avoid abuses.
• Safety training to be an integral element in the use of handcuffs, footcuffs and other equipment used for self-defence.

2. PACE FOR MAURITIUS

The authorities are still contemplating the introduction of a Police and Criminal Justice Bill to codify police practices in relation to arrest and search on the model of Police and Criminal Evidence Act (PACE) in the United Kingdom and the related Codes of Practice.

Access to a Lawyer, a Doctor (if necessary) and communication with relatives are essential to protect the rights of a suspect. Powers of arrest should only be exercised when there is a strong suspicion or enough evidence that an offence has been committed. The use and abuse of the provisional charge by the police in Mauritius has often been criticised. The suspect must be made aware of the reasons for his arrest. A new law will also require more frequent reviews of detention. This would speed up police enquiries and hopefully decrease the number of suspects remanded to jail by the Court while enquiries are pending (a practice which considerably increases the prisons population at any one time). In the UK there is more recourse to community orders than to short prison sentences which may have an adverse effect on convicted persons. More clarification is needed on the right to silence which has been done away with in the United Kingdom.
The role of the custody Officer has to be well defined under the proposed Police and Criminal Justice Legislation. Although the Custody Officer may be a Senior Police Officer his role is to protect the rights of a suspect (who benefits from the presumption of innocence under the Constitution) while the Enquiring Officers investigate. Thus the recording of interviews of a suspect is an essential part of an investigation. The immediate provision of legal aid to suspects who cannot afford a lawyer may pose a problem in Mauritius. In the UK such legal aid is readily available at all police stations.

The powers of search by the police will also be regulated by the new law. In certain cases the search warrant is not shown to the occupiers of premises before a search is carried out.

The new law is expected to improve relations between the police and the public. Police investigations will be carried out in all transparency and members of the public will have more regard for the police if their rights are respected.
CHAPTER VI

RODRIGUES

1. INTRODUCTION

The Office of the Chief Commissioner in Rodrigues has provided a member of staff to receive complaints regarding violations of human rights in Rodrigues. No complaint was received regarding violations of rights under Chapter II of the Constitution. Complaints against the Police are now dealt with by the Independent Police Complaints Commission.

The Office of the Island Chief Executive is contemplating the creation of a public counter, a ‘one stop shop’ for all issues. The trained officers would record the request and channel it to the relevant institutions like the National Human Rights Commission, the Independent Police Complaints Commission, the Ombudsperson for Children, the Ombudsman and the Independent Commission Against Corruption.

The local administration links with the population through the 100 village committees that are grouped under the umbrella Rodrigues Council of Social Services. The RCSS meeting takes place 3 to 4 times in a month and a decision is taken as to the prioritizing of projects. The decision is then communicated through the “Chef de Villages” to implement the projects. There exists a mechanism for local democracy and administration that streams through Villages Committees and “Chef de Villages”.

2. PLACES OF DETENTION

2.1 Prison

In 2018, the NPMD visited places of detention, the hospital and various other institutions in Rodrigues. During the NPMD’s visit, it was noted that most of the institutions’ infrastructure have improved significantly since 2017. The NPMD has recommended regular maintenance of various facilities with the aim of improving the treatment and condition of detainees.

During the NPMD’s visit to Pointe La Gueule Prison in Rodrigues, the NPMD found there were 26 inmates in detention (24 male and 2 female) and the maximum capacity of the facility ranged from 30 to 35 detainees.

The NPMD noticed that the construction of a new separate building on the prison compound was almost completed and soon all the detainees would be transferred there. The actual building would be converted into a big workshop to propose vocational courses reinforcing the rehabilitation programme for convicted persons. The new block would be able to hold 54 detainees and would be opened by February 2019. It would also have two towers. Convicted detainees will be kept separately from remand detainees in the new block.

Recidivism (reoffending) in Rodrigues stood at around 17% and most of the detainees in Rodrigues Prison were undergoing short sentences.
Detainees in the prison were involved in the following activities: - gardening, playing football and farming such as poultry, egg laying and pig rearing. The prison was self-sufficient in vegetables, pork, chicken and eggs.

Most of the job opportunities in Rodrigues are within government sector. The mandatory production of a certificate of character has been a constraint to rehabilitation and reinsertion of ex-detainees within society. The number of remand cases was relatively low. Concerning food, there was a diet plan for detainees that catered for their special dietary requirements. Male and female detainees have their own association yard each where they can watch TV, play carom, dominoes and read the newspaper.

Overall, the NPMD observed that the conditions of detention were satisfactory. The NPMD recommended the provision of fans in Rodrigues Prison to improve the condition of detention during summer.

2.2 Rehabilitation Youth Centre

The Rehabilitation Youth Centre for Boys consists of a fresh new building nested on the hillside. The place was very calm and peaceful for a maximum occupancy of nine boys and has more of the characteristics of a house rather than a centre for children in conflict with law.

The NPMD noted the professionalism of the staff of RYC in Rodrigues in carrying out their duties. A computer training room had been installed and the Commission for
Education regularly sends technicians to teach the children in RYC. The facility is equipped with CCTV cameras. The main objective of the RYC was to provide training to the boys so that they can find a job on their release. Part of the premises initially identified for vocational training was to be converted to a RYC girls section.

2.3 Police Cells in Rodrigues

There are three police stations in Rodrigues equipped with police cells. They are Plaine Corail Police Station, Riviè re Coco Police Station and La Ferme Police Station.

Plaine Corail Police Station

There are 10 cells in the station, which include an integrated bathroom and toilet. However, none of the cells was operational because water and sewage system have not been functioning properly. The NPMD recommended that the necessary should be done.

Riviè re Coco Police Station

The cellblock and the other areas in Riviè re Coco Police Station had plumbing issues. The NPMD was informed that Senior Police Policers and the Police Technical Unit had visited the station to evaluate the current situation.

One of the main technical problems was the change from galvanized pipes to PVC pipes. However the latter could not stand the pressure from the water pump used for water distribution, around the building. The NPMD noted that the water pipes were
encased in the walls, making it difficult for maintenance works to be carried out. The NPMD has recommended that the issues be resolved as a matter of urgency.

**La Ferme Police Station**

The cells were reserved exclusively for juvenile offenders. There was a dormitory for the juveniles and the structure was in a relatively good condition. The NPMD recommended that the cells be more children friendly by adding a TV set.

According to the Chief of Police in Rodrigues, strong pressure was exerted by the civil society upon defaulters and the small ‘close-knit’ community strengthen the working relationship with Police. Cannabis was the main drug used by drug addicts. Alcoholism was a serious issue in Rodrigues and often the cause for removal of children from their families.

**2.4 The Shelter**

The Shelter ‘Marie Reine de La Croix’ in Baladirou was opened in 2004 and was run by nuns. The shelter held 14 children. The ideal situation would be the return of the children into their respective families. The Child Development Unit in Rodrigues recently recruited eleven social workers who would carry out field duties associated with the Child Development Unit (CDU).

**2.5 The Magistrate**

The Magistrate in Rodrigues at Port Mathurin Court has the additional jurisdiction to hear and dispose of any case referred to under Section 112 (d) and (f) of the Courts Act which in Mauritius, would upon a reference by the Director of Public Prosecutions,
be cognizable by the Intermediate Court. According to statistics, property offences are
the most common in Rodrigues. Mediation and conciliation play an important role within
the judicial system and are carried out on a case-to-case basis.
CHAPTER VII

NHRC PROJECT WITH THE EUROPEAN UNION

‘Promotion of Respect for Human Rights in Mauritius and Rodrigues’

As part of its External Actions to promote democracy and respect for human rights in developing countries, the European Union (EU) has granted funds over a period of three years to the National Human Rights Commission of Mauritius to finance the implementation of the Project entitled ‘Promotion of Respect for Human Rights in Mauritius and Rodrigues’.

The Project aims to educate and raise awareness amongst different sections of the Mauritian population on their human rights and on respect for human rights, thus contributing towards the prevention of human rights violations and abuse in the country. In this regard, various activities were organised in 2018, notably seminars, workshops, talks, lectures and forum debates. From March to December 2018, the NHRC organized 110 awareness activities with varied target groups. Some 4797 individuals have benefitted from these sessions. Tables with detailed lists of all the activities held in 2018 as well the number of participants for each session are annexed (Annex XIa - XId).

The Project has reinforced the NHRC’s mandate to promote human rights under the Protection of Human Rights Act 1998 by providing it with the resources to reach out to a larger public, including youth, students, public officers, media, law enforcement officers, NGOs as well as vulnerable groups such as women, elderly persons and persons with disabilities.
1. TALKS

Two Resource Persons were recruited under this Project to deliver talks on human rights in Women Empowerment Centres, Social Welfare Centres, Secondary Schools, Youth Centres, Elderly Day Care Centres and Citizens Advice Bureaus across the island. The collaboration of relevant Ministries and institutions was enlisted to this end. The sessions were tailored to the particular needs of the audience. Thus, in addition to general information on human rights legislation and institutions in Mauritius, they focused on human rights issues pertinent to the specific audience and the relevant legal framework in place for their protection.

Below is a description of the different talks delivered by the Resource Persons in 2018. Where relevant, observations and suggestions made by participants on social and legal human rights issues that raise much concern are included. These may be taken into consideration by relevant actors when devising policies and actions to address these issues.

<table>
<thead>
<tr>
<th>No.</th>
<th>Talks conducted in 2018</th>
<th>No of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Women Empowerment Centres</td>
<td>1100</td>
</tr>
<tr>
<td>2.</td>
<td>Citizen Advice Bureaus</td>
<td>563</td>
</tr>
<tr>
<td>3.</td>
<td>Secondary Schools</td>
<td>1175</td>
</tr>
<tr>
<td>4.</td>
<td>Youth Centres</td>
<td>423</td>
</tr>
<tr>
<td>5.</td>
<td>Elderly Day Care Centres</td>
<td>520</td>
</tr>
<tr>
<td></td>
<td><strong>Total Number of Participants:</strong></td>
<td><strong>3781</strong></td>
</tr>
</tbody>
</table>
National Women Council

From 21 March 2018 to 11 December 2018, with the collaboration of the National Women Council, the Resource Persons delivered 31 informative sessions on women’s rights in different Women Empowerment Centres, Social Welfare Centres and Community Centres across the island. The participants were women across all age groups.

These sessions emphasized the equal rights of girls and women in different spheres such as education, political representation and the right to vote, in employment and perhaps more importantly, at home. Resource Persons explained key provisions of the Employment Rights Act 2008 which ensure equal remuneration for equal work, protect employees from harassment at work and provide for benefits such as maternity and paternity leaves. Provisions from the Mauritian Civil Code on marriage, the duties resulting therefrom and on divorce were also explained. A major part of these sessions also focused on issues which affect the female gender, namely sexual harassment, sexual and reproductive health rights and services in Mauritius as well as sexual and domestic violence.

With regard to domestic violence, participants were sensitized on the different forms violence takes. They also received information on the work carried out by the Police Family Protection Unit (PFPU) under the Mauritius Police Force and the protection provided by the Protection from Domestic Violence Act 1997. At the outset it became apparent that there is a lack of knowledge on the existence and purpose of Protection, Occupation, Tenancy and Ancillary Orders which a victim of domestic violence may apply for.
Observations and Suggestions from participants

With regards to sexual and reproductive health rights, many participants have suggested that pre-marital counselling is essential to both a happy marital life and family planning and that it should be a prerequisite for all newly-wed couples in order to prevent unwanted pregnancies, sexual and domestic abuse as well as breakdown of marriages and at the same time to reduce the divorce rate in the country.

Moreover, many parents agreed on the importance of having sex education in schools, particularly since many felt uncomfortable to address sexuality and related issues such as use of contraception or sexually transmitted diseases at home with their children.

(ii) Citizens Advice Bureaus (CAB)

The NHRC regularly conducts awareness sessions on human rights and the work of its two divisions in CAB offices in collaboration with the National Development Unit under the aegis of Prime Minister's Office. During these sessions, the Resource Persons addressed the rights of vulnerable groups in the country, notably people living with disabilities, women, children and elderly persons. They also laid emphasis on existing legal provisions and other measures to protect people from different forms of discrimination, abuse and domestic violence.

Observations and Suggestions from participants

Participants regularly suggested that access to information on where to seek relevant assistance and advice should become easier with a user friendly approach and that all statistics, reports and information pertaining to different ministries, and human rights institutions should be grouped under one same portal.
(iii) **Secondary Schools**

The Resource Persons also delivered informative sessions in Private and State Secondary Schools in collaboration with the Ministry of Education and Human Resources, Tertiary Education and Scientific Research. From March to August 2018, 1175 students across all grades were educated on their rights as set out in the United Nations Convention on the Rights of the Child and relevant national legislation such as the Child Protection Act.

The sessions covered, inter alia, compulsory and equal access to education for all children up to the age of 16, freedom of expression and its limitations, child labour, protection from negligence and different forms of abuse including domestic violence, corporal punishment and cyber bullying, the issue of street children, and substance abuse.

Children were also informed about their responsibilities and the need to respect the rights of others, in particular the rights of vulnerable groups such as the elderly and people with disabilities. The importance of behaving responsibly at school and in public spaces such as bus stations and public transport as well as on social media was also stressed.

Following sessions where students raised questions with regards to formal emotional and psychological support available, the Resource Persons informed them about the National Education Counselling Service, which is a free and confidential service provided by the Ministry of Education and Human Resources, Tertiary Education and Scientific Research to students, and emphasized the significance of this Service in protecting and fulfilling their right to health and adequate health services.
(iv) **Youth Centres**

The NHRC held ten informative sessions in different youth centres across the island in collaboration with the Ministry of Youth and Sports. A total of 423 youths - 198 boys and 225 girls - between the age of 14 and 20 years participated in these sessions. The Resource Persons addressed social issues pertinent to young persons and the different legal provisions for their protection and empowerment, notably: equal access to education, teenage pregnancies, sexual and reproductive health, youth unemployment, training opportunities to enhance employability, as well as sexual orientation and the rights of LGBTI persons.

An issue of particular concern which transpired through these talks is that many young persons remain unaware of the legal age to get married and of the fact that it is a criminal offence to engage in sexual relations with persons under 16 even if there is consent. Furthermore, there exist many preconceived ideas on the notion of ‘LGBTI’ and a significant lack of knowledge and understanding on the difference between gender and sexual orientation as well as gender differences and the definition of different sexual orientations.

(v) **Elderly Day Care Centres**

The Elderly Persons Protection Unit under the Ministry of Social Security, National Solidarity and Environment and Sustainable Development, facilitated sensitization sessions with elderly persons in Elderly Day Care Centres, enabling the NHRC to reach a total of 520 elderly persons. The latter were sensitized on the legal framework for their protection from abuse and violence, with particular emphasis on the role of the Elderly Watch groups in different regions of the country and the PFPU. Resource Persons explained the amendments brought to the Protection from Domestic Violence Act 1997
which have extended the definition of a victim to “another person living under the same roof”, therefore including elderly persons.

Other themes addressed were health services for elderly persons, property rights, social benefits, rights of elderly persons living in residential care and protection from discrimination, particularly in accessing public transport. During sessions with the elderly, the Resource Persons explained the procedures to seek Legal Aid for those who cannot afford the services of a Counsel.

2. THEMATIC WORKSHOPS HELD UNDER THE EU-FUNDED PROJECT

The NHRC also organised thematic workshops and forum debates to generate wider discussion on pertinent human rights issues. Below is a summary of the activities held in 2018 and the contribution made by different Guest Speakers and Panellists on each occasion.

<table>
<thead>
<tr>
<th>No.</th>
<th>Workshops/Forum Debates held in 2018</th>
<th>Number of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>‘Human Rights and Children's Rights’ Workshop</td>
<td>115</td>
</tr>
<tr>
<td>2</td>
<td>Half-day Workshop in the context of the International Day for the Elimination of Violence Against Women</td>
<td>99</td>
</tr>
<tr>
<td>3</td>
<td>Forum debate on ‘Protecting and Promoting Human Rights for LGBTI Persons’</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td><strong>Total Number of Participants:</strong></td>
<td><strong>308</strong></td>
</tr>
</tbody>
</table>
(i) ‘Human Rights and Children’s Rights’ Workshop

On 21 June 2018, the NHRC held a half-day workshop under the chairmanship of the Chairperson of the NHRC on ‘Human Rights and Children’s Rights’ at the Renganaden Seeneevassen State Secondary School (Girls) with students of Grade 12 and Grade 13 in collaboration with the Ministry of Education and Human Resources, Tertiary Education and Scientific Research. Mrs Carla Osorio, Minister Counsellor from the EU Delegation to the Republic of Mauritius and Mrs Rita Venkatasawmy, the Ombudsperson for Children were present on the occasion.

Mrs Osorio highlighted the role of the EU in designing policies in line with the best interests of children and in ensuring that EU member states and partner countries respect international standards for protecting rights of children. She also emphasised the importance of empowering children through appropriate sensitisation programmes.

Mrs Venkatasawmy made an exposé on key issues affecting children’s rights in Mauritius and the work carried out by the Ombudsperson for Children’s Office to ensure that these rights are respected and protected by all stakeholders.

(ii) Half-day Workshop in the context of the International Day for the Elimination of Violence Against Women

On 28 November 2018, the NHRC and the Delegation of the EU to the Republic of Mauritius jointly organised a half-day workshop in the context of the International Day for the Elimination of Violence against Women, celebrated on the 25 November every year. The aim was to sensitise public officials as well as civil society on the varied forms
of violence against women namely discrimination, domestic violence, and street harassment.

The Guest Speaker, Hon. Fazila Jeewa-Daureeawoo, Vice Prime Minister and Minister of Local Government and Outer Islands and Minister of Gender Equality, Child Development and Family Welfare stressed the important role of men as caring partners in marital relationships and the Marriage Enrichment and Pre-Marital Counselling Programmes. She further highlighted the urgent need to initiate a Perpetrator Rehabilitation Programme at the level of the Ministry and to provide comprehensive Victim Support Services.

Mrs D. Beesoondoyal, Chairperson of the Independent Police Complaints Commission and Former Puisne Judge of the Supreme Court (Family Division) spoke on the legal framework for the protection of women in Mauritius and emphasised the significance of key legislation such as the Constitution, the Criminal Code and the Protection from Domestic Violence Act in protecting women’s rights.

Mr Khalid Tegally, Chairperson of the Equal Opportunities Commission described the role of the institution in addressing discrimination based on gender and sex, as well as sexual harassment.

Mr. Bruno Woomed, founder of Business Magic, talked on the effect of social and psychological conditioning and the influence of the patriarchal society and religion on men and women’s behaviour respectively. He spoke on the need to set up an Anger Management Programme.
Mrs Sylvia Rajiah, Police Inspector of the PFPU, described the services offered to victims of domestic violence across the ten PFPU units in the island, notably in-house counselling, conciliation and mediation at the reporting stage and the Reconstruction and Recovery Programme as follow-up after a court order is obtained.

Ms Diksha L. Beeharry, Barrister at the NHRC, elaborated on Street Harassment as a form of Gender-based violence. She pointed out that the perception that street harassment towards women is normal and acceptable is wrong and must change. In this regard, the NGO ‘Mafubo Mauritius’ has initiated the “Psst, Psst: Aret Harcel Mwa!” campaign to encourage women to speak about their own experience of street harassment on Facebook. Ms Beeharry highlighted the damaging effects of street harassment on victims and the pressing need to raise awareness and thus to curb this practice.

(iii) **Forum Debate on ‘Promoting and Protecting the Human Rights of LGBTI persons’**

On 13 December 2018, the NHRC in collaboration with the EU Delegation to the Republic in Mauritius organised a Forum Debate on ‘Promoting and Protecting the Human Rights of LGBTI Persons’ to raise awareness on the human rights of LGBTI persons and to protect them from all forms of discrimination. The Forum Debate provided the opportunity to discuss the challenges faced by LGBTI persons in the enjoyment of their rights and the solutions thereto. The event was opportune in light of the preliminary recommendations emanating from the Universal Periodic Review of Mauritius in November 2018, many of which are pertinent to the rights of LGBTI persons and the legal framework for their protection.
Five panellists participated in the Forum Debate which was moderated by the Chairman of the NHRC, notably: the Honourable Maneesh Gobin, Attorney General and Minister of Justice, Human Rights and Institutional Reforms; Mrs Marjaana Sall, Ambassador of the EU; Dr Conway Blake from the Equality and Justice Alliance of the United Kingdom; Dr. Lindsay Edouard, former Senior Reproductive Health Adviser at the United Nations Population Fund (UNFPA); and Mr Najeeb A. Fokeerbux, Founder and Advisory and Mentoring Council Member of Young Queer Alliance. Representatives from diplomatic missions, relevant Ministries, human rights institutions, NGOs as well as legal practitioners attended the event.

Mr Fokeerbux made a comprehensive presentation on sexual orientation and defined the terms ‘lesbian’, ‘gay’, ‘bisexual’, ‘transgender’ and ‘intersex’. Highlighting instances of discrimination and homophobic attitudes in Mauritius, he pointed out how these hinder LGBTI persons’ access to employment, accommodation and essential services such as health.

Mrs. Sall recalled that respect for human rights is one of the founding values of the EU and remains at the forefront in its external actions. She explained the EU’s efforts in combating all forms of discrimination based on sexual orientation and gender identity.

The Attorney General reflected on the landmark decision delivered by India’s Supreme Court in September 2018 which decriminalized gay sex and ruled that discrimination on the basis of sexual orientation is a human rights violation. He spoke of Section 250 of the Mauritian Criminal Code which criminalises sodomy and puts it on the same footing as bestiality. He also stressed the need to instill dialogue with civil society to address these issues and to devise relevant policies more effectively.
Dr. Blake described the work carried out by the Equality and Justice Alliance in addressing the structural causes of discrimination and violence against women and girls in Commonwealth countries to ensure their protection.

From a medical perspective, Dr Edouard shed light on the sexual and reproductive health of LGBTI persons and the challenges faced in devising health services for this group as well as in providing them access to these services.

3. EXTERNAL RESOURCE PERSONS

The EU-funded Project enables the NHRC to invite foreign experts to provide training on human rights and human rights law. In 2018, the NHRC called upon the following foreign experts:

(i) **Professor Ludovic Pierre Hennebel**

   - Professor of Law at Aix-en-Provence, Member of the Advisory Committee of the UN Human Rights Council, Director of the Institute for International Humanitarian Studies

Professor Ludovic Pierre Hennebel visited Mauritius in May 2018. He led seminars and gave lectures to different target groups, including legal practitioners, media, students, civil society, law enforcement officers, officers of the Independent Commission against Corruption and staff of human rights institutions on human rights related topics. These included inter alia international human rights law and the obligations incumbent upon states upon signature or ratification of international conventions; investigation of human rights violations and the right to remedy; case studies from the European Court of Human Rights, in particular with regards to discrimination based on gender, religion
and sexual orientation; media and the freedom of expression; the rights of barristers and magistrates; and the link between corruption and human rights.

The lectures enabled law practitioners and other stakeholders to gain a deeper insight into the international human rights system and the application of international norms and provisions in the domestic context. Media representatives benefitted from useful examples on freedom of press laws as well as discrimination and attacks faced by media in the European context.

(ii) Ms Karen Grayson and Ms Lynn Welsh
- Principal for Institutional Strategy and Head of Legal, respectively, of the UK Equality and Human Rights Commission (EHRC)

In November 2018, Ms Karen Grayson and Ms Lynn Welsh gave lectures to different stakeholders, notably law enforcement officers, officers from human rights institutions and relevant Ministries, students as well as members of civil society on the UK Equality Act 2010, the EHRC’s legal levers when investigating alleged human rights violations, discrimination based on sex and disability and relevant case studies, and the EHRC’s state of the nation report 2018 on Racial Equality.

Participants were able to get a comparative picture of equality and non-discrimination legislation and measures in Mauritius and in UK and benefitted from a useful insight into the enforcement powers and legal levers of the EHRC.
4. HUMAN RIGHTS BRACELET CAMPAIGN

In 2018, the EU launched a human rights bracelet campaign worldwide as a lead up to the celebration of Human Rights Day as well as to commemorate the 70th anniversary of the adoption of the Universal Declaration of Human Rights (UDHR) on the 10th December 2018. As part of the campaign, individuals were given human rights bracelets summarising the provisions of the UDHR and were encouraged to publicly support the universal values of the Declaration by posting their photos on social media with the hashtags #HumanRightsPower and #Standup4HumanRights. In this way, the EU sought to celebrate and reaffirm the universal values of the UDHR and to show its support to the UN human rights system, particularly at a time when respect for human rights appears to undergo a downward trend in many parts of the world.

To include Mauritius in this worldwide campaign and to show the country’s efforts in upholding the values of the UDHR, the EU Delegation to the Republic of Mauritius and the NHRC jointly launched the bracelet campaign in November 2018. Six different provisions of the UDHR were chosen and printed on bracelets in French, notably: ‘Libres et égaux en dignité et en droits’, ‘Droit à la vie’, ‘Protection contre la torture’, ‘Nul ne peut être arbitrairement arrêté, détenu ni exilé’, ‘Protection de la vie privée de toute personne’, ‘Liberté de pensée, de conscience et de religion’.

The NHRC distributed these bracelets to participants during workshops and talks given to sensitise people on the significance of human rights as well as of respect for human rights, and invited them to join the EU social media campaign to show their support for the values and provisions of the UDHR.
5. ACHIEVEMENTS AND THE WAY FORWARD

By enabling the NHRC to promote human rights on such a large scale, the EU-funded Project has helped to reinforce the NHRC’s mandate to promote human rights in Mauritius. In the process, the staff has been able to initiate and strengthen collaboration with key stakeholders.

The setting up of the Project was timely in light of the issues highlighted above. In fact while human rights violations and instances of violence and abuse continue to rise, there remains the need to inform the public across all spheres of life and professions on what their human rights are and the legal framework in place to assist them and to protect their rights. Through the various activities described in this section, the NHRC was able to contribute to reducing this gap.

Thematic events as well as sharing of expertise with external resource persons are planned for 2019 and 2020 to commemorate important international human rights days and to raise discussion and reflection on pertinent human rights issues.
1. **CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)**

   In its Concluding Observations on the fourth periodic report of Mauritius, the Committee against Torture proposed the following main recommendations amongst others:

   - **Protection from Torture, other Cruel, Inhuman or Degrading Treatment**
     
     The Committee stressed the need to fully domesticate the CAT within our national legislation and to amend the Criminal Code so as to avoid any excuse or justification on part of perpetrators of torture. Authorities should hold perpetrators accountable for their misdeeds and they should not be left to go scot-free.

     The sentence imposed ought to be proportional to the harm caused to the victim, for instance if the latter has endured aggravated harm such as permanent disability.

   - **Fundamental Safeguards during Detention**
     
     Detainees currently receive a doctor's visit upon request and in the presence of an officer, however this breaches their right to confidentiality and privacy. As such, officers can be present for security reasons but they should be out of hearing distance.

     Detainees enjoy the constitutional right of being tried within a reasonable time, albeit they are often remanded for up to three years or even more. To address this
issue, the Committee urged relevant authorities to fully justify their refusal for bail and to apply pre-trial detention as a last resort and in exceptional cases only.

Magistrates and law enforcement officers must be trained and encouraged in advocating and using alternative sentencing methods, notably non-custodial ones such as community service orders or probation orders.

• **Review of the Investigative Methods**

  The Committee underlined an over-zealousness of the police for investigation purposes, it is therefore recommended that all police stations be equipped with fully operational video and audio recordings so as to monitor interrogation methods and prevent coercive practices. Ultimately investigation should be undertaken in cases of extracted confession and officers should be held accountable and duly prosecuted.

• **Juvenile Justice**

  The Committee urged authorities to define the age of criminal responsibility in line with the international standards and to include same in the Juvenile Justice Bill and the draft Children's bill. It stressed the need to establish separate juvenile courts with specialized judges to prevent minors in conflict with the law from being jointly prosecuted in open courts with an adult co-accused.

• **Independence of National Human Rights Institutions**

  The difficulties encountered by the then Police Complaints Division under the NHRC must be taken into consideration when setting up the Independent Police
Complaints Commission (IPCC) to ensure that the IPCC is impartial both in carrying out investigations and while referring cases to prosecution.

- **Women Police Officers subject to Sexual Harassment**
  
  A number of sexual harassment cases have been reported by women police officers, however none has resulted in criminal charges. The complaint mechanism should thus be reviewed and investigation must be conducted to enquire on such blatant unfairness. Additional gender sensitive training must be held.

- **Manslaughter resulting from an Adultery**
  
  Adultery is still a permissible defence in cases where a spouse commits Manslaughter after witnessing an act of adultery (section 242, Criminal Code). The Committee hence urged authorities to revoke this provision.

2. **CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)**

   In 2018, the Committee on the Elimination of Racial Discrimination made the following key recommendations in its Concluding Observations on the periodic report of Mauritius:

   - **Discrimination based on Criminal Records, Race, Caste and Ethnic Origins**
     
     During the recruitment process, employers often request applicants for a Certificate of Character, which is an official document issued by the Office of the Director of Public Prosecutions clearly stating whether the person has previous
convictions recorded against him/her. Employers, at their own discretion, often disqualify applicants based on their previous conviction.

In this context, the Equal Opportunities Act (hereunder referred as the Act) has been amended to broaden the definition of discrimination to accommodate individuals who have been discriminated in the employment sector due to their criminal records. The Act now stipulates that an employer cannot discriminate against a person who “...has a criminal record which is irrelevant to the nature of the employment for which that person is being considered” and the burden of establishing the relevance of the criminal record to the nature of employment lies with the employer (Section 10).

Discriminatory practices based on race, caste, ethnic origins must be discontinued at all levels notably racial profiling by police officers when conducting unlawful checks, searches or during detention; through stigmatization or hate speeches on social media; and racist media coverage. There is a dire need to impose appropriate sanctions to hold officers accountable.

The Committee also observed that though there are many complaints the Equal Opportunities Commission refers only few cases to the Equal Opportunities Tribunal. Law enforcement officers and the judiciary should be trained to properly identify, record, investigate and prosecute these offences. To instill a sense of trust in the criminal justice system, the public at large must be made aware of judicial and non-judicial remedies.

- Language
Language is not included in the Equal Opportunities Act as a form of discrimination, consequently the Act should be amended.

The Committee stressed that Creole language must be conferred the status of national language which in turn will guarantee the social inclusion of individuals who only speak Creole.

- **Disaggregated data**
  The Committee regretted the lack of disaggregated data and statistics in terms of ethnicity when accessing facilities such as education, employment, housing, healthcare and politics. Authorities must henceforth ensure that ethnic minorities including Creoles and Chagossians are equally represented in the above spheres to foster a diverse and inclusive society.

  It recommended that national human rights institutions should produce statistical reports on complaints by specifying the ethnic origins of the complainant. Similarly, both the judicial and the penal system should disaggregate their statistics.

- **Migrant Workers**
  The working and living conditions of migrant workers remain inadequate and are characterised by excessive working hours, passport confiscation, underpayment of wages, substandard living conditions, and lack of defined work titles. As such authorities must intensify awareness-raising campaigns among migrant workers on their human rights and they must have access to effective remedies. Additionally, inspection activities must be reinforced.
• **Political Participation**

There must be an adequate representation of ethnic minorities in the government, parliament, judiciary and law enforcement agencies as a means to empower all segments of the population to make a contribution to development of the country.
3. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

In its Concluding Observations on the eighth periodic report of Mauritius, the Committee on CEDAW made the following major recommendations:

- **Discrimination on basis of Sex**

  There is a need to fully incorporate provisions on prohibition of direct and indirect discrimination within the national legislation and to ensure its implementation. In addition, a more comprehensive and inclusive definition of discrimination against women should be devised, on all grounds for both the public and private sectors. This definition should be included in the draft Gender Equality bill. Stakeholders must also conduct inclusive consultations with women representatives, notably among religious leaders before repealing discriminatory provisions.

  The Committee observed that women working in the private sector cannot seek constitutional redress in cases of discrimination. An amendment should be brought to Section 16 of the Constitution to include the private sector and encourage women working therein to report same.

  Alternatively, to address the lack of knowledge on women’s rights, the Committee urged stakeholders to sensitize the general public on the laws protecting women against discrimination and available remedies and complaint mechanisms. The Committee also emphasized the need to reinforce capacity-building for legal practitioners and judicial and law enforcement officials to better equip them in interpreting and applying CEDAW along with related national legislation during court proceedings.
• **Gender Based Violence (GBV)**

There is no explicit prohibition of marital rape in both the Criminal Code and the Protection from Domestic Violence Act. In this respect the CEDAW Committee advocated an amendment to fully criminalize marital rape. Furthermore, the Protection from Domestic Violence Act must be amended to broaden the definition of violence to include economic violence.

In order to enhance access to justice to all women and girls who are victims of GBV or discriminatory practices, a proper complaint mechanism with simplified procedures must be set up. To further encourage victims in reporting, authorities must ensure that reported cases are investigated, perpetrators are duly prosecuted, and victims are offered adequate compensation and effective protection under protection orders. Furthermore, victims must have access to Government-funded shelters and other support strategies.

Eventually, the Commission on the Prerogative of Mercy should only grant pardon to perpetrators of GBV after proper consultation of their records of previous convictions and other related reports.

• **Trafficking in Persons**

The CEDAW Committee noted that trafficking in persons is scarcely reported, investigated and prosecuted. There is a pressing need to establish an effective mechanism to ensure investigation and prosecution of traffickers, to enhance services
to identify victims and to offer adequate remedies - health care, access to shelters, counselling and compensations.

In order to prevent trafficking authorities must rely on regional cooperation through exchange of information with countries where women and girls are victims of trafficking.

• **Prostitution**

  Authorities must investigate the root causes of prostitution and adapt services accordingly by providing adequate health services like antiretroviral medicines to sex workers who are HIV positive so as to lead them towards exit programs.

• **Holistic approach to Education**

  The Committee recommended that sanitation facilities and sanitary pads be offered in schools. Additionally, there is need to address the lack of comprehensive sex education. The school curricula must include an age-appropriate and evidence-based education on both sexual and reproductive health covering aspects like inter alia responsible sexual behavior and menstruation.

  The Committee suggested the adoption of temporary special measures such as scholarships reserved for girls to encourage them to enroll in male-dominated fields namely technology, engineering and science.

• **Employment**
The equal pay for work of equal value policy is not being maintained specifically in the private sector. Consequently, authorities should conduct regular pay surveys and inspections.

The Committee suggested that the provision on maternity leave as stipulated in section 30 (3) of the Employment Rights Act must be amended so that all women can enjoy their paid maternity leave irrespective of whether they have completed 12 consecutive months in a specific employment. Furthermore, women must be protected against discriminatory practices to avoid termination of work due to pregnancy.

- **Teenage Pregnancies**

  To address the issue, authorities should render contraception methods accessible and affordable to teenagers. Alternatively, teenage mothers must be empowered in pursuing their studies for their social integration and authorities must also provide affordable child care services.

- **Right to Health**

  The Committee emphasized the necessity to fully decriminalize abortion as stipulated in the Criminal Code (Amendment) Act 2012 and to sensitize women and health care providers on access to legal abortion and post-abortion care. It highlighted the need to collect data on both legal and unsafe abortions.

  The medical personnel must be educated on ways to ensure specialized attention, care and specific services are delivered to women and girls who are victims of sexual violence as well as to lesbian, bisexual and transgender women and intersex persons.
• **Marriage**

The national legislation pertinent to marriage must be reviewed by rendering registration for all marriages mandatory, including Muslim marriages. In turn this will extend protection of women’s marital rights including property, inheritance and child custody. Furthermore, non-compliance with these measures must be sanctioned.

Alternatively, policy makers must redefine a child as "any person under the age of 18" in line with the Convention on the Rights of the Child and the provision of Section 145 of the Civil Code must be revised to prevent girls and boys under the age of 16 from getting married with parental consent and such marriage should be allowed in exceptional cases only.

• **Lesbian, Bisexual and Transgender Women and Intersex Persons**

More sensitization activities must be organized to protect the rights of lesbian, bisexual and transgender women and intersex persons and relevant legislative and policy measures must be adopted to eliminate discriminatory practices, stigmatization, hate speech and abuses.
4. **THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)**

In its Concluding observations on the fifth periodic report of Mauritius, the CESCR Committee made the following key recommendations:

- **Economic, Social and Cultural Rights**
  
  Economic, social and cultural rights are not enshrined within the Constitution. Furthermore, the National Human Rights Commission is not mandated to investigate violations thereof. The Committee recommended the Constitution be amended to enlarge the mandate of the NHRC to protect individuals whose economic, social or cultural rights are infringed.

  The Committee observed that the Creole population living in Mauritius and Rodrigues still encounter hardship in accessing services such as employment, adequate housing, healthcare and inclusive quality education. Consequently, authorities must ensure proper monitoring to these services so as all individuals can equally enjoy their economic, social and cultural rights and promote non-discrimination.

- **Anti-Discrimination**

  The Equal Opportunities Act is subject to limitations. The Committee recommended that the definition of discrimination as stipulated in Sections 2 and 19(2) must be more exhaustive to prohibit discrimination on basis of gender identity, social origin, and property amongst others, in all sectors.
- **Rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons**

  The Committee observed that LGBTI persons are not sufficiently protected as there are still discriminatory provisions notably section 250 of the Criminal Code which jointly criminalize sodomy and bestiality, hence rendering same sex relations illegal. There is urgent need to amend same.

  Same sex couples are not legally recognized, consequently it restricts their protection if there is a separation, illness or death of one partner.

- **Rights of Persons living with Disabilities**

  The Training and Employment of Disabled Persons Act provides for a 3 percent quota for persons living with disabilities in the employment sector. Nonetheless the Committee regretted that the provision is limited to the private sphere only. It must also be applicable in the public sector and authorities must ensure its enforcement.

- **Gender Equality**

  Despite the provision of equal pay for work of equal value, the gender pay gap is still prevalent mainly in the agricultural sector. There is also an unequal representation of women in decision making positions in the public sector. Similarly, the rate of women working in non-traditional fields is still low. The Committee recommended a revision of current laws, norms and practices to end both the gender pay gap and gender segregation. Practices like Work Appraisal can make employment free of gender bias.

  It is also observed that women are more likely to be unemployed than men. Initiatives promoting job training and vocational education, such as the Youth Employment Program and the Back to Work Program, must be reinforced along with
continuous learning opportunities. The Back to Work Program enables women above 35 years old to learn from training programs approved by the Mauritius Qualifications Authority with the Human Resource Development Council and find paid job placement in private enterprises. A maximum of Rs 7,500 is refunded to each woman for training cost, following which she receives a maximum monthly stipend of Rs 5,000 during a one-year placement.

- **Decent Working Conditions**
  
  The national minimum wage policy is still not fully enforced especially in export-oriented enterprises where workers receive a salary lower than the minimum wage. The Committee urged relevant authorities to conduct inspections to ensure that all workers across all sectors and industries benefit from the national minimum wage.

  Additionally, since there are innumerable complaints regarding working conditions proper complaint mechanisms must be set up. Authorities have the duty to investigate and apply sanctions where required.

  Migrant workers are still subject to poor working conditions. In order to address these human rights issues, authorities must intensity the protection of migrant workers by revamping the complaint mechanism, allowing them to have recourse to legal assistance and reviewing the regulatory framework for recruitment.

- **Social Security**
The Committee noted that non-nationals do not benefit from social aid and the contributory pension scheme. Furthermore, migrant workers cannot enroll in the national contributory pension scheme during the first two years of their contract. It is therefore recommended that the contributory pension scheme be extended to all workers, including migrant workers, the self-employed and non-nationals.

- **Elderly Abuse**

  The Committee laid stress on the high number of reported cases of elderly abuse, unregistered care homes and a lack of qualified carers. To tackle these issues, the Committee highlighted that authorities must intensify their efforts to combat elderly abuse by strengthening the enforcement of the Protection of Elderly Persons Act and the role of the Elderly Watch Management Committees to properly identify and address the root cause of such abuses. Oversight bodies must ensure the registration and monitoring of all care homes. Ultimately additional awareness-raising activities must be carried out.

- **Equitable Distribution of Family Responsibilities**

  Women still bear most of the burden of unpaid domestic and care work which impact on their employment and eventually their pension benefits. Men only have short paternity leave and they only benefit from such if they are married. The Committee urged for the introduction of shared parental leaves with a minimum period earmarked for fathers regardless of their marital status.

- **Right to Health**
There is a large number of persons infected with Hepatitis-C, particularly among persons who inject drugs (95 percent), while there is limited capacity to treat the patients due to the unaffordability of medicines. The Committee urged authorities to introduce treatment for Hepatitis-C and to conduct awareness-raising and outreach activities with drug users.

The Committee highlighted that over half of the prison population are drug offenders and that the minimum age to access harm reduction programs is 18 years. In this regard, harm reduction programs, substitution therapy and needle syringe programs must be intensified and made available for all drug users regardless of their age.

Furthermore, there is a high prevalence of mental health illnesses, an insufficient number of psychiatrists and other professional mental health care providers and social stigma against persons with mental health issues. Authorities must increase the availability, accessibility and quality of professional mental health-care services, including community-based services, and skilled personnel.
CHAPTER IX

OTHER IMPORTANT ISSUES

1. CANNABIS

On the 14th July 2015, the President of the Republic, in accordance with section 2(2) of the Commissions of Inquiry Act instituted a Commission of inquiry to inquire into and report on all aspects of drug trafficking in Mauritius.

The report was released in July 2018.

The report made a deep analysis on the issue of Cannabis, which is the number one drug in Mauritius in terms of its prevalence and quantity.

It is defined as a dangerous drug under the Dangerous Drugs Act. Generally, cannabis is grown and sold locally. According to the Anti-Drug Smuggling Unit (ADSU), one small packet of cannabis, commonly referred to as 'pouliah', which is about 300mg, is sold at Rs 200 to Rs 300 and one gram of cannabis can be sold at Rs600. One plant of cannabis of any height is valued at Rs 3000 and one seed is sold at Rs 100. Consumers purchased 'pouliah' while peddlers or those involved in dealing, purchased either in grams or kilograms. However, the street value of the cannabis depends on its availability and quality.
The Commission of Inquiry also analysed the pros and cons of the legalisation of cannabis and made the following observations:

1. There are no statistics available in the Republic of Mauritius on the numbers and general trends applicable to cannabis smokers.

2. It has been observed that sometimes cannabis consumption in Mauritius has a sociocultural and religious aspect. It is cross-cutting across social class, age and sex. It is noted that cannabis seems to have a certain appeal specially within the younger age groups inasmuch as the famous cannabis leaf proudly displayed by the young on caps or t-shirts as a symbol of various and sometimes even conflicting vindications such as freedom to do what one wishes with one's body, rebellion against prohibitions of dangerous drugs when other harmful drugs like cigarettes and alcohol are legally on the market, and the desire to lead a carefree life. But smoking of cannabis (known as gandia) for purely recreational purposes also concerns the older generations as there has been before the Commission depositions from people of varying age, background and social status.

3. Keeping that in mind, every country should have its own strategies in terms of the legalisation of cannabis. Half of states in the USA have legalised cannabis for certain medical uses with a majority favouring legalisation for recreational use. Uruguay has voted in favour of legalisation; Portugal has decriminalised it. An increasing number of countries have liberalised laws in relation to possession. Canada, the Netherlands and Israel have in place medical marijuana programmes.
4. There is a prevalence of new psychoactive substances or synthetic drugs on the Mauritian territory which have dire consequences on the health of the users. The user’s family and social life are also impacted. To counteract this emerging deadly type of drugs, there is maybe a valid argument for the legalisation of cannabis which has caused no recorded deaths caused or linked by an overdose of cannabis. Even more so, as cannabis is considered to be a “bio”drug which is not chemically engineered and has less harmful effects than synthetic drugs. It is argued that it might be wise to legalise the lesser evil drug to deter the use of synthetic drugs.

5. The Commission of Inquiry considered the health impacts of cannabis. As such it was observed that cannabis for recreational use and occasional intake has not been shown to cause brain damage, genetic damage or damage to the immune system. It can cause respiratory problems and cause short-term memory loss when the user is under the influence of the substance. It does not cause damaging health problems like tobacco and alcohol do such as liver damage, strong addiction, heart problems, birth defects etc. There is therefore a contention that lawful substances like tobacco and alcohol cause more harm than the illegal use of cannabis. However, the Commission has taken into account the report by the WHO which highlights the health problems that a prolonged abuse of cannabis can cause. The Commission has stated that the researches made internationally cannot reflect the Mauritian reality. There is a need to conduct an independent study on the national front to obtain a clear picture, in the light of which appropriate steps can be taken.
6. The economic implications of the illicit trade of cannabis were also taken into consideration. There is an important economic benefit from the trade of cannabis which is presently only benefitting traffickers. The Commission of Inquiry has suggested that the legalisation of the trade would stop the business of traffickers. The Government would be the one to regulate the trade, to give licenses to cannabis planters and set the standards for the THC concentrations. The economic burden to run prisons with a large population of minor drug related offenders is consequential. The proper regulation of the use of this drug by Government would help curtail this problem. In 2017, according to the statistics by the Mauritius Prisons Service, the number of convicted male offenders and female offenders related to drug offences are 282 and 8 which represents 7% and 6.25% of the total prison population respectively considering that about half of the prison’s population consists of people who are on remand mostly related to drug offences. The costs for maintaining detainees are quite high.

7. The Commission of Inquiry considered the fact that the legalisation of cannabis would send the wrong signals to the youth and society in general giving them the impression that the use of the drug is safe and there is no risk of dependency and abuse. There will likely be an increase in the consumption of cannabis after legalisation as it will be readily available. There is also a risk that the users of cannabis will then want to experiment with more dangerous drugs like heroin. The health implications will weigh on public funds as compared to the revenue which may be gained by its taxation in case the use of cannabis is legalised.
8. The Commission of Inquiry considered the need to authorise the use of cannabis for medicinal purposes. Some researchers have found that cannabis helps with certain medical conditions and symptoms. Other researchers have however remained sceptical as to its use.

Taking into account the above observations, the Commission of Inquiry recommended the following:

1. Drug addicts and individuals found to be smoking or in possession of a small amount of cannabis [to be quantified] should be sent to the Drug Offenders Administrative Panel (DOAP) to follow a programme instead of being dealt with by the Criminal Justice system. The Criminal Justice system should get involved only when there is a failure to complete the programme. The person should then be prosecuted.

2. Mauritius can take into consideration the best practices from overseas but must customise the solution to suit local needs and specificities. The Commission on Inquiry is of the view that Mauritius is not yet ready to adopt a final stand on the question of the legalisation of cannabis. The way forward would be to have a fair and frank national debate on the legalisation of cannabis. It would be essential to have accurate statistics which could be analysed and relied upon to make valid observations. The setting up of the National Drug Policy Commission (NDPC) would play a pivotal role in that respect.

3. A study should be conducted jointly with the Ministry of Health and Quality of Life and the Ministry of Industry, Commerce and Consumer Protection
together with local research institutions in collaboration with a foreign research laboratory of repute to:

(i) determine the properties and THC level of the locally grown cannabis;

(ii) determine if the local cannabis may be used for medicinal purposes;

(iii) determine whether the local cannabis is the variety which can be used as hemp for industrial purposes and whether the concentration of THC is relatively low so as not to have any psychoactive effect, taking into consideration the fact that the Dangerous Drugs Act already provides the granting of licence for the cultivation of cannabis for medical, scientific or teaching purposes.

As the WHO has not yet recognised and recommended the use of cannabis for medical use, in view of the absence of convincing and reliable research, medicinal cannabis remains an issue to be dealt with utmost caution.

NOTE: The authorities are conducting a relentless fight against drugs and have taken a stand against legalisation of the use of cannabis, asserting that the harm which may result will seriously outweigh whatever beneficial effects there may be.
2. **ILLEGAL STAY OF THE CONGOLESE NATIONALS**

Twelve persons from the Republic of Congo were arrested by the police in 2018. Nine of them were charged with the offence of “making a statement known to be false” contrary to Sections 5(a) and 13(1) of the Passports Act and the other three were charged for “giving false name for the purpose of obtaining an Identity Card” contrary to Section 9(1) (d) (3) of the National Identity Card Act. They all pleaded guilty to the chargers. The Congolese had pretended that their mothers were Mauritian citizens who gave birth to them in the Republic of Congo. They had used fake birth certificates and had obtained Mauritian passports.

On the 30 November 2018 they were all sentenced to 10-11 months of imprisonment. Some 250 days that they spent in custody on remand were deducted from the sentence. They were discharged from prison on the 01 December 2018. BB who was the mastermind of this conspiracy left Mauritius after completion of his sentence. The Passport and Immigration Office took charge of the Congolese after their release and they were arrested on a charge of being “prohibited immigrants” as they were illegally staying on the Mauritian territory. They were released on bail on 10 January 2019 by Court Order as an NGO had agreed to provide them with a fixed place of abode as requested by the Office of the United Nations High Commissioner for Refugees.

The Congolese averred that they had fled the Republic of Congo as their lives were in danger because of their political affiliation and stated that they were seeking political asylum.
Mauritius has not ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol thereto nor any other Convention relating to rights of refugees and asylum seekers. This fact has been criticized by UN Treaty bodies but Mauritius being a small island state lacks economic resources to be able to welcome refugees and asylum seekers.

According to the fundamental principle of “Non-Refoulement” in international law, a country receiving asylum seekers is prohibited from returning those seeking asylum to their country if they are likely to be in danger of persecution based on race, religion, nationality, membership of a particular social group or political opinion. Nevertheless there is a need for the seekers to come with clean hands and good faith when applying for refuge. In this case, the Congolese had made false statements in order to obtain Mauritian passports.

The matter is being considered by the authorities. There has been a change of regime after the recent Presidential elections in the Republic of Congo.
3. LGBT RIGHTS- JUDGMENT OF THE SUPREME COURT OF INDIA

LGBT rights are still a burning issue in the Mauritian society. Experts in Treaty Bodies have time and again criticized the provisions of Section 250 of the Criminal Code of Mauritius. Section 250(1) states that “Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years”. NGOs such as Collectif Arc-en-Ciel and Young Queer Alliance are militating for LGBT rights. The Mauritian society has become more aware of this contentious issue which impacts on the lives of many citizens. Most Mauritians contend that as long as LGBT persons restrict their way of life to the private sphere, they have no issues. The LGBT movement also faces opposition from most of the religious groups, condemning what they proclaim is against the order of nature and God’s will.

On the 06 September 2018, the Supreme Court of India delivered a judgment ‘scrapping’ Section 377 of the Indian Penal Code, a colonial-era law banning gay sex. The bench consisting of five judges unanimously gave concurrent judgments to end a ten yearlong battle for the recognition of the LGBT rights.

Autonomy and the consideration of individuality

The ex-Chief Justice of the Indian Supreme Court, Dipak Misra, wrote the following:

“Not for nothing, the great German thinker, Johann Wolfgang von Goethe, had said, — ‘I am what I am, so take me as I am’ and similarly, Arthur Schopenhauer had pronounced, — ‘No one can escape from their individuality’. In this regard, it is profitable to quote a few lines from John Stuart Mill:-
‘But society has now fairly got the better of individuality; and the danger which threatens human nature is not the excess, but the deficiency of personal impulses and preferences.’

The emphasis on the unique being of an individual is the salt of his/her life. Denial of self-expression is inviting death. Irreplaceability of individuality and identity is grant of respect to self. This realization is one’s signature and self-determined design. One defines oneself.”

That opening statement set the tone of the judgment putting the human being at the centre of the question. CJI Misra emphasized the concept that identity is pivot to one’s life, which enables a human being to live with honour and freedom. Such is embodied by the concept of constitutional recognition. He went further in recognising that the “ideals of individual autonomy and liberty, equality for all without equality for all sans discrimination of any kind, recognition of identity with dignity and privacy of human beings” make up the cardinal four corners of the Indian Constitution which is the basis of fundamental rights. Those rights were denied to the LGBT section of society, which suffered from social exclusion, identity seclusion and isolation from social mainstream.

He believed that unless and until each and every individual is liberated from such discrimination, Indian society cannot consider itself as a truly free society.

He went further in explaining the meaning of the natural identity of an individual and made a distinction between sex and gender. CJI Misra cited the NALSA case where Judge Radhakrishnan opined that a person’s sex is assigned at birth but a group of persons may be born with bodies embodying both or certain aspects of both male and female physiology.
Constitutional morality has been held supreme over social morality. The concept of constitutional morality urges the different organs of the State, including the Judiciary to preserve the heterogeneous nature of the society and stop any attempt of the majority to seize the rights and freedoms of a smaller section of society. It has been stated in the judgment that the:

“The veil of social morality cannot be used to violate fundamental rights of even a single individual, for the foundation of constitutional morality rests upon the recognition of diversity that pervades the society. Constitutional morality cannot be martyred at the altar of social morality and it is only constitutional morality that can be allowed to permeate into the Rule of Law.”

Such a concept being embedded in a Supreme Court judgment of the largest democracy in the World is of upmost significance for the rights of all human beings, especially those who feel marginalised by the society. Human rights are exactly about protecting those in need of its shield.

The Constitution as a living document

The judgment reinforced significant constitutional principles which are worth highlighting. The Constitution in the judgment is said to be “an organic and breathing document with senses which are very much alive to its surroundings, for it has been created in such a manner that it can adapt to the needs and developments taking place in the society”. The role of the constitutional courts is crucial in the evolution of this living document. The judiciary should, through its dynamic and purposive interpretative approach, ensure to “breathe life into the Constitution and not render the document a collection of mere dead letters”.
The judgment emphasised that the manifest ascendance of rights under the Constitution has engendered the doctrine of progressive realisation of rights whereby rights evolve with the evolution of society.

**Right to privacy, freedom of choice and discrimination**

According to the judgment, one is entitled to determine his/her own pattern of life. The central issue at stake is the non-recognition and denial of expression and of choice by a statutory penal provision which is Section 377 of the Indian Penal Code akin to Section 250 of the Criminal Code of Mauritius.

The focus of the Supreme Court was on the right to privacy in relation to Section 377 of the Indian Penal Code and other issues such as right to choice as part of the freedom of expression and sexual orientation. The judges stated that individual autonomy has a significant space within the compartment of privacy. Autonomy is an expression of self-determination which includes sexual orientation and declaration of sexual identity. The orientation or choice that reflects an individual’s autonomy is innate to that person and is part of his/her identity. The judgment states that:

“The said identity under the constitutional scheme does not accept any interference as long as its expression is not against decency or morality. And the morality that is conceived of under the Constitution is constitutional morality. Under the autonomy principle, the individual has sovereignty over his/her body. He/she can surrender his/her autonomy wilfully to another individual and their intimacy in privacy is a matter of their choice. Such concept of identity is not only sacred but is also in recognition of the quintessential facet of humanity in a person’s nature. The autonomy establishes identity and the said identity, in the ultimate eventuate,
becomes a part of dignity in an individual. This dignity is special to the man/woman who has a right to enjoy his/her life as per the constitutional norms and should not be allowed to wither and perish like a mushroom.”

A denial of same would be a denial of human rights to people, quoting, Nelson Mandela’s saying “to deny people their human rights is to challenge their very humanity”.

The judgment of the Supreme Court, in the contemporary world where even marriage is not equated to procreation of children, questioned whether homosexuality and carnal intercourse between consenting adults of opposite sex can be considered as “against the order of nature”. The Supreme Court considered that it is the freedom of choice of two consenting adults whether they want to get into a sexual relationship for procreation or otherwise. It is a question of choice and not against the order of nature.

Section 377 IPC in its present form resulted in an unwanted effect whereby even consensual sexual acts, which are neither harmful to children nor women, by the LGBT community have been targeted resulting in discrimination and unequal treatment. The Supreme Court upheld that any discrimination on the basis of one’s sexual orientation would amount to a violation of the fundamental right of freedom of expression.

**Conclusion**

The judgment is expected to have great impact on the Indian Society in various ways, especially in leading to a better acceptance and integration of the LGBT
community in India. The judgment of the Supreme Court made a deep philosophical, sociological, psychological and political evaluation of the LGBT issue and at the heart of it upheld the very essence of human rights, worth exploring.

In Mauritius, the society should have a frank conversation and stop being silent about this issue, as if it does not exist. The matter should be considered in light of basic human rights. Mauritius should engage in a study and research collecting data on the number of people in the LGBT community and the type of discrimination and violation of rights that they experience to really understand the problem.

The way forward would be to have a dispassionate debate on the rights of LGBT persons in order to have a society free of discrimination and marginalisation.

There is a need to repeal or amend section 250 of the Mauritian Criminal Code. Section 250 dating from the colonial era is outdated and in need of reform. The British Prime Minister, Theresa May has said that she “deeply regrets” Britain’s historical legacy of anti-gay laws across the Commonwealth as its 53 leaders gathered in London for their Annual Summit in April 2018.

She urged the Commonwealth nations to overhaul “outdated”, colonial-era legislation that treats more than 100 million lesbian, gay, bisexual and transgender people across the member countries as criminals.
4. STATELESSNESS

The Oxford Dictionary defines “identity” as “the fact of being who or what a person or thing is”. Identity refers to those attributes and qualities that enable us to recognize an individual or collective from others. Identity is attributed to one at birth starting with the birth registration where the birth certificate contains the name of the individual, the name of the parents if available and the place of birth. The individual thus has a legal identity and also has a claim to a nationality.

The NHRC has received various complaints from people who have never been declared at birth at the Civil Status Office. They have either used the birth certificate of another person or have no birth certificate at all.

Problems have arisen when the person whose birth certificate they have been using have died. As a consequence the person who is alive has also ceased to exist for the State. The person is therefore not eligible for any old age pension, bus pass and cannot engage into any administrative procedure. There are also cases of undeclared children who could not attend school or persons who could not get civilly married.

The right to identity is directly linked to the right to life. Without an identity, one cannot legally exist and therefore cannot have any human rights under the law. Statelessness typically leaves people unable to enjoy basic rights that most people take for granted, including the rights to go to school, get a regular job, open a bank account, vote, get married, and obtain a passport to be able to travel abroad.
The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the key international Conventions addressing statelessness. They are complemented by international human rights treaties and provisions relevant to the right to a nationality.

The 1954 Convention is designed to ensure that stateless people enjoy a minimum set of human rights. It establishes the legal definition of a stateless person as someone who is “not recognized as a national by any state under the operation of its law.” The 1961 Convention aims at preventing statelessness and reduce it over time. It establishes an international framework to ensure the right of every person to a nationality. It requires that states establish safeguards in their nationality laws to prevent statelessness at birth and later in life. Perhaps the most important provision of the Convention stipulates that children are to acquire the nationality of the country in which they are born if they do not acquire any other nationality. Mauritius is not party to the two Conventions.

In cases where the birth has not been declared at the Civil Status Office within the delay provided by law, an application for tardy declaration can be made to the District Court Magistrate. The matter is referred to the Ministère Public which gives its conclusions after a police enquiry. In case there are two persons with exactly the same name, an application needs to be made to the Supreme Court for determination after an enquiry is undertaken. As the ‘victims’ are often poor people they have to apply for legal aid. It is a lengthy procedure and until there is no final determination by the Court, the person remains without an identity.
The United Nations Convention on the Rights of the Child (CRC), ratified by Mauritius, provides that every child “shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents” (Article 7(1)). The implementation of this right applies “in particular where the child would otherwise be stateless” (Article 7(2)). More importantly, Article 3 of the CRC, applied in conjunction with Articles 7 and 8, requires that all actions concerning children, including in the area of nationality, be undertaken with the best interests of the child as a primary consideration.

As such, the establishment of proper regulations and procedures for birth registration can be considered a crucial component for safeguards against statelessness. In Mauritius, birth registrations are easily done in all the thirty-three Civil Status Offices found around the Island. Despite the legal and administrative framework in place, there are still a number of children who are not registered at birth. Most mothers in Mauritius follow medical treatment during their pregnancy in government hospitals. There is a need for a proper monitoring system involving the hospital, the police and other stakeholders to record the births of children and ensure that the new-born babies are registered within a short delay. The NHRC made recommendations in that sense (See chapter on Human Rights Division).

The issue is very complex when one of the two persons bearing the same name and born at the same time has died. The incumbent application to the Supreme Court for a determination can impose a long period of statelessness on a person. During that long period of time, that individual cannot enjoy his basic human rights. It is essential to find
an intermediate remedy that would give that person an identity so that that individual can exercise his or her rights until final determination by the Supreme Court.

5. THE FOURTH INDUSTRIAL REVOLUTION: ARTIFICIAL INTELLIGENCE AND BIG DATA: A HUMAN RIGHTS CHALLENGE?

A fourth industrial revolution is building on the third revolution in Information Technology. Billions of people are connected by mobile devices giving rise to an unlimited processing power, storage capabilities and knowledge access. Intelligent robots, self-driving cars, genetic editing, and neuro-technological brain enhancements are evidence of the change that is happening around us.

This amalgamation of technologies is blurring the lines between the physical, digital and biological spheres. It is disrupting every industry in the world. Businesses are operating in a different way by changing the models of production, consumption, transportation and delivery. Society is not left unperturbed by this change. An unprecedented shift is underway in the way we work, communicate and inform. At the same time, governments, institutions, systems of education, healthcare and transportation are following suit.

The fourth industrial revolution with its disruptive nature is challenging our way of life and incontestably, our rights.

Economic Rights

The fourth industrial revolution will have an important impact on the global economy in terms of employment and growth. In light of the speed with which industries
are using artificial intelligence, the fundamental question is the extent and the rate at which automation will substitute for labour. Workers will be forced out of employment and compelled to learn and adapt new set of skills for other jobs. This would pose a problem for low-skilled workers who would lose their jobs and not be capable of getting new skills required by the new industries using artificial intelligence and big data processing.

The impact of the fourth industrial revolution on the economy and business will contribute to the rise in inequality. As robots and algorithms will increasingly substitute capital for labour, while investing to build digital based businesses, the labour markets will demand a limited range of technical skill sets possessed by few players. The trends indicate that the winners would be those who are able to participate fully in innovation-driven ecosystems by providing new ideas, business models, products and services, rather than those who can offer only low-skilled labour or ordinary capital.

As Professor Klaus Schwab, founder and executive chairman of the World Economic Forum, in his book, the Fourth Industrial Revolution writes, “These dynamics are why technology is regarded as one of the main reasons incomes have stagnated, or even decreased, for a majority of the population in high-income countries. Today, the world is very unequal indeed.” According to Credit Suisse’s Global Wealth Report 2018, the lower half of the global population collectively owns less than 1% of global wealth, while the richest 10% of adults own 85% of all wealth and the top 1% account for almost half of all global assets.
Data protection and privacy issues

Every company is grappling with the data age. Big data and Artificial Intelligence (AI) are everywhere and are mainly about the collection of personal data. For example, the statistics of a fitness tracker generated from a run, the sensors we pass when walking into the local shopping centre, the social media postings we regularly make. AI requires a major amount of data whereby there is possibility that personally identifiable data are being collected. It is clear that the use of big data has implications for privacy, data protection and associated rights of individuals.

Satya Nadella, the CEO of Microsoft called for new global norms on privacy, data and Artificial Intelligence. In addition to being transparent, organizations will need to be more accountable for what they do with personal data. Tools such as encryption are also important for IT to maintain data privacy and security. IT departments should also have policies in place that make it clear to users what is permissible and not permissible data for IT to collect and what the business can do with it.

Conclusion

In writing about the AI Governance Challenge, an authority on the subject has said -

“Where does ownership of the AI sector and responsibility for it and its related technologies, actually lie? This question raises the fundamental issue of responsibility for AI, and whether it delivers enormous social progress or introduces a Kafkaesque system of data appropriation and manipulation.”
Mauritius aims at developing its technological sectors, with big data and artificial intelligence and a high tech service delivery to improve access. This would result in two principal dilemmas namely, the privacy concerns and intervention of the State in regulating the use of our personal data in the cyber world and the possible discriminatory use of big data. For example, the efficiency of predictive software relies on the quality of input data and a deficiency in same could cause false results and have societal implications. Mauritius would therefore be faced with the challenges of determining the scope and meaning of human rights in a digital age, and of developing regulatory and enforcement measures to monitor the positive and negative uses of technology and big data.
CHAPTER X

HUMAN RIGHTS EDUCATION AND PROMOTION

To fulfil its mandate under the Protection of Human Rights Act, the National Human Rights Commission conducts awareness raising campaigns on Human Rights throughout the year. Regular talks are delivered in Citizens Advice Bureaux, Social Welfare Centres and Women Empowerment Centres to inform the public at large about their rights and their obligation to respect the rights of other citizens. Members of the public put pertinent questions on several issues. For those who are more concerned about immediate problems in their locality like the state of the roads, lack of amenities or disputes with their neighbours, they are given information about the authorities to whom they should address their complaints. Others want to know more about the rights of detainees in prisons and about the rights of victims especially in cases of domestic violence. Talks are delivered in kreol, the vernacular language.

Talks to students and Police are delivered in English and French about the history of Human Rights, the Universal Declaration of Human Rights, Chapter II of the Constitution on Fundamental Rights, and about Children’s rights and responsibilities. As Police officers and Prisons officers already have a module on Human Rights in their Training Course, the NHRC delivers refresher talks to them on Human Rights, including the rights of suspects and victims and the primary duty of being of service to the public.

Trade Unions want to know more about workers’ rights. The NHRC contributes to inform their members about their rights. Some employers especially in textile factories are also keen in maintaining compliance with human rights norms to ensure their good
reputation when they do their marketing overseas. The NHRC has delivered lectures to the top management and middle management to inform them about the rights of workers, especially about the rights of migrant workers who may be a major part of their workforce.

Mauritius has an ageing population. Elderly persons also wish to be informed about their rights. The NHRC participates in this information campaign through workshops and meetings.

The NHRC also informs the public about the international obligations of Mauritius regarding the different Conventions on human rights and the work of the Treaty Bodies. Wherever applicable (especially in the case of lawyers and law students), emphasis is laid on the independence of the NHRC, the Paris Principles and the importance of National Human Rights Institutions acting as intermediaries between the Citizen and the State to protect Human Rights.
## HUMAN RIGHTS DIVISION
### JANUARY TO DECEMBER 2018

<table>
<thead>
<tr>
<th>SN</th>
<th>Categories</th>
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<td>Ministries and Government Departments</td>
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<td>2</td>
<td>Judiciary</td>
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<td>5</td>
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<td>3</td>
<td>Director of Public Prosecution</td>
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<td>3</td>
<td>3</td>
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<td>Parastatal Bodies</td>
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<td><strong>Total</strong></td>
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### NATIONAL PREVENTIVE MECHANISM DIVISION

**JANUARY TO DECEMBER 2018**

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<td>Hospitals</td>
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<td><strong>TOTAL</strong></td>
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<td><strong>85</strong></td>
<td><strong>76</strong></td>
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### NATURE OF COMPLAINTS JANUARY TO DECEMBER 2018

<table>
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<tr>
<td>Legal Issues</td>
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<tr>
<td>Petitions: 4 applications for reduction of sentence and 1 application for respite</td>
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<td>Miscellaneous</td>
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### POLICE COMPLAINTS DIVISION

#### 01 JANUARY TO 06 APRIL 2018

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<tr>
<th>SN</th>
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<td></td>
<td></td>
<td></td>
<td>1 to DFSC</td>
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<td></td>
<td></td>
<td></td>
<td>62 transferred to IPCC</td>
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<tr>
<td>2</td>
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<td>Service Delivery</td>
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<tr>
<td></td>
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<td>88 transferred to IPCC</td>
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<td>179</td>
<td>16 filed</td>
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<tr>
<td></td>
<td></td>
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<td>1 to DFSC</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>162 to IPCC</td>
</tr>
</tbody>
</table>

162 Cases sent to IPCC = 102 pending cases + 60 new cases (where investigation had not yet started)
The Committee against Torture considered the fourth periodic report of Mauritius (CAT/C/MUS/4) at its 1588th and 1591st meetings, held on 17 and 20 November 2017 (CAT/C/SR.1588 and 1591), and adopted the following concluding observations at its 1606th meeting, held on 30 November 2017.

A. Introduction

2. The Committee welcomes the submission of the State party’s fourth periodic report prepared on the basis of a list of issues prior to reporting drawn up by the Committee (CAT/C/MUS/QPR/4). It expresses its appreciation to the State party for having accepted the simplified reporting procedure, as this improves the cooperation between the State party and the Committee and gives focus to the examination of the report as well as the dialogue with the delegation.

3. The Committee welcomes the dialogue held with the State party’s delegation, as well as the responses provided to the questions and concerns raised during the consideration of the report. It also thanks the State party for the additional statistical data supplied that are relevant to the monitoring of the implementation of the Convention at the national level.

B. Positive aspects

4. The Committee welcomes the political commitment to legal, policy and institutional reforms laid out in the Government Programme 2015–2019 that will help improve compliance with the State party’s obligations under the Convention.


6. The Committee welcomes the adoption of, among others, the following legislative measures by the State party in areas of relevance to the Convention:

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* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).
(a) The Independent Police Complaints Commission Act, in 2016, which establishes the independent commission replacing the Police Complaints Division of the National Human Rights Commission;

(b) The Protection from Domestic Violence (Amendment) Act, in 2016, which, inter alia, broadens the definition of domestic violence;

(c) The Criminal Appeal (Amendment) Act, in 2013, which enables a convicted person to apply for a retrial on the basis of sufficient fresh and compelling evidence;

(d) The Protection of Human Rights (Amendment) Act, in 2012, which broadens and strengthens the mandate of the National Human Rights Commission;

(e) The National Preventive Mechanism Act, in 2012, which gives effect to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(f) The Criminal Code (Amendment) Act, in 2012, which authorizes the termination of pregnancy in specific circumstances;

(g) The Legal Aid (Amendment) Act, in 2012, which, inter alia, provides for legal assistance to persons in need during police enquiries and for bail applications.

7. The Committee welcomes the administrative and other measures taken by the State party to give effect to the Convention, including:

(a) The operationalization of the National Preventive Mechanism Division of the National Human Rights Commission, since June 2014;

(b) The adoption of the National Human Rights Action Plan 2012–2020, in 2012;

(c) The extension, since 2012, of the operating days of the Bail and Remand Court to weekends and public holidays;

(d) The opening of new detention facilities, which has helped address overcrowding in prisons;

(e) The measures taken to prevent inter-prisoner violence and suicide in places of detention.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

8. The Committee notes with regret the State party did not provide information on the implementation of recommendations identified for follow-up in its previous concluding observations (CAT/C/MUS/CO/3). It also notes with regret that its recommendations relating to police legislation, conditions in detention and the publication of the report of the visit by Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2007 (see CAT/C/MUS/CO/3) have not been fully implemented.

Incorporation of the Convention into domestic legislation

9. The Committee remains concerned that the State party has not fully incorporated the provisions of the Convention into its domestic law, especially in view of the shortcomings in its anti-torture legislation (art. 2).
10. Recalling its previous recommendation (see CAT/C/MUS/CO/3 para. 7), the Committee recommends that the State party should fully incorporate the provisions of the Convention into its domestic legislation so that they can be applied by domestic courts.

Absolute prohibition of torture

11. While noting that in its judgement in the case of Director of Public Prosecutions v V. Jagdawoo & Ors the State party’s Supreme Court referred to the non-derogable right to freedom from torture and other cruel, inhuman or degrading treatment and its peremptory nature, the Committee nonetheless notes the absence in the State party’s legislation of an express provision on the absolute prohibition of torture (art. 2).

12. The State party should introduce a statutory provision on the absolute prohibition of torture declaring that no justification may be invoked for this crime under any circumstances, in accordance with article 2 (2) of the Convention. It should also bring its laws, such as the provisions of section 245 of the Criminal Code on homicide and wounds and blows under lawful authority, into line with the absolute ban. The Committee draws the attention of the State party to paragraphs 5 to 7 of its general comment No. 2 (2007) on the implementation of article 2.

Penalties for acts of torture

13. The Committee expresses once against its concern that penalties provided by the State party’s legislation do not correspond to the grave nature of the crime of torture and do not take account of aggravating circumstances (art. 4).

14. The State party should make the necessary legislative amendment to ensure that acts of torture carry appropriate penalties, taking into account aggravating circumstances such as permanent disability sustained by victims or death, in line with article 4 of the Convention.

Impunity for acts of torture and ill-treatment

15. While noting the strong statement of the State party’s Supreme Court condemning the perpetration of torture and any form of inhuman or degrading treatment by State agents, the Committee is deeply concerned that those responsible for the death of Ramdoolar Ramlogun, who was subjected to physical abuse and killed in State custody, have not been found and duly prosecuted. The Committee notes that the State party awarded monetary compensation in the above-mentioned case (arts. 2 and 12).

16. The State party should draw lessons from the judicial proceedings in relation to the death of Ramdoolar Ramlogun and bring about the necessary changes to ensure accountability for acts of torture.

Non-refoulement

17. The Committee notes the explanation provided by the delegation that the geographic configuration of the State party and its limited resources constrain its capacity to receive and accept asylum seekers and refugees. Moreover, it notes that provisions on the protection of human rights and the right to appeal an extradition decision were introduced into the Extradition Act of 2017. Nevertheless, the Committee is concerned at the lack of a legal and procedural framework for safeguarding the rights of persons in need of international protection who are present on the State party’s territory (art. 3).

18. The State party should establish a legal and procedural framework regulating expulsion and refoulement so as to safeguard the rights of persons in need of international
protection, in accordance with article 3 of the Convention. The Committee also encourages the State party to consider ratifying the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

Fundamental legal safeguards

19. The Committee notes the information provided by the State party that the right to legal counsel and to have access to a doctor is guaranteed to arrested and detained persons in police custody and that information thereon is properly recorded. At the same time, the Committee is concerned that doctors’ visits take place under supervision for safety and security reasons as a matter of routine (art. 2).

20. The State party should:

(a) Stipulate in police standing orders and other relevant regulations that doctors’ visits to arrested and detained persons be conducted in a confidential manner and that supervision, when requested by the doctor, be within sight but out of hearing distance;

(b) Improve the mechanism for monitoring the fundamental safeguards afforded to detainees by including detailed information on, inter alia, access to a lawyer and medical visits in the records transmitted to the police information room and the divisional or branch operations.

Arrest and pretrial detention

21. The Committee is concerned at the number of arrests made in the State party without passing the test of reasonable suspicion of having committed an offence. Moreover, the Committee notes the explanation provided by the delegation that the pattern of pretrial detention is attributable to the complexity of investigations of drug-related crimes with international ramifications. At the same time, it remains concerned that as a result, pretrial detention is increasingly used and that some detainees have been in pretrial detention for as long as three years. More generally, the Committee is concerned at the slowness of judicial procedures in the State party (arts. 2, 11, 12 and 16).

22. The State party should:

(a) Specify in its enactments, including in the police and criminal evidence act to be adopted, safeguards for ensuring the full justification of arrests and detentions, and provide the necessary training thereon to law enforcement personnel and members of the judiciary;

(b) Strengthen efforts to promote the use of alternative and non-custodial measures to reduce the number and length of pretrial detentions. Pretrial detention should be used only as a means of last resort, in exceptional circumstances, and for limited periods, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(c) Take the necessary measures to reduce the delays in criminal proceedings.

Inadmissibility of statements made as a result of torture

23. The Committee is concerned at reports about the overreliance of the police in the State party on confessions for the purpose of investigation and prosecution and at reports of extraction of confessions under duress. The Committee also notes with regret the lack of information on cases where officials have been charged for having coerced arrested persons into giving evidence.
Moreover, the Committee is concerned at the judicial culture whereby an appellate court would rarely quash a conviction based on a statement that the trial court had deemed admissible (arts. 2 and 15).

24. The Committee urges the State party to:

(a) Expedite the installation of video and audio recording facilities in police stations to ensure the monitoring of interrogation procedures;

(b) Redouble efforts to improve methods of investigation based on scientifically-based evidence, including training police officers on non-coercive interrogation methods;

(c) Make the necessary legislative changes so that statements obtained through torture or cruel, inhuman or degrading treatment are invalidated as evidence;

(d) Permit appeal courts to review the admissibility of evidence, building on the jurisprudence of the Supreme Court in the case of *Rudolph Jean Jacques v the State*;

(e) Investigate all reports of extraction of confession allegedly obtained under duress, prosecute alleged perpetrators and punish anyone found responsible, and ensure that such testimony is not allowed to be entered as evidence.

Juvenile justice

25. The Committee notes the information provided by the delegation of the State party that in camera proceedings could be considered for hearings involving minors. The Committee is nevertheless concerned that, under section 4 (2) (b) of the Juvenile Offenders Act, the trial takes place before the ordinary court if a juvenile is charged jointly with an adult. It is also concerned at the lack of a statutory minimum age of criminal responsibility (arts. 2, 12 and 16).

26. Referring to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Committee recommends that, in the revision of relevant laws, including the juvenile justice bill and the draft children’s bill:

(a) The State party establish a statutory minimum age of criminal responsibility at an internationally acceptable level;

(b) Provisions be made to ensure that children in conflict with the law are tried in juvenile courts by specialized judges.

Sentencing rules

27. The Committee is concerned that different rules have been applied by the Supreme Court of the State regarding the deduction of the time spent on remand from the sentence (arts. 11 and 16).

28. The State party should lay down in law that time served in pretrial detention be deducted from the sentence, as advised by the Supreme Court in its Kamasho ruling.

Conditions of detention

29. The Committee is concerned at reports of poor hygiene and inadequate access to food and water in the State party’s prisons (arts. 11 and 16).

30. The State party should promptly improve material conditions in its prisons by guaranteeing the right of all detainees to the basic rights to water, sanitation and adequate food, in keeping with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Committee also invites the State party to make public the report of the Subcommittee on Prevention of Torture on its visit in 2007.
Complaint mechanisms

31. The Committee is concerned at reports of torture and ill-treatment by law enforcement officials, which on some occasions have led to death. Moreover, while noting the large number of complaints lodged against the police, which indicates that existing procedures are accessible, the Committee is concerned that very few cases have been referred to the Director of Public Prosecutions and to the Attorney-General’s Office since the establishment of the Police Complaints Division. The Committee also notes that the Division will be replaced by the Independent Police Complaints Commission (arts. 2, 12 and 13).

32. The State party should:
   (a) Promptly and thoroughly investigate in an impartial manner all complaints of torture and ill-treatment by law enforcement officials and, as warranted, submit the alleged perpetrators to public prosecution;
   (b) Ensure that the new Independent Police Complaints Commission has the necessary capacity to carry out timely, impartial and exhaustive inquiries into complaints of improper conduct by the police and that the difficulties encountered by the Police Complaints Division are taken into account when designing the procedures and operations of the new institution;
   (c) Mandate the Commission to issue recommendations on corrective measures to prevent future misconduct by law enforcement officials and the improper treatment of arrested and detained persons.

Independence of oversight and complaint bodies

33. The Committee is concerned that the independence of the National Human Rights Commission, including its National Preventive Mechanism Division, as well as the Independent Police Complaints Commission that is about to become operational, is not guaranteed under the current legislation, especially in the light of the power held by the President of the State party to remove the members of these institutions (arts. 2 and 11–13).

34. The State party should guarantee the independence of the National Human Rights Commission and its National Preventive Mechanism Division as well as that of the Independent Police Complaints Commission, including by securing in law the tenure of the mandate of their members. The Committee refers the State party to the principles relating to status of national institutions for the promotion and protection of human rights (the Paris Principles).

Redress and reparation

35. The Committee notes with concern that, in the State party’s legislation, redress and reparation for victims of torture are limited to monetary compensation (art. 14).

36. The State party should ensure that legal provisions and procedures are in place to enable victims of torture and ill-treatment to access and enjoy the right to adequate and appropriate redress, including restitution, compensation, as full rehabilitation as possible, satisfaction and right to truth, as well as guarantees of non-repetition. In this regard, the Committee refers the State party to its general comment No. 3 (2012) on the implementation of article 14.
Violence against women police officers

37. The Committee is concerned that none of the complaints of sexual harassment and assault filed by female police officers have hitherto resulted in criminal charges. It is also concerned at the prolonged delay in their resolution (arts. 2, 12 and 13).

38. The State party should:
   (a) Ensure that complaints mechanisms for violence against women police officers are effective, gender-sensitive and gender-responsive;
   (b) Conduct further investigation into the slowness of proceedings in cases of violence against women police officers and provide detailed information about the state of investigation of these cases;
   (c) Ensure that such violence is prevented through, inter alia, gender-sensitive trainings.

Training

39. The Committee notes the various training provided to police and prison officers on human rights. However, it notes with regret that specific and systematic training on the Convention and its Optional Protocol is limited (art. 10).

40. The State party should ensure that training programmes on the Convention and its Optional Protocol be extended to all law enforcement personnel, including both civil and military; medical personnel; public officials; and other persons dealing with persons deprived of their liberty. Such training should include the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The State party should also assess the impact or results of these programmes.

Violence against women

41. While welcoming the fact that the State party has taken various steps, including the adoption of a national action plan to end gender-based violence, the passing of an amendment to broaden the definition of domestic violence, and recognition in the constructive dialogue that “the eradication of domestic violence is a long-term undertaking”, the Committee is concerned that:
   (a) Marital rape has not yet been criminalized;
   (b) The provisions of section 242 of the Criminal Code relating to manslaughter in cases of adultery have not been repealed;
   (c) The perpetrators of trafficking-related crimes have not been prosecuted and convicted under the Combating of Trafficking in Persons Act, largely because other laws are still used instead (arts. 1, 2 and 16).

42. The State party should pursue its efforts to modernize its criminal legislation to address cases of violence against women, including domestic violence and trafficking, by, inter alia:
   (a) Defining marital rape as a specific criminal offence with appropriate penalties;
   (b) Abrogating section 242 of the Criminal Code, which excuses manslaughter committed against a spouse caught in the act of adultery;
   (c) Promoting awareness and the actual use of the Combating of Trafficking in Persons Act.
Follow-up procedure

43. The Committee requests the State party to provide, by 6 December 2018, information on follow-up to the Committee’s recommendations on interrogation methods and confessions obtained under duress, conditions of detention, and complaint mechanisms (see paras. 24 (a), (b), (d) and (e), 30 and 32 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

44. The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.

45. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.

46. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

47. The State party is invited to submit its fifth periodic report by 6 December 2021. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party’s replies to that list of issues will constitute its fifth periodic report under article 19 of the Convention.
Committee on the Elimination of Racial Discrimination

Concluding observations on the combined twentieth to twenty-third periodic reports of Mauritius*

1. The Committee considered the combined twentieth to twenty-third periodic reports of Mauritius (CERD/C/MUS/20-23), submitted in one document, at its 2658th and 2659th meetings (CERD/C/SR.2658 and 2659), held on 14 August and 15 August, 2018. At its 2671st meeting (CERD/C/SR.2671), held on 24 August 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twentieth to twenty-third periodic report of the State party, which included some responses to the concerns raised by the Committee in its previous concluding observations (CERD/C/MUS/CO/15-19). The Committee also expresses its appreciation for the constructive dialogue with the State party’s high-level delegation and for the additional written information provided thereafter.

B. Positive aspects

3. The Committee welcomes the adoption by the State party of the following measures:

(a) The Government programme for the period 2015-2019, which provides for reforms within the judiciary and aims at expediting the processing of court cases;

(b) The creation of a new Ministry dedicated to human rights in September 2017, under which a national mechanism for reporting and follow-up has been set up to address recommendations made by United Nations human rights mechanisms;

(c) The amendment to the Equal Opportunities Act in 2017, which prohibits discrimination in access to employment on the grounds of a criminal record;

* Adopted by the Committee at its ninety-sixth session (6–30 August 2018).
(d) The passage of the Constitution (Declaration of Community) (Temporary Provisions) in 2014, which provided that candidates for the 2014 elections were not obliged to declare the community they belonged to;

(e) The adoption of the Guidelines for Employers (2013) under section 27 (3) (f) of the Equal Opportunities Act, requiring employers with more than 10 employees to draw up and implement an equal opportunity policy.

C. Concerns and recommendations

Legal status of the Convention

4. The Committee regrets that the rights enshrined in the Convention are still not fully incorporated into the State party’s legal domestic order. It is also concerned about the limited number of court cases in which the provisions of the Convention were invoked in, or applied by, domestic courts (art. 1).

5. The Committee recommends that the State party take all necessary measures to ensure that the Convention is fully incorporated into the State party’s domestic legal order. It also recommends that the State party take steps to ensure that judges, prosecutors and lawyers are trained on the provisions of the Convention in order to enable them to apply it in relevant cases. The Committee requests the State party to include in its next periodic report specific information on cases of application of the Convention by domestic courts and access by individuals to remedies on violations of rights contained in the Convention.

Disaggregated data

6. The Committee regrets the State party’s persistent position of not collecting data disaggregated by ethnicity, which in the view of the Committee impedes assessment of the enjoyment of human rights by the different ethnic groups present in the State party (art. 1).

7. Bearing in mind the guidelines for reporting under the Convention (see CERD/C/2007/1, para. 7) and recalling its general recommendation No. 24 (1999) concerning article 1 of the Convention, the Committee recommends that the State party provide statistics, disaggregated by sex, on the socioeconomic situation and representation in education, employment, health, housing and political life of ethnic groups, including Creoles, Chagossians, people of African descent and migrant workers, in order to provide it with an empirical basis to evaluate the equal enjoyment of rights under the Convention.

National human rights institution

8. The Committee is concerned about reported challenges faced by the National Human Rights Commission, in particular concerning the appointment and removal of commissioners (art. 2).

9. The Committee recommends that the State party ensure that the process related to the selection, appointment and removal of commissioners is independent, fair and transparent. The State party should also allocate sufficient human and financial resources to the National Human Rights Commission to enable it to discharge its role in a comprehensive and efficient manner. The Committee refers the State party to its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention.

Equal Opportunities Act, Commission and Tribunal

10. Considering the intersectionality between ethnicity and language in the context of the composition of the State party’s population, the Committee is concerned that the Equal
Opportunities Act still does not prohibit discrimination on the grounds of language and that a provision on special measures continues to be absent from the Act. It is also concerned (a) about the reported interference by the executive in the appointment of commissioners to the Equal Opportunities Commission; (b) that the Commission has no jurisdiction to investigate complaints against civil servants; and (c) that sanctions handed down by the Equal Opportunities Tribunal are not commensurate with the gravity of the offences (arts. 1, 2 and 4).

11. The Committee recommends that the State party revise the Equal Opportunities Act, with a view to including language among the prohibited grounds of discrimination and introducing a legal provision on special measures aimed at accelerating the full and equal enjoyment of rights by disadvantaged groups, taking into account its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention. The Committee also recommends that the process for the appointment, security of tenure and removal of commissioners is timely, impartial and independent from the executive. Furthermore, the State party should take steps, including legislative measures, to empower the Equal Opportunities Commission to investigate complaints against civil servants and ensure that sanctions handed down by the Equal Opportunities Tribunal comply with the requirements of article 4 of the Convention.

Classification of the population

12. While noting the explanations provided by the delegation concerning the “best loser” system, the Committee is concerned about the persistent constitutional classification of the State party’s population, which does not fully reflect the identities of the various groups present in the State party (arts. 1 and 4).

13. The Committee reiterates its previous recommendation (CERD/C/MUS/CO/15-19, para. 15) to hold countrywide consultations in order to bring about a change of the existing classification of groups, including in the Constitution, giving due account to the principle of self-identification and the Committee’s general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention.

Inter-ethnic relations

14. The Committee appreciates the State party’s efforts to foster harmony among the different components of society. It expresses concern, however, that hierarchal structures along ethnic and caste lines linger in the State party, although such systems are not recognized by law, and race, ethnic origin and caste are prohibited grounds of discrimination under the State party’s Constitution (arts. 4 and 7).

15. The Committee recommends that the State party intensify its efforts to foster an inclusive society that cherishes diversity and equality, and put an end to any manifestations that pertain to racial or caste-based superiority, or any other grounds that are prohibited under the Convention. To that end, the State party should also undertake awareness-raising campaigns and educational programmes aimed at showcasing the contribution of each ethnic group to the development of the State party’s society, while engaging all necessary stakeholders, including the Government, equality bodies, community and religious leaders, the education system, civil society actors and the media.

Truth and Justice Commission

16. The Committee applauds the State party for having initiated the Truth and Justice Commission, which demonstrates a commitment to addressing the lingering legacies of slavery and indentured servitude linked to the colonial era. It remains, however, concerned that the bulk of the recommendations put forward by the Commission in 2011 are yet to be implemented.
17. The Committee recommends that the State party take effective measures to implement the recommendations of the Truth and Justice Commission, including those concerning the establishment of an intercontinental slavery museum and addressing all land dispossession and ownership claims, with a view to fostering reconciliation and achieving transitional justice. The State party should also consider establishing a well-resourced body, comprising representatives of the Government, equality and human rights bodies, civil society organizations and the communities concerned, to monitor the implementation of those recommendations.

Complaints of racial discrimination

18. The Committee is concerned about the limited number of court cases dealing with racial discrimination, despite information that such incidents persist in the State party. The Committee also regrets that the statistics provided by the State party on complaints of racial or ethnic-based discrimination submitted to national human rights and equality bodies reveal that the bulk of complaints were not referred to the Equal Opportunities Tribunal or not followed up and that information on effective remedies provided to victims of racial discrimination is absent (arts. 4 and 6).

19. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reminds the State party that the absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, lack of confidence in judicial and non-judicial redress, or an unwillingness on the part of the authorities or institutions to initiate proceedings. The Committee recommends that the State party take all steps necessary, including by undertaking awareness-raising campaigns on the non-judicial avenues for submitting complaints, such as the Ombudsman, the Equal Opportunities Commission and the National Commission for Human Rights; increasing public trust in State authorities and institutions; and facilitating access to justice by all groups covered by the Convention. Finally, the Committee requests that the State party include disaggregated data on such complaints and their results in its next periodic report.

Hate speech and racial profiling

20. The Committee is concerned about incidents of stereotyping and stigmatization of ethnic groups, notably the Creoles, and cases of hate speech against them on social media and by public and political figures. The Committee is also concerned about incidents of racial profiling by the police, notably in the form of unlawful checks, searches and detention of Creole individuals (arts. 2 and 4–6).

21. Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee urges the State party to:

(a) Strengthen its efforts, including through education and awareness-raising campaigns, to combat ethnic or racial stereotypes and stigma with a view to promoting diversity and understanding;

(b) Take the necessary measures to combat racist media coverage and incidents of hate speech committed by politicians and ensure that such cases are thoroughly investigated and, where appropriate, sanctions imposed;

(c) Put an end to the practice of racial profiling by the police, undertake effective investigations into all allegations of racial profiling, hold those responsible accountable and provide effective remedies to victims;
(d) Develop training programmes on racial discrimination for law enforcement officers, including the police, prosecutors and the judiciary, including on racial profiling and on proper methods for identifying, registering, investigating and prosecuting racist hate crimes and speech.

Prison population

22. The Committee notes that the State party does not have statistical information disaggregated by ethnic groups on its prison population.

23. Bearing in mind the Committee’s general recommendation No. 31, the Committee requests the State party to provide, in its next periodic report, statistics disaggregated by ethnicity of the population in the judicial and prison system.

Public and political participation

24. The Committee notes the ongoing electoral reforms and that the political system does not exclude by law any group from participation. It remains, however, concerned that political participation is not reflective of the various components of the State party’s population and that political participation and representation in the various State party bodies are highly influenced by a person’s ethnicity (arts. 2 and 5).

25. The Committee recommends that the State party expedite the process of electoral reform and reiterates its previous recommendation to effectively address obstacles to participation in political life by, and adequate representation of, ethnic groups (see CERD/C/MUS/CO/15-19, para. 18). The Committee requests the State party to provide in its next periodic report statistics, disaggregated by, among others, ethnic origin and sex, on political representation in the Government, the parliament, the judiciary and law enforcement. The Committee encourages the State party to continue its efforts for the active participation of all segments of society at all levels of public life.

Creoles

26. The Committee is concerned that the Creoles, including those living on Agaléga and Rodrigues Islands, face de facto discrimination in all walks of life and remain disadvantaged in the enjoyment of human rights. In particular, the Creoles are disproportionately vulnerable to poverty and have limited access to employment, housing, health care and education. The Committee is also concerned that measures taken by the State party and by the Equal Opportunities Commission have had a limited impact on improving the socioeconomic situation of the Creoles and about the lack of measures specifically targeted at improving their situation (arts. 2, 5 and 6).

27. The Committee urges the State party to adopt and implement, with the participation of representatives of the Creoles, a well-resourced strategy to address the deep-rooted discrimination faced by the Creoles, including those living on Agaléga and Rodrigues Islands. The Committee also recommends that the State party assess the effectiveness of the measures taken, and design and implement other measures, including special measures, in close collaboration with the communities concerned and relevant civil society organizations, to ensure that the Creoles have effective access to employment, adequate housing, health-care services and quality inclusive education. The Committee requests the State party to take into account its general recommendations No. 34 (2011) on racial discrimination against people of African descent and No. 32.
Creole language

28. The Committee notes with satisfaction the measures taken to promote the use of the Creole language. It remains, however, concerned that it still does not enjoy official status, despite being the common language spoken by most Mauritians and taught at schools (art. 5).

29. The Committee recommends that the State party take the necessary measures to confer the status of national language on the Creole language, with a view to facilitating its use in the administration, judicial and education systems, and preventing the social exclusion of those who are Creole-speaking only.

Situation of the Chagossians

30. The Committee notes the information about the measures taken by the State party to address the plight of the Chagossians, including at international forums, in collaboration with the Chagossian community. It regrets, however, the limited information provided on the measures taken to improve the living conditions of the Chagossians residing on the mainland of Mauritius and the impact of those measures (art. 5).

31. The Committee recommends that the State party continue its efforts to facilitate the return of the Chagossians to their original homes, guaranteeing the active participation of the Chagossian community in the actions taken by the State in that regard. At the same time, the State party should intensify its efforts to improve the living conditions of those Chagossians residing on the mainland of Mauritius and report on such measures and their results in its next periodic report.

Migrant workers

32. The Committee is concerned that, despite some measures taken by the State party, the working and living conditions of migrant workers remain inadequate and are reportedly characterized by excessive working hours, passport confiscation, underpayment of wages, substandard living conditions and a lack of defined job titles. The Committee is moreover concerned about information that exploitative employers are not prosecuted (arts. 2 and 5).

33. The Committee recommends that the State party take effective measures to improve the working and living conditions of migrant workers, including through developing a mechanism to monitor the processes related to their recruitment, intensifying awareness-raising campaigns among migrant workers about their rights and increasing labour inspection activities at workplaces that are likely to engage such workers. To that end, the State party should ensure that the inspection and enforcement section within the Ministry of Labour is equipped with the resources necessary to discharge its functions effectively. The State party should also step up its efforts to investigate allegations of abuse and exploitation of migrant workers, including by facilitating victims’ access to justice, such as the industrial court, among other adjudication avenues, with a view to bringing alleged perpetrators to justice and providing victims with effective remedies. The Committee requests the State party to include relevant statistical data in its next periodic report.

Trafficking in persons

34. The Committee is concerned that, despite the State party’s efforts, trafficking in persons, notably of migrants for sexual and labour exploitation purposes, and the sale of children, remain widespread and that the rate of investigations, prosecutions and convictions under the Trafficking in Persons Act (2009) and other related legislation remains very low (arts. 2 and 5).

35. The Committee recommends that the State party intensify its efforts to prevent, combat and deter incidents of trafficking in persons, including by adopting the draft
action plan to combat trafficking in persons. It also recommends that the State party (a) strictly implement its domestic legal framework in relation to trafficking in persons, in particular the Trafficking in Persons Act; (b) ensure that suspected cases of trafficking in persons are duly investigated; (c) swiftly bring alleged perpetrators to justice and, if convicted, punish them with adequate sanctions; and (d) redouble its efforts to identify victims and provide them with effective remedies, appropriate protection and assistance, including access to shelters.

D. Other recommendations

Ratification of other treaties

36. Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of all Persons from Enforced Disappearance.

Follow-up to the Durban Declaration and Programme of Action

37. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

38. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African Descent, taking into account the Committee’s general recommendation No. 34.

Consultations with civil society

39. The Committee recommends that the State party consult and increase its dialogue with civil society organizations concerned with human rights protection, in particular those working to combat racial discrimination, in the preparation of the next periodic report and in follow-up to the present concluding observations.

Declaration under article 14 of the Convention

40. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee’s competence to receive and consider individual communications.
Amendment to article 8 of the Convention

41. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Follow-up to the present concluding observations

42. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 31 and 33 above.

Paragraphs of particular importance

43. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 27 and 35 above, and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

44. The Committee recommends that the State party’s reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.
Preparation of the next periodic report

45. The Committee recommends that the State party submit its combined twenty-fourth and twenty-fifth periodic reports, as a single document, by 29 June 2021, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
Committee on the Elimination of Discrimination against Women

Concluding observations on the eighth periodic report of Mauritius*

1. The Committee considered the eighth periodic report of Mauritius (CEDAW/C/MUS/8) at its 1641st and 1642nd meetings (see CEDAW/C/SR.1641 and CEDAW/C/SR.1642), held on 30 October 2018.

A. Introduction

2. The Committee appreciates the submission by the State party of its eighth periodic report, which was prepared in response to the list of issues and questions prior to reporting (CEDAW/C/MUS/QPR/8). It welcomes the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue. It also appreciates the additional information provided in writing following the dialogue.

3. The Committee commends the State party on its high-level delegation, which was headed by the Vice-Prime Minister, Minister of Local Government and Outer Islands and Minister of Gender Equality, Child Development and Family Welfare, Fazila Jeewa-Daureeawoo. The delegation also included representatives of the Ministry of Gender Equality, Child Development and Family Welfare and the Permanent Mission of Mauritius to the United Nations Office and other international organizations in Geneva.

B. Positive aspects

4. The Committee welcomes the progress achieved since the consideration in 2011 of the State party’s combined sixth and seventh periodic reports (CEDAW/C/MUS/CO/6-7) in undertaking legislative reforms, in particular the adoption of the following:

   (a) Protection from Domestic Violence (Amendment) Act 2016 (Act No. 10 of 2016), which broadens the definition of domestic violence;

   (b) Protection of Human Rights (Amendment) Act 2012 (Act No. 19 of 2012) and Independent Police Complaints Commission Act 2016 (Act No. 14 of

* Adopted by the Committee at its seventy-first session (22 October–9 November 2018).
2016), the latter of which strengthened the role of the National Human Rights Commission, among other bodies, by establishing an Independent Police Complaints Division on 9 April 2018;

(c) Criminal Code (Amendment) Act 2012 (Act No. 11 of 2012), which decriminalizes abortion in certain cases;

(d) Equal Opportunities Act 2008 (Act No. 42 of 2008), in force since 1 January 2012, which prohibits direct and indirect discrimination on the grounds of sex and sexual orientation in certain areas, such as employment and education;


5. The Committee welcomes the State party’s efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the following:

(a) Establishment of the Ministry of Justice, Human Rights and Institutional Reforms in September 2017 and of a national mechanism for reporting and follow-up in December 2017;

(b) Launch, by the Prime Minister’s Office in October 2012, of a national human rights action plan covering the period from 2012 to 2020, which includes respect for women’s rights as one of its goals;

(c) Establishment, in January 2012, of the Equal Opportunities Commission, which became operational in April 2012, and of the Equal Opportunities Tribunal, pursuant to the Equal Opportunities Act 2008.

6. The Committee welcomes the fact that, in the period since the consideration of the previous report, the State party ratified, in June 2017, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

Sustainable Development Goals

7. The Committee welcomes the international support for the Sustainable Development Goals and calls for the realization of de jure (legal) and de facto (substantive) gender equality, in accordance with the provisions of the Convention, throughout the process of implementing the 2030 Agenda for Sustainable Development. The Committee recalls the importance of Goal 5 and of the mainstreaming of the principles of equality and non-discrimination throughout all 17 Goals. It urges the State party to recognize women as the driving force of the sustainable development of the State party and to adopt relevant policies and strategies to that effect.

C. Parliament

8. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see A/65/38, part two, annex VI). It invites the National Assembly and the Rodrigues Regional Assembly, in line with their mandates, to take the necessary steps regarding
the implementation of the present concluding observations between now and the submission of the next periodic report under the Convention.

D. Principal areas of concern and recommendations

Constitutional and legislative framework

9. The Committee notes that articles 3 and 16 of the Constitution of Mauritius of 1968 and sections 2, 5, 6 and 7 of the Equal Opportunities Act 2008 prohibit direct and indirect discrimination on the basis of sex. The Committee is, nevertheless, concerned that:

   (a) The provisions of the Convention have not been fully incorporated into the national law of the State party;

   (b) The prohibition of discrimination contained in articles 3 and 16 of the Constitution and in sections 2, 5, 6 and 7 of the Equal Opportunities Act 2008 does not include a comprehensive definition of discrimination against women in line with article 1 of the Convention;

   (c) Discriminatory provisions in the State party’s constitutional and legislative framework have not been repealed, in particular article 16, paragraph 4 (c), of the Constitution, according to which matters relating to personal status are exempted from the prohibition of discrimination on the basis of sex and other grounds.

10. Recalling its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and referring to target 5.1 of the Sustainable Development Goals, to end all forms of discrimination against all women and girls everywhere, the Committee recommends that the State party:

   (a) Fully incorporate the provisions of the Convention into its national law and ensure its implementation;

   (b) Adopt, without delay, a comprehensive definition of discrimination against women, covering all prohibited grounds of discrimination in the public and private spheres, in line with article 1 of the Convention, and ensure that such a definition is included in the draft gender equality bill;

   (c) Ensure inclusive consultations, including with women religious leaders, on the review of article 16, paragraph 4 (c), of the Constitution and expedite the review process, with a view to amending or repealing the article and bringing it into compliance with articles 2 and 16 of the Convention.

Visibility of the Convention and legal complaint mechanisms

11. The Committee welcomes the establishment of complaint mechanisms for women and girls who are victims of discrimination and gender-based violence. It is, however, concerned that:

   (a) The Convention and the Optional Protocol have not been given adequate visibility, as reflected by the absence of direct references to the Convention in court proceedings, with the exception of one decision in 2012, and in any decisions of the Equal Opportunities Commission;
(b) A low number of complaints were lodged before the Equal Opportunities Commission between May 2016 and the time of submission of the present concluding observations;

(c) Women cannot lodge complaints directly before the Equal Opportunities Tribunal, which has the power to issue orders and directives and provide redress, but to which only the Equal Opportunities Commission can refer complaints (section 35 (1) (a) of the Equal Opportunities Act 2008);

(d) Due to the lack, in article 16 of the Constitution, of an explicit prohibition of discrimination on the basis of sex in the private sector, similar to that which is specified for the public sector in article 16, paragraph 2, of the Constitution, women in the private sector cannot seek constitutional redress in cases of discrimination;

(e) The multiplicity and complexity of legal complaint mechanisms affect women’s access to justice;

(f) Women have limited knowledge of their rights and of the available complaint mechanisms, and there is a lack of expertise regarding women’s rights among legal practitioners and judicial and law enforcement officials.

12. The Committee recommends, in line with its general recommendation No. 33 (2015) on women’s access to justice, that the State party:

   (a) Raise awareness among the general public, including among women and girls, of the legislation prohibiting discrimination against women and of the remedies available to victims;

   (b) Amend article 16 of the Constitution to explicitly prohibit discrimination on the basis of sex in the private sector;

   (c) Undertake a review of its judicial complaint mechanisms that are available to women in cases of discrimination with a view to simplifying procedures and enhancing access to justice for women;

   (d) Strengthen capacity-building for legal practitioners and judicial and law enforcement officials on ways to invoke or apply the Convention, or to interpret national legislation in the light thereof, in court proceedings.

National machinery for the advancement of women and gender mainstreaming

13. The Committee commends the State party on the establishment in July 2010 of the National Steering Committee on Gender Mainstreaming and the appointment in 2017 of gender focal points within the ministries on a pilot basis. It also notes the current review of the national gender policy framework of 2008. The Committee is concerned, however, about the following:

   (a) The lack of a national action plan on the advancement of women and girls;

   (b) The complexity of the national machinery for the advancement of women and of State organs with similar mandates, such as the National Steering Committee, the gender focal points, the National Women’s Council, the National Women Entrepreneur Council and the Equal Opportunities Commission;
(c) The lack of adequate human, technical and financial resources allocated to the national machinery, which hinders its capacity to coordinate and implement gender equality plans, policies and programmes effectively;

(d) The absence of information on mechanisms for monitoring and evaluating the implementation and impact of gender mainstreaming and of information on the impact of cooperation between actors within the national machinery and all relevant stakeholders in the design and monitoring of public policies on gender equality;

(e) The insufficient visibility of the Equal Opportunities Commission and its activities aimed at achieving gender equality and raising awareness of women’s rights, as well as the insufficient number of those activities.

14. The Committee recommends that the State party:

(a) Expedite the review of the national gender policy framework of 2008 and adopt and implement a national action plan;

(b) Ensure that all components of the national machinery for the advancement of women and State organs with similar mandates work in a coordinated manner, and undertake an audit on areas where cooperation could be strengthened;

(c) Increase the resources allocated to the national machinery;

(d) Ensure the full and effective participation of all relevant stakeholders in the activities of the national machinery through systematic and institutionalized coordination;

(e) Introduce effective monitoring, evaluation and accountability mechanisms, including through cooperation with such existing mechanisms as the national mechanism for reporting and follow-up and the Human Rights Monitoring Committee;

(f) Ensure the visibility of the Equal Opportunities Commission and increase its commitment to organizing activities aimed at achieving gender equality and raising awareness of women’s rights.

Temporary special measures

15. The Committee notes with concern that the State party does not systematically use temporary special measures, as set out in article 4 (1) of the Convention, in order to accelerate the achievement of substantive gender equality. The Committee is also concerned that the State party has not included a provision on the adoption of temporary special measures in the Equal Opportunities Act 2008.

16. The Committee recalls its previous concluding observations (CEDAW/C/MUS/CO/6-7, para. 17) and recommends that the State party:

(a) Put in place temporary special measures, with a view to achieving substantive equality between women and men in all areas covered by the Convention in which women are underrepresented or disadvantaged, such as participation in political and public life and in employment;

(b) Ensure that the planned gender equality bill includes a provision on temporary special measures;

(c) Raise awareness among relevant government officials and policymakers and increase their understanding of the nature of temporary
special measures and of their importance to the achievement of substantive equality between women and men.

Stereotypes and gender-based violence against women

17. The Committee welcomes the adoption of the Protection from Domestic Violence (Amendment) Act 2016, which expands the scope of protection of victims of domestic violence and provides for protection orders. It notes the establishment of the National Coalition against Domestic Violence Committee in 2015 and of a steering committee to fight gender-based violence in Rodrigues in 2017. The Committee remains concerned, however, about the following:

(a) The prevalence of gender-based violence, in particular domestic and sexual violence, against women and girls and of discriminatory gender stereotypes that perpetuate violence against women and girls, in particular in domestic settings;

(b) The gaps in national legislation with regard to some forms of gender-based violence, including the lack of an explicit prohibition of marital rape, notwithstanding that marital rape can be prosecuted under section 249 of the Criminal Code of 1838 and under section 13 (2) of the Protection from Domestic Violence Act (Act 6 of 1997), as well as the limited scope of regulation 13 (4) of the Education Regulations 1957, as amended, which prohibits corporal punishment only in schools, and of section 13 (4) of the Child Protection Act (Act 30 of 1994), and the resulting lack of an explicit prohibition of corporal punishment in all settings;

(c) The limited definition of “spouse” in the Protection from Domestic Violence Act and the omission of economic violence in its definition of “domestic violence”;

(d) The lack of safeguards under article 75 of the Constitution to prevent pardons being granted to convicted perpetrators of gender-based violence against women;

(e) The low rates of prosecutions and convictions for offences of gender-based violence against women and girls;

(f) The limited availability and quality of assistance and protection services, leading to women who are under protection orders reportedly enduring continuing and aggravating threats against them and an insufficient number of shelters available for women who are victims of violence;

(g) The lack of a monitoring mechanism to evaluate the impact of existing legislation, including the Protection from Domestic Violence Act and the Child Protection Act, as well as of assistance and protection services;

(h) The lack of accurate statistical data on cases of gender-based violence against women and the frequent incomplete recording of acts of domestic violence as other offences under the Criminal Code, such as assaults (under sections 228 to 232 of the Code), threats (sections 224 to 227) or manslaughter and injury and bodily harm (section 239), without recording that the offense occurred in a domestic setting.

18. The Committee recalls its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and reiterates its recommendation to the State party that it:
(a) Enforce existing legislation and develop a comprehensive strategy to eliminate discriminatory gender stereotypes against women and girls;

(b) Amend or adopt legislation to explicitly prohibit marital rape and corporal punishment of children in all settings;

(c) Expand the scope of protection of victims of domestic violence under the Protection from Domestic Violence Act to include economic violence and acts by any person living in the same household;

(d) Put safeguards in place to ensure that a pardon under article 75 of the Constitution cannot be granted to perpetrators of gender-based violence without a review of all past convictions based on comprehensive documentation;

(e) Encourage reporting of gender-based violence against women and girls by launching awareness-raising campaigns on reporting mechanisms and remedies and ensure that reports of gender-based violence against women, including domestic violence, are duly investigated, that perpetrators are prosecuted and adequately punished and that victims have access to appropriate redress, including compensation;

(f) Ensure that women and girls who are victims of gender-based violence, including domestic violence, are effectively protected under protection orders and have adequate access to government-funded shelters and support services;

(g) Undertake an analysis of the impact of the State party’s current programmes and measures to prevent and address gender-based violence against women and take steps to improve accuracy and disaggregation in the recording of statistical data.

**Trafficking and exploitation of prostitution**

19. The Committee notes that the State party remains a country of origin, transit and destination for trafficking in persons. It notes the following with concern:

(a) The prevalence of trafficking in persons in the State party, including for the purpose of sexual exploitation, with women and girls, particularly those from rural areas, facing the highest risk;

(b) The lack of a comprehensive anti-trafficking strategy and a national action plan and the temporary nature of the mandate of the interministerial committee on trafficking in persons that was set up in December 2015;

(c) The limited measures available to protect women from trafficking, as the State party’s legislative and policy measures focus largely on the protection of children from sexual exploitation and trafficking;

(d) The low rates of reporting, prosecution and conviction in cases of trafficking, both under the Combating of Trafficking in Persons Act (Act 2 of 2009) and the Child Protection Act, with only two reported cases of trafficking and no convictions since 2009 under the Combating of Trafficking in Persons Act;

(e) The inadequate number of shelters and insufficient assistance, rehabilitation and reintegration measures for women and girls who are victims of trafficking;
(f) The absence of regional and bilateral cooperation agreements on combating trafficking in persons, particularly women and girls;

(g) The lack of a national policy framework to tackle the commercialization of sexual exploitation and of measures to protect women in prostitution.

20. The Committee draws attention to target 5.2 of the Sustainable Development Goals, which is aimed at eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation, and recommends that the State party:

(a) Strengthen the mechanisms and policies in place to combat trafficking and ensure that they are supported by adequate technical, financial and human resources;

(b) Accelerate the adoption of a national plan of action for combating trafficking in persons and establish a permanent body to coordinate and monitor its implementation;

(c) Systematically collect and analyse data, disaggregated by sex and age, on trafficking in persons;

(d) Provide effective redress mechanisms, raise awareness of those mechanisms, investigate, prosecute and adequately punish traffickers and ensure that women and girls who are victims of trafficking are exempted from any criminal liability;

(e) Strengthen support provided to women and girls who are victims of trafficking, in particular migrant women, by ensuring adequate access to health care, counselling services and redress, including reparations and compensation, and the adequate provision of shelters;

(f) Enhance regional cooperation with countries of origin and destination, in order to prevent trafficking in women and girls, by exchanging information and harmonizing procedures;

(g) Take effective measures to protect women in prostitution from exploitation and abuse, carry out a study on the root causes and the extent of prostitution and use the outcomes of the study to develop services and exit programmes for women who wish to leave prostitution.

Participation in political and public life

21. The Committee notes the positive impact of sections 11 (6) and 12 (6) of the Local Government Act 2011, as amended by the Local Government (Amendment) Act 2015, which provide for quotas for electoral lists, in increasing the representation of women in local governance. It welcomes amendments made to the Constitution in 2016 to adopt similar quotas for the Rodrigues Regional Assembly. The Committee also notes that women have held high-level decision-making positions in the State party, such as Head of State and Speaker of the National Assembly, and that women and men are equally represented in the public sector, including in senior positions. The Committee remains concerned, however, about the low levels of participation of women in political and in some areas of public life in the State party, in particular in decision-making positions at the national level, where only 8 of 69 members of the parliament and 2 of 27 ministers are women.
In accordance with article 4 (1) of the Convention and its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party:

(a) Take the steps necessary to adopt temporary special measures, including extending the application of the quotas that are in place for local elections to elections conducted at the national level, in order to accelerate the achievement of substantive equality between women and men in all areas of political and public life;

(b) Address all structural, social and cultural barriers to women entering political life or holding public office, including by providing incentives to political parties to include an equal number of women and men at equal ranks on their electoral lists and by providing training to women on political campaigning, leadership and negotiation skills.

Education

23. The Committee notes with appreciation the substantive measures taken by the State party to ensure universal access to education, including the provision of free, compulsory education until the age of 16, free transportation and the provision of grants. It is concerned, however, about the following:

(a) The insufficient data collected on the educational enrolment and achievement of women and girls and the school dropout rates among them;

(b) The high rate of absenteeism among girls in primary and secondary school, attributable partly to menstruation remaining a social taboo, the lack of adequate sanitation facilities for girls in schools and the societal norm for girls to assist in housework and caregiving;

(c) The low literacy rate among girls who have finalized their compulsory education;

(d) The lack of comprehensive education on and services concerning sexual and reproductive health and rights for adolescents, contributing to an extremely high rate of pregnancy among school-age girls;

(e) The lack of regulations and measures to address social exclusion and inadequate support for the reintegration of pregnant students and adolescent mothers to ensure that they complete their education;

(f) The concentration of women and girls in traditionally female-dominated fields of study and the low proportion of girls who are enrolled in studies in the fields of science, technology, engineering and mathematics, which amounted to only 21.1 per cent in 2016;

(g) The difficulties faced by women and girls with disabilities and by asylum-seeking and migrant women and girls in gaining access to high-quality education.

24. In line with its general recommendation No. 36 (2017) on the right of girls and women to education, and taking note of target 4.5 of the Sustainable Development Goals, which is aimed at eliminating gender disparities in education, the Committee recommends that the State party:

(a) Monitor the implementation of the right of girls and women to education by ensuring that the Ministry of Education and Human Resources, Tertiary Education and Scientific Research collects data on the educational enrolment, absenteeism and dropout rates, including owing to
adolescent pregnancy, of girls and women at all levels of education, disaggregated by sex, location, age, school type and ethnic group;

(b) Strengthen efforts to retain girls in school and raise awareness, in particular among parents, of the importance of education for women;

(c) Undertake comprehensive research on the root causes of illiteracy and absenteeism and adopt measures to address them;

(d) Provide adequate sanitation facilities and sanitary pads for girls in schools;

(e) Include in school curricula mandatory, age-appropriate, evidence-based and scientifically accurate education for girls and boys on sexual and reproductive health and rights that covers responsible sexual behaviour, that dismantles the social taboo of menstruation and that is free of discriminatory gender stereotypes;

(f) Encourage pregnant girls to continue their education and facilitate the reintegration into education of adolescent mothers, including by combating cultural stigma through awareness-raising campaigns and by providing affordable care for their children;

(g) Adopt temporary special measures, including incentives such as scholarships, to promote the participation of women and girls in the fields of science, technology, engineering and mathematics, such as providing more scholarships in those fields, and address stereotypes and structural barriers that may deter girls from enrolling in traditionally male-dominated fields of study;

(h) Take the steps necessary to ensure that reasonable accommodation is provided to women and girls in schools and that asylum-seeking and migrant women and girls have access to education.

Employment

25. The Committee welcomes the State party’s initiative, taken on 15 April 2013, under section 27 (3) (f) of the Equal Opportunities Act 2008, to issue guidelines for employers on developing and applying an equal opportunity policy in businesses that employ more than 10 people. The Committee is concerned, however, that:

(a) Horizontal and vertical occupational segregation persists in the private sector, leading to a wide gender pay gap in the State party, and the principle of equal pay for work of equal value is not enforced, in particular in the agricultural sector where wages depend on the “differences in the work performed in terms of tasks allocated” (CEDAW/C/MUS/8, para. 85);

(b) Women are underrepresented in decision-making positions in the private sector and no regulations are in place to ensure their equal participation in the labour market;

(c) Under section 30 (3) of the Employment Rights Act 2008 (Act No. 33 of 2008), paid maternity leave is limited to women who have worked 12 consecutive months for the same employer;

(d) A limited number of cases of sexual harassment in the workplace are recorded by the Ministry of Labour, Industrial Relations and Training;
Reports received by the Committee indicate that women migrant workers may be subjected to exploitative working conditions and that there have been incidences in which work contracts have been terminated on the basis of pregnancy.

26. The Committee recommends that the State party:

(a) Enforce the principle of equal pay for work of equal value, enshrined in section 20 (1) of the Employment Rights Act 2008, in the public and private sectors, including in the application of the new minimum wage, and narrow the gender pay gap, with a view to eliminating it, including by conducting regular pay surveys and labour inspections;

(b) Improve access for women to all areas of the private sector, including through regulations and measures, in particular temporary special measures, in line with article 4 (1) of the Convention and the Committee’s general recommendation No. 25 (2004) on temporary special measures;

(c) Amend or repeal section 30 (3) of the Employment Rights Act 2008 to ensure equal rights for women with regard to paid maternity leave, irrespective of the length of their employment with their employer;

(d) Enforce section 54 of the Employment Rights Act 2008, strengthen labour-related complaint and dispute resolution mechanisms to address discrimination on the basis of sex, including sexual harassment, in the workplace, encourage reporting and impose appropriate sanctions on perpetrators;

(e) Ensure the enforcement of sections 38 (1) (a) and 46 (5B) of the Employment Rights Act 2008, which protect employees against the termination of their contracts on various discriminatory grounds, including pregnancy, and which are applicable to women migrant workers pursuant to section 13 of the Civil Code of 1808;

(f) Continue to systematically carry out inspections to ensure that migrant women are not subject to exploitative labour practices and strengthen relevant inspection mechanisms, such as the Flying Squad.

Health

27. The Committee welcomes the adoption of the Criminal Code (Amendment) Act 2012, which amended section 235 of the Code and introduced section 235A, which legalizes abortion in certain circumstances. The Committee is concerned, however, about the following:

(a) The high incidences of adolescent pregnancy and unsafe abortion, attributable to the limited availability of education on sexual and reproductive health and rights;

(b) The lack of clear regulations and protocols to ensure the effective implementation of the new legislative provisions on abortion;

(c) The high rate of maternal mortality;

(d) The prevalence of HIV/AIDS, including mother-to-child transmission;
The lack of sufficient information on the provision of high-quality care and medical services to women and girls who are victims of gender-based violence.

28. Recalling its general recommendation No. 24 (1999) on women and health and its general recommendation No. 35, the Committee draws attention to targets 3.1 and 3.7 of the Sustainable Development Goals, which are aimed at reducing the global maternal mortality ratio and ensuring universal access to sexual and reproductive health-care services. It recommends that the State party:

(a) Step up efforts to prevent adolescent pregnancies and ensure that modern contraceptives are available, accessible and affordable for women and girls;

(b) Fully apply section 235A of the Criminal Code, which decriminalizes abortion in specified circumstances, including through the adoption of clear regulations and protocols for hospitals and health-care practitioners, and raise awareness among women and health-care providers regarding access to legal abortion and post-abortion care;

(c) Collect data and provide information on access to legal abortion and on the number of women and girls resorting to unsafe abortions in the State party in its next periodic report;

(d) Reduce maternal mortality by improving access to basic prenatal and postnatal care and emergency obstetric services provided by skilled birth attendants throughout the territory of the State party and conducting audits to analyse the reasons behind each case of maternal mortality;

(e) Ensure access to adequate health services, including antiretroviral medicines, for women and girls living with HIV/AIDS, paying particular attention to disadvantaged groups of women, such as women in prostitution;

(f) Adequately train medical personnel to ensure specialized attention and care for women and girls who are victims of sexual violence, including the provision of essential services for emergency contraception and abortion.

Economic empowerment of women and economic and social benefits

29. The Committee welcomes the existence of various economic and social benefit schemes, such as the subsistence allowance scheme, the national housing programme for the period 2015–2019, and measures taken by the National Empowerment Foundation and the National Women Entrepreneur Council. It notes the adoption of a corporate social responsibility policy, under which private companies can contribute 2 per cent of their profits to benefit social and environmental programmes. The Committee also welcomes the State party’s continued efforts to reduce poverty, such as the Marshall Plan against Poverty and the Poverty Observatory. The Committee is concerned, however, about the following:

(a) The fact that the State party has not established an official poverty line to allow the State party to analyse the poverty rates among women, including rural women, Creole women and women heads of household;
(b) The lack of information on mechanisms that ensure the meaningful participation of vulnerable women in the design of strategies and programmes that focus on women as active participants in the implementation thereof;

(c) The insufficient provision of statistical data, disaggregated by sex, age, disability, ethnicity, location and socioeconomic status, on the economic and social benefits provided to women by the State party and the lack of information on the effectiveness of monitoring mechanisms;

(d) The ways in which the State party’s financial policies and practices on corporate reporting and taxation may have an adverse impact on the ability of other States, in particular those that have insufficient revenue, to mobilize maximum resources for the realization of women’s rights.

30. The Committee recommends that the State party:

(a) Establish an official poverty line and provide data, disaggregated by sex, age, disability, ethnicity, location and socioeconomic status, on poverty levels among women, in particular vulnerable groups of women, and ensure the meaningful participation of vulnerable women in the formulation and development of poverty reduction and eradication strategies;

(b) Conduct assessments of the impact of economic and social benefits, including the corporate social responsibility policy, on gender equality;

(c) Establish monitoring mechanisms and include comprehensive statistical data disaggregated by sex, age, disability, ethnicity, location and socioeconomic status in its next periodic report to illustrate the degree to which women benefit from existing anti-poverty initiatives, including on housing, in line with Sustainable Development Goal 5;

(d) In line with the Committee’s general recommendation No. 28, undertake independent, participatory and periodic assessments of the extraterritorial effects of its financial and corporate tax policies on women’s rights and on substantive equality between women and men, ensuring that the assessments are conducted impartially and that the methodology and findings are communicated to the public.

Rural women, Creole women, migrant women and women with disabilities

31. The Committee is concerned about reports of discrimination against disadvantaged or marginalized groups of women facing intersecting forms of discrimination, such as rural women, Creole women, migrant women and women with disabilities. It notes with concern the lack of data, disaggregated by sex, age, disability, ethnicity, location and socioeconomic status, on the situation of such women in all areas covered by the Convention and the lack of information on their meaningful participation in political decision-making.

32. The Committee refers to its general recommendation No. 34 (2016) on the rights of rural women and recommends that the State party collect data on rural women and other women facing intersecting forms of discrimination, disaggregated by sex, age, geographical location, disability, socioeconomic or other status and whether they belong to a minority group, with a view to informing and designing measures, including temporary special measures, aimed at achieving substantive equality between women and men in all areas covered by the Convention. It calls upon the State
party to ensure the full participation of women belonging to disadvantaged and marginalized groups in political decision-making.

Lesbian, bisexual and transgender women and intersex persons

33. The Committee notes with concern the intersecting forms of discrimination faced by lesbian, bisexual and transgender women and intersex persons, including the following:

(a) The prevalence, in all areas covered by the Convention, of discriminatory practices that disadvantage lesbian, bisexual and transgender women and intersex persons, including social exclusion and acts of hate speech and abuse;

(b) The lack of policy measures pertaining to the rights of lesbian, bisexual and transgender women and intersex persons (CEDAW/C/MUS/8, para. 36);

(c) The underreporting of acts of violence and of physical, verbal and emotional abuse against lesbian, bisexual and transgender women and intersex persons.

34. The Committee recommends that the State party:

(a) Adopt the legislative and policy measures necessary to combat discrimination and violence against lesbian, bisexual and transgender women and intersex persons, including hate speech and physical, verbal and emotional abuse;

(b) Promote the protection of the rights of lesbian, bisexual and transgender women and intersex persons, in all areas covered by the Convention, including in employment and health, and conduct awareness-raising activities to address their stigmatization in society;

(c) Ensure that law enforcement mechanisms efficiently protect the rights of lesbian, bisexual and transgender women and intersex persons;

(d) Provide access to shelter and assistance for lesbian, bisexual and transgender women and intersex persons who are victims of violence;

(e) Provide training to medical personnel, the police and law enforcement officials in this regard.

Women and climate change

35. The Committee notes the State party’s efforts, such as the national climate change adaptation policy framework, to address the adverse impact of climate change and disasters and to incorporate a gender perspective therein. The Committee is concerned, however, about the lack of information on the involvement of women in drafting legislation, policies and strategies and on the impact of programmes aimed at engaging women as agents of change, such as awareness-raising initiatives undertaken by the Ministry of Social Security, National Solidarity and Environment and Sustainable Development, in cooperation with the National Women’s Council and women’s associations and under the Africa Adaptation Programme.

36. In line with its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party ensure that women are meaningfully involved in the development of legislation, national
policies and programmes on climate change, disaster response and disaster risk reduction, such as the forthcoming bill on climate change and the nationally appropriate mitigation actions for low carbon island development strategy project.

Marriage and family relations

37. The Committee is concerned that:

(a) Article 16, paragraph 4 (c), of the Constitution, together with the de facto repeal of chapter 9, of the Civil Code which was in effect from 1982 to 1987, leaves women who are in unregistered Muslim marriages unprotected, without effective means of safeguarding their marital rights, including to property, to inheritance and to the recognition and custody of their children, and with no forum in which they can claim those rights, and allows for the persistence of informal polygamous and child marriages;

(b) There are no legislative measures in place to protect the economic and other rights of women in de facto unions, including unregistered Muslim marriages and polygamous marriages;

(c) Section 145 of the Civil Code allows for girls and boys between the ages of 16 and 18 to marry with only the consent of a parent or guardian, and no requirement for judicial approval, and section 2 of the Child Protection Act defines a child as an unmarried person under the age of 18;

(d) Section 254 (1) of the Civil Code excludes women who are considered to be “at fault” for a divorce (sections 230 to 234 of the Code) from the right to alimony under section 255;

(e) There is a lack of comprehensive data, disaggregated by sex, age, disability, ethnicity, location and socioeconomic status, on the numbers of child marriages, unregistered religious marriages and polygamous marriages.

38. The Committee, recalling its general recommendation No. 21 (1994) on equality in marriage and family relations and its general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, recommends that the State party:

(a) Review relevant national legislation in order to make mandatory the registration of all marriages, including past unregistered marriages under section 74 (1) of the Civil Status Act (Act 23 of 1981), and to criminalize non-compliance and consider, as an interim measure, the reinstatement of chapter 9 of the Civil Code, with a view to applying it to all Muslim religious marriages regardless of when they were celebrated, so as to grant marriage recognition, to adequately protect the rights of all women upon the dissolution of religious marriages, including the rights to an equitable division of marital property and to the recognition and custody of their children, and to ensure that their rights are protected under the Civil Code and the Civil Status Act and such provisions enforceable under the jurisdiction of civil courts, and to effectively preventing all forms of polygamous and child marriages;

(b) Review the Civil Code in order to adequately protect the property rights of women and to establish a system of equitable division of marital property upon dissolution of de facto relationships and undertake a study on the prevalence of polygamy in the State party, with a view to
addressing its root causes and implementing measures to enforce its prohibition (section 150 of the Civil Code);

(c) Repeal or amend section 145 of the Civil Code to completely preclude consent by parents or guardians as a sufficient requirement to allow marriage of those under the age of 18 and to allow court approval only under exceptional circumstances for marriages of those between the ages of 16 and 18, ensure that the planned children’s bill reflects this provision and amend section 2 of the Child Protection Act to define a child as any person under the age of 18;

(d) Amend or repeal section 254 (1) of the Civil Code to ensure that women have a right to alimony regardless of the grounds for divorce;

(e) Ensure the collection, analysis and dissemination of comprehensive and data, disaggregated by sex, age, disability, ethnicity, location and socioeconomic status, on child marriages, religious marriages and polygamous marriages, in cooperation with relevant institutions, such as the Muslim Family Council, tasked, under section 30 (a) of the Civil Status Act, to register all marriages celebrated in accordance with Muslim rites;

(f) Conduct comprehensive awareness-raising campaigns to challenge cultural attitudes that legitimize child marriage and polygamy.

Data collection and analysis

39. The Committee takes note of the development of several data collection systems, including the Domestic Violence Information System, the Child Protection Register and the database of human rights indicators. It regrets, however, that the data disaggregated by sex and other relevant factors, in particular on the situation in Rodrigues, Agalega and other remote parts of the territory of the State party, remain insufficient. Such statistical data is necessary for accurately assessing the situation of women, determining the magnitude and nature of discrimination, developing informed and targeted policies and systematically monitoring and evaluating progress achieved towards the realization of substantive equality between women and men in all areas covered by the Convention.

40. The Committee calls upon the State party to ensure that its existing data collection systems disaggregate data by sex, age, disability, ethnicity, location and socioeconomic status. It further recommends that the State party enhance the collection, analysis and dissemination of comprehensive and disaggregated data through a centralized system and use measurable indicators to assess progress achieved towards the realization of substantive equality between women and men in all areas covered by the Convention, in particular on gender-based violence against women, child marriage, adolescent pregnancy, education, employment, women in prostitution and trafficking. In that regard, the Committee draws attention to its general recommendation No. 9 (1989) on statistical data concerning the situation of women and encourages the State party to seek technical assistance from the relevant United Nations agencies.

Dissemination

41. The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the de facto official
languages of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, the National Assembly and the Rodrigues Regional Assembly and the judiciary, to enable their full implementation.

Technical assistance

42. The Committee recommends that the State party link the implementation of the Convention to its development efforts and that it avail itself of regional or international technical assistance in this respect.

Ratification of other treaties

43. The Committee notes that the adherence of the State party to the nine major international human rights instruments1 would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance, to which it is not yet a party.

Follow-up to the concluding observations

44. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 16, 18 (b), 38 (c) and 40 above.

Preparation of the next report

45. The Committee requests the State party to submit its ninth periodic report, which is due in November 2022. The report should be submitted on time and cover the entire period up to the time of its submission.

46. The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I).

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1 The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.
Committee on Economic, Social and Cultural Rights

Concluding observations on the fifth periodic report of Mauritius

1. The Committee considered the fifth periodic report of Mauritius (E/C.12/MUS/5) at its 14th and 15th meetings (see E/C.12/2019/SR.14 and 15) held on 26 and 27 February 2019, and adopted the present concluding observations at its 30th meeting, held on 8 March 2019.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report by the State party as well as the supplementary information provided in the replies to the list of issues (E/C.12/MUS/Q/5/Add.1). The Committee appreciates the constructive dialogue held with the State party’s high-level delegation.

3. While welcoming the establishment of the national mechanism for reporting and follow-up in the State party, the Committee regrets the lack of engagement by stakeholders, including civil society and the National Human Rights Commission of Mauritius, in its process of examination of the fifth report of the State party.

B. Positive aspects

4. The Committee welcomes the Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 adopted on 25 February 2019 by the International Court of Justice, affirming the right to self-determination of the Chagos Archipelago on the basis, inter alia, of article 1 of the Covenant. It also welcomes the legislative, institutional and policy measures taken by the State party to enhance the level of protection of economic, social and cultural rights in the State party, many of which are reflected in the present concluding observations. It notes, in particular, the adoption of the

C. Principal subjects of concern and recommendations

Applicability of the Covenant

5. The Committee notes that the process of amending the Constitution to enshrine the economic, social and cultural rights of the Covenant on an equal footing with other constitutional rights has not been completed. It reiterates its concern that the rights contained in the Covenant have not been incorporated into the domestic legal order and thus cannot be directly invoked by individuals before national courts. It also notes with concern the intention of the State party, expressed in para. 23 of its National Human Rights Action Plan 2012-2020, to select for inclusion in the Protection of Human Rights Act only those provisions of the Covenant that it considers to lend themselves to being domestically enforced by the courts.

6. The Committee recommends that the State party accord the Covenant a legal status that would enable its provisions to be invoked directly within the domestic legal system, allowing them to be applied in the domestic legal order. Moreover, the Committee recommends that the State party enhance training for judges, lawyers and public officials on the provisions of the Covenant and their justiciability. The Committee draws attention of the State party to its general comment no. 9 (1998) on the domestic application of the Covenant, as well as to paragraph 11.3 of its decision of 17 June 2015 in I.D.G. v. Spain (communication no. 2/2014).

National Human Rights Commission of Mauritius

7. The Committee notes that the National Human Rights Commission of Mauritius has been granted A-status by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institution (GANHRI) since 2014, with a number of recommendations for further strengthening its independence and effective functioning. Like the Sub-Committee on Accreditation, however, the Committee is concerned that the Commission does not have an explicit mandate to protect and promote economic, social and cultural rights.

8. The Committee recommends that the State party provide the National Human Rights Commission of Mauritius with an explicit mandate to protect and promote economic, social and cultural rights. It also recommends that the State party further strengthen the independence and effective functioning of the Commission in accordance with the Principles relating to the Status of National Institutions for the promotion and protection of human rights (the Paris Principles), including by fully implementing the recommendations made by GANHRI and by implementing the commitment expressed in para. 68 of the National Human Rights Action Plan 2012-2020 to this end.

Climate change
9. The Committee is aware that the State party is prone to natural calamities such as cyclones and appreciates the establishment of the National Environment Fund. Natural disasters, in the face of climate change, have had a serious impact on the enjoyment of the Covenant rights, particularly by those living at sea level in the Southern part of the State party, despite the negligible contribution of the State party to the phenomenon.

10. The Committee recommends that the State party enhance its disaster preparedness, response and disaster risk reduction, adopting a human rights-based approach based on a clear identification of rights and responsibilities and including the establishment of monitoring mechanisms, and allocate an adequate level of financial resources to this end. It also recommends that the State party strengthen the preparedness of communities, particularly those living in the South, to climate change and natural disasters. It encourages the State party to seek international support and assistance in order to mobilize the financial and technological support to which it is entitled in mitigating and responding to the effects of climate change.

State obligations in the context of business activities

11. The Committee notes that Section 46(5) of the Public Procurement Act 2006 provides that a procurement contract shall include a clause guaranteeing the rights of the workers engaged in the execution of the contract. However, it is concerned that the definition of “worker” provided for in Section 46(10) and in Section 2 of the Employment Rights Act 2008 may exclude those workers employed by subcontractors from this protection.

12. The Committee recommends that the State party ensure that Section 46(5) of the Public Procurement Act 2006 covers all workers engaged in the execution of the contract, including those employed by subcontractors. It recalls that, as part of their duty to protect the rights of the Covenant, States should require corporations to ensure that their business partners (including suppliers, franchisees and subcontractors) respect Covenant rights, referring in that regard to its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paragraph 33.

Maximum available resources

13. While appreciating the need to attract foreign direct investment, and while commending the contribution of the National Corporate Social Responsibility Foundation (NCSRF) to the work of non-governmental organisations, the Committee is concerned that the low rate of corporate income tax applied in the State party may reduce the public revenues available to finance public policies for the implementation of Covenant rights. It may also encourage a unhealthy regulatory competition in the sub-region, which ultimately shall make it more difficult for all governments to mobilize the resources necessary to the fulfilment of the rights in the Covenant (art. 2(1)).

14. The Committee recommends that the State party re-examine the role of the corporate income tax in mobilizing domestic revenues, and that it play an active role
in seeking to make progress towards the upwards harmonization of corporate taxation in the region, enabling all countries in the region to maximize the contribution to public revenue of foreign investors. It refers in this regard to general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paragraph 29.

Non-discrimination

15. The Committee is concerned at the shortcomings of the Equal Opportunities Act 2012. The list of prohibited grounds of discrimination in Section 2 does not include gender identity, social origin, or property. The term "spouse" is defined narrowly, thus excluding persons in unregistered Muslim marriages and de facto unions from being protected from discrimination in enjoying their Covenant rights. Moreover, the prohibition of discrimination in the private housing market is limited (Section 19(2)) (arts. 2(2), 10 and 11).

16. The Committee recommends that the State party revise the Equal Opportunities Act, in particular Sections 2 and 19(2), with a view to ensuring that the Act prohibits all direct, indirect and intersectional forms of discrimination, on any ground, including gender identity, social origin, property and other status, in all spheres relevant to the Covenant rights; and that it provide for effective remedies for victims of discrimination, including through judicial and administrative proceedings. The Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons

17. The Committee is concerned that Section 250 of the Criminal Code, a legacy of the colonial era, still criminalizes same-sex relations. The Committee is also concerned at the limited protection of LGBTI persons provided in anti-discrimination provisions by excluding gender identity as a prohibited ground, and the absence of any legal recognition of same-sex couples, which may restrict the protection of same-sex partners upon separation, or following the illness or death of a partner (arts. 2(2) and 10).

18. The Committee urges the State party to make the necessary legislative changes with a view to repealing Section 250 of the Criminal Code, fully protecting LGBTI persons from discrimination based on sexual orientation and gender identity, and providing for legal recognition of same-sex unions or partnerships.

Persons with disabilities

19. While noting the efforts made by the State party to enact comprehensive legislation on the rights of persons with disabilities, the Committee remains concerned that the duty to provide reasonable accommodation in Section 13 of the Equal Opportunities Act is limited to the field of employment. It is also concerned that the 3 percent employment quota for persons with disabilities is applicable only in the private sector and is not effectively enforced (arts. 2(2) and 6).
20. The Committee recommends that the State party expedite the adoption of a comprehensive law on the rights of persons with disabilities and review all relevant legislation, including the Equal Opportunities Act, with a view to integrating the duty to provide reasonable accommodation therein. It also recommends that the State party extend the employment quota for persons with disabilities to the public sector and strengthen the enforcement of the quota.

The Creoles

21. While noting the measures taken by the State party, particularly in Rodrigues Island, the Committee remains concerned that the Creoles, including those living on Rodrigues Islands, continue to face systemic disadvantages in enjoying the Covenant rights, particularly in the areas of employment, housing, healthcare and education and that they are disproportionately affected by poverty. It is particularly concerned at the situation of the Malaise Creoles, who are most marginalized among the Creole population (art. 2(2)).

22. The Committee recommends that the State party assess the effectiveness of the measures taken, and design and implement other measures, including temporary special measures in accordance with paragraph 39 of general comment no. 20 (2009) on non-discrimination in the area of economic, social and cultural rights, with the participation of representatives of the Creole population, to ensure that they have effective and equal access to employment, adequate housing, health-care services and inclusive quality education. It also recommends that the State party monitor the situation of economic, social and cultural rights enjoyed by the Malaise Creoles and take necessary measures to address the situation.

Equality between men and women

23. While welcoming the 2012 Equal Opportunities Act and efforts to mainstream gender equality in all ministries, as well as the amendment to the Employment Rights Act in 2017 to establish the principle of equal pay for work of equal value, the Committee is concerned that deep rooted gender role stereotypes, patriarchal attitudes and persistent discriminatory cultural norms and practices against women contribute to the low representation of women in the decision-making positions in the public sector; as well as at the low participation of women in the labour market, the significant gender pay gap and the uneven implementation of the principle, particularly in the agricultural sector and the sugar and tea industries; and the persistence of occupational gender segregation (arts. 3, 6 and 7).

24. The Committee recommends the State party to:

(a) Review and amend all existing laws, regulations, norms and practices which are discriminatory against women and develop policies and programmes, including temporary special measures, to bring substantive gender equality in all areas of economic, social and cultural rights;

(b) Adopt effective measures to close the significant occupational gender segregation and gender pay gap, including by providing women with decent
work and career development opportunities in non-traditional fields of study and work on an equal footing with men;

(c) Effectively implement the principle of equal pay for work of equal value, including by establishing methods for objective appraisal of the work to be performed with a view to providing a classification of jobs free of gender bias; and

(d) Take comprehensive measures to eliminate strong gender role stereotypes, including through media campaigns and opinion leaders and by awareness-raising of the general public on the equal sharing of rights and responsibilities of men and women in the family and society.

25. The Committee refers the State party to its general comment no. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights and to its general comment no. 23 (2016) on the right to just and favourable conditions of work, paras. 11-17, 47(a) and 62.

Right to work

26. While noting the measures taken by the State party, the Committee is concerned at the lack of appropriate education and training to meet the requirements of the right to work, since it has contributed to the high level of unemployment among young people and women. It is also concerned at the disproportionately low participation of women in the labour market and at the high incidence of unemployment among women (arts. 3 and 6).

27. The Committee recommends that the State party intensify its efforts to improve vocational education and training, including the Youth Employment Programme and the Back to Work Programme, and provide continuous learning opportunities, to meet the changing demands of the labour market. It also recommends that the State party identify the root causes of the disproportionately low level of female labour force participation and high unemployment among women and effectively address them.

Minimum wage

28. While welcoming the establishment of national minimum wage, the Committee remains concerned that it does not apply equally to all workers and that the minimum wages benefiting workers in the sugar, tea and salt-manufacturing industries as well as workers in export-oriented enterprises are lower than the national minimum wage (arts. 3 and 7).

29. The Committee urges the State party to ensure that the national minimum wage applies to all workers in all sectors and industries in the State party. It refers to general comment no. 23 (2016) on the right to just and favourable conditions of work, paragraphs 18-24.

Domestic workers

30. The Committee is concerned at the large number of complaints filed by domestic workers as regards their working conditions. It is also concerned that the labour inspectorate cannot effectively monitor the situation of domestic workers (art. 7).
31. The Committee recommends that the State party ensure that all complaints received from domestic workers about working conditions are duly investigated and, where appropriate, penalties are applied. It also recommends that the State party take measures necessary to enable the labour inspectorate to effective monitor the working conditions of domestic workers, including by exercising the power of the Permanent Secretary provided for in Sections 61-62 of the Employment Rights Act 2008 and in Section 24-27 of the Occupational Safety and Health Act 2005.

Migrant workers

32. While noting the efforts made by the State party, the Committee remains concerned at reports that migrant workers continue to be subjected to forced labour, underpayment of wages, substandard living conditions, denial of allowances, deportation, and termination in the event of pregnancy. It is also concerned at the insufficient regulation of recruiting agencies, which are often responsible for such abuses.

33. The Committee recommends that the State party intensify its efforts to protect the rights of migrant workers and, in particular:

(a) Continue to raise awareness of migrant workers of their rights provided in the legislation and on the complaint mechanisms available to them;

(b) Improve the complaint mechanisms and provide complainants with necessary assistance, including legal assistance;

(c) Apply deterrent penalties for contravening employers;

(d) Establish a regulatory framework for recruitment agencies and monitor their activities;

(e) Strengthen the cooperation with workers’ countries of origin, through bilateral agreements, to protect and promote the rights of these workers.

Trade union rights

34. While welcoming the legislative reform that allows the police to form and join unions, the Committee is concerned at reports that trade union representatives face harassment, intimidation, threats, discrimination and unfair dismissals in export processing zones (EPZs).

35. The Committee urges the State party to ensure that all the allegations of harassment and intimidation against trade union activists, particularly in EPZs, are thoroughly investigated and that those responsible are tried and punished. It also recommends that the State party take effective measures to ensure that all workers, including those in EPZs, enjoy their rights provided in article 8 of the Covenant.

Right to social security

36. The Committee welcomes the significant increase in the amount of the basic retirement pension from MUR 3,623 in 2014 to MUR 6,210 in 2019 as well as the introduction of free medical services and public transportation for older persons. It is
concerned, however, that the amount of the pension, which remains below the relative poverty line, is not sufficient to provide beneficiaries with an adequate standard of living. It is also concerned that the coverage of contributory pension scheme is low. It is further concerned that non-nationals remain excluded from social aid and that, despite the amendment to the National Pension Act in 2015, migrant workers in export manufacturing enterprises cannot enrol in the national contributory pension scheme during the first two years of their contract. (Arts. 2(2), 9 and 11).

37. The Committee recommends that the State party continue its efforts to:

   (a) Increase the amount of the basic retirement pension to a level that ensures an adequate standard of living for beneficiaries;

   (b) Ensure that migrant workers in export manufacturing enterprises can participate in the national pension scheme from the first day of employment;

   (c) Extend the coverage of contributory pension scheme to cover all workers, including those in the informal economy, the self-employed and non-nationals;

   (d) Extend the coverage of social aid to include non-nationals.

38. The Committee draws the attention of the State party to its general comment No. 19 (2008).

Older persons

39. While noting the efforts made by the State party to strengthen the protection of older persons, the Committee is concerned at the persistently high number of reported cases of abuse against older persons. It is also concerned that several unregistered care homes operate without oversight and the lack of qualified caretakers. It is further concerned at the prevalence of social prejudice against older persons.

40. The Committee recommends that the State party intensify its efforts to:

   (a) Combat abuse against older persons, including by strengthening the enforcement of the Protection of Elderly Persons Act and the role of the Elderly Watch Management Committees, and identifying and addressing the root cause of such abuse;

   (b) Ensure that all care homes are registered and brought under effective regulation and monitoring by relevant public authorities, and that a sufficient number of qualified caretakers are secured;

   (c) Combat social prejudice against older persons, including through awareness-raising activities.

Domestic violence / criminalization of marital rape

41. The Committee is concerned at the prevalence of domestic violence in the State party and the absence of explicit criminalization of marital rape.
42. The Committee recommends that the State party intensify its efforts to combat domestic violence, including by strengthening the enforcement of the Protection from Domestic Violence Act and raising awareness of the Act, particularly the provisions of the occupation and tenancy order in sections 4-8 of the Act, as well as enhancing the assistance available to survivors. It also recommends that the State party take legislative measures to explicitly criminalize marital rape.

Equitable distribution of family responsibilities

43. Welcoming the amendment to the Employment Rights Act in 2015 to extend the length of, and the eligibility for, the maternity leave as well as the regulations governing teleworking (Government Notice No. 37 of 2019), the Committee remains concerned that the greater burden of unpaid domestic and care work is borne by women, which impacts negatively on women’s employment and later in life their pension benefits. It is particularly concerned at the absence of parental leave; the short paternity leave which benefits only those who have contracted civil or religious marriage to the mother of their child; and the fact that no pension points are accrued during long-term unpaid leave taken for family responsibilities, which may disproportionately affect women (see the decision of the Committee of 26 March 2018 in communication no. 10/2005, *Marcia Cecilia Trujillo Calero v Ecuador*, para. 13.4) (arts. 2(2), 3, 6, 9 and 10).

44. The Committee recommends that the State party further its efforts to ensure equitable distribution of family responsibilities between men and women, in particular:

(a) Introduce the parental leave with a minimum period exclusively earmarked for fathers;

(b) Extend the length of paternity leave and apply it to the father of a new-born child regardless of marital status;

(c) Ensure that both men and women take advantage of the teleworking policy in practice;

(d) Expand the provision of affordable child care and personal services;

(e) Ensure that the period of the long-term unpaid leave taken for family responsibilities is taken into account in the calculation of pension benefits.

Child marriage

45. The Committee is concerned that Section 145 of the Civil Code permits children between 16 and 18 years of age to marry with only the consent of the parties concerned and of their parent or a guardian, and that there have been a number of children married under the age of 18 in the State party (art. 10).

46. The Committee recommends that the State party ensure strict adherence to the legal provision that sets the minimum age for marriage for both sexes at 18 and take all measures to eliminate child marriage.
Right to housing

47. The Committee is concerned that the provision of social housing is inadequate and that the living conditions in many social housing units remain poor with limited access to water, adequate sanitation facilities and other public services, despite the efforts made by the State party. It is also concerned that a number of neighbourhoods in the State party are de facto ethnically segregated, particularly in Rodrigues where the majority of the Creole population are concentrated in informal urban settlements (art. 11).

48. The Committee recommends that the State party intensify its efforts to expand the provision of social housing units and to improve the conditions of existing social housing units and the National Housing Development Company Housing Estates. It further recommends that government planning policy aims to achieve spatially integrated housing developments so as to counteract residential de facto segregation against poor and marginalised populations such as the Creoles. The Committee draws the attention of the State party to its general comment no. 4 (1991) on the right to adequate housing.

Social Register of Mauritius

49. While it welcomes the support provided to low-income households included in the Social Register of Mauritius (SRM), the Committee is concerned that the targeting of beneficiaries may lead to under-inclusion of certain individuals or households, and that gender stereotypes may be reinforced if women are made primarily responsible for compliance with conditions in the social contract linked to health or education. (art. 11 and 3).

50. The Committee recommends that the State party review the SRM to ensure that all potential beneficiaries are informed about their right to be included and that any practical obstacles to registration be removed; and that the conditions stipulated in the social contract with beneficiaries do not reinforce gender stereotypes.

Right to health

51. The Committee is concerned at:

   (a) The high incidence of non-communicable diseases (NCD) and the increase in the NCD-related mortality;

   (b) The large number of persons infected with Hepatitis-C, particularly among persons who inject drugs (95 percent), and the very limited capacity to treat the patients due to the unaffordability of medicines;

   (c) The estimated high incidence of unsafe clandestine abortions and the large number of reported cases of post-abortion complications (art. 12).

52. The Committee recommends that the State party:
(a) Take effective measures to reduce the risk factors of NCD, to improve early detection of NCDs, to provide effective and timely treatment and to prevent complications;

(b) Enhance its capacity to treat persons infected with Hepatitis-C, and prevent new infections, including through awareness-raising and outreach activities targeted to drug users;

(c) Reduce clandestine abortions by ensuring that safe abortion services in accordance with s 235A of the Criminal Code are easily accessible; provide post-abortion care and counselling; and improved access to sexual and reproductive health information and services, including contraceptives, particularly among adolescents. The Committee draws the attention of the State party to its general comment no. 22 (2016) on the right to sexual and reproductive health.

Use of drugs

53. While noting the decrease in the number of drug users, the Committee is concerned at:

(a) The repressive laws and policies dealing with the use of drugs, which results in over half of prison population being drug offenders;

(b) The acute health conditions of drug users, such as the high prevalence of HIV and Hepatitis-C infections, and their limited access to health care services due to the social stigma against them;

(c) The limited availability of harm reduction programmes, particularly for those under the age of 18 years;

(d) The provisions of the Certificate of Character Act which provides for the inclusion of information on drug offences in certificates of character issued upon request by prospective employers (arts.2(2) and 12).

54. The Committee recommends that the State party:

(a) Review its legislation and policies relating to the use of drug based on an approach that prioritises the right to health of drug users;

(b) Develop a policy to address the acute health conditions of drug users, improve access to healthcare services by drug users, and combat social stigma against drug users, including through awareness programmes;

(c) Continue to expand harm reduction programmes, including opioid substitution therapy and needle syringe programmes, and expand the harm-reduction programmes available to those under the age of 18 years;

(d) Review the Certificate of Character Act with a view to bringing it in line with the amendment to Equal Opportunities Act in 2017 to prohibit employment discrimination on the ground of criminal record.
Mental health

55. The Committee is concerned at the high prevalence of mental health conditions and the insufficient number of psychiatrists and other professional mental health care providers in the State party. It is also concerned at social stigma against persons with mental health conditions, often labelled as “pagla” or “fou” (arts. 2(2) and 12).

56. The Committee recommends that the State party identify the root causes of the prevalence of mental health conditions in order to address them and that it increase the availability, accessibility and quality of professional mental health-care services, including community-based services, and skilled personnel. It also urges the State party to combat social stigma against persons with mental health conditions.

Right to education

57. While welcoming the measures taken to strengthen basic education, including the introduction of the Nine Years of Continuous Basic Education programme and of the Primary School Achievement, and the adoption in 2018 of the Special Education Needs Authority Act, the Committee is concerned at:

(a) The high rates of absenteeism in both primary and secondary education;

(b) The insufficiency of educational materials in the Creole language for instruction purposes;

(c) The highly unequal education outcome due to the frequent recourse to private courses;

(d) The insufficient provision of inclusive education for students with disabilities as well as the reliance on non-governmental organizations (NGOs) for the training of teachers and special services for those children.

58. The Committee recommends that the State party:

(a) Identify and address root causes of the persistent absenteeism;

(b) Take steps necessary to improve access to educational materials in the Creole language;

(c) Address the growing inequality in education outcome, including through enhancing the quality of public education;

(d) Further extend the provision of inclusive education for students with disabilities and strengthen the capacity of the State party, in collaboration with relevant stakeholders, including NGOs, to train teachers and to provide special services for children with disabilities.

Cultural rights

59. The Committee is concerned that Mauritian Creole has not been given any official status, despite the fact that over 85 percent of the population speak the language.
60. The Committee recommends that the State party take the necessary steps to accord Mauritian Creole an official status.

Right to enjoy the benefits of scientific progress and its applications

61. The Committee notes with appreciation the installation of the Mauritius-Rodrigues submarine cable and extension of the Internet connectivity to an outer island, Agalega. It is, however, concerned that the share of the Internet users remains very low and that many people, particularly disadvantaged and marginalized individuals, do not have digital skills to enjoy the benefits from advanced technology, including information and communication technology (ICT).

62. The Committee recommends that the State party take effective measures to support those who have neither access to the Internet or digital skills to benefit from the advanced ICT infrastructures, and to ensure that all persons in the State party enjoy the benefits of scientific progress and its applications, including ICT, without discrimination.

D. Other recommendations

63. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

64. The Committee recommends that the State party consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

65. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.

66. The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).

67. The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national,
provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the National Human Rights Commission of Mauritius, non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.

68. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 16 (revision of the Equal Opportunities Act), 29 (minimum wage legislation) and 44, a) and b) (parental leave and paternity leave) above.

69. The Committee requests the State party to submit its sixth periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 March 2024. In addition, it invites the State party to update its common core document, as necessary, in accordance with the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN/2/Rev.6, chap. I).
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Mauritius

* The annex is being circulated without formal editing, in the language of submission only.

115.15 Consider ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (Gabon);
115.16 Withdraw reservations to the Convention on the Elimination of All Forms of Discrimination against Women (Denmark);
115.17 Ratify the Convention on the Prevention and Punishment of the Crime of Genocide to increase conformity to its international obligations (Burundi);
115.18 Consider ratifying the Convention on the Prevention and Punishment of the Crime of Genocide (Rwanda);
115.19 Ratify the Convention on the Prevention and Punishment of the Crime of Genocide (Armenia);
115.20 Ratify the 1951 Convention relating to the Status of Refugees (Senegal);
115.21 Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Germany);
115.22 Accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Kenya);
115.23 Adhere to and implement the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, taking additional measures to facilitate late registration of births (Chile);
115.24 Accede to the 1954 Convention relating to the Status of Stateless d Ivoire);
115.25 Consider the ratification of the international conventions relating to refugees and statelessness to fill the existing legal void (Niger);
115.26 Ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (Denmark);
Consider ratifying international instruments to which Mauritius is not a party, particularly all of the conventions and protocols of the African Union (Djibouti);

Ratify the Protocol to the African Charter on Human and Peoples Rights on the Rights of Older Persons in Africa (Comoros);

Consider signing the Southern African Development Community Protocol on Gender and Development (Namibia);

Make efforts to fulfil its international obligations by submitting the two national reports with regard to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Iraq);

Consider issuing a standing invitation to all special procedures of the Human Rights Council (Botswana);

Consider the extension of a standing invitation to all special procedure mandate holders of the Human Rights Council (Latvia);

Consider issuing a standing invitation to the human rights special procedures, while noting Mauritius exemplary cooperation with the United Nations human rights mechanisms (Rwanda);

Adopt an open, merit-based selection process when selecting national candidates for United Nations treaty body elections (United Kingdom of Great Britain and Northern Ireland);

Continue to mobilize resources and seek necessary international assistance to enhance its capacity in upholding the human rights of its people (Nigeria);

Strengthen the independence and funding of the National Human Rights Commission (France);

Provide the Office of the Ombudsperson with adequate resources to enable it to carry out its mandate effectively (Ghana);

Strengthen the implementation of policies and measures relating to democracy, the rule of law and good governance, to ensure the independence and healthy development of State institutions (Angola);

Take appropriate measures to popularize international human rights law in the whole country (Togo);

Adopt comprehensive legislation to prevent and combat discrimination against all marginalized groups on any grounds, including gender and sexual orientation, which includes positive actions for their advancement (Honduras);

Step up its efforts to combat all forms of discrimination, in particular against women and persons with disabilities, and discrimination based on sexual orientation and gender identity (Italy);

Continue to combat discriminatory practices based on sex, and strengthen measures related to the protection of the family and the child (Algeria).
Explicitly prohibit discrimination on the grounds of sexual orientation and gender identity and develop awareness campaigns and training programmes to raise awareness about the rights of lesbian, gay, bisexual and transgender persons (Uruguay);

Take the necessary measures to establish in its national legislation a comprehensive legal framework for adequate and effective protection against discrimination based on sexual orientation (Argentina);

Ensure better recognition of the rights of lesbian, gay, bisexual, transgender and intersex persons and combat discrimination against them (France);

Take measures to combat violence based on sexual orientation and gender identity, by guaranteeing freedom of speech and association for lesbian, gay, bisexual, transgender and intersex persons (Brazil);

Modify section 282 of the Criminal Code by inserting a direct indication that hate crimes motivated by sexual orientation or gender identity will be an aggravating circumstance and punishable by law (Chile);

Implement policies and programmes to protect lesbian, gay, bisexual, transgender and intersex persons from violence and intimidation, for instance by developing training programmes for police officers, or by including attacks against such persons under section 282 of the Criminal Code Act of 1838 (Netherlands);

Repeal the sections of its Criminal Code that criminalize same-sex relationships between consenting adults and strengthen efforts to address inequality and discrimination based on sexual orientation and gender identity (Australia);

Repeal section 250 of the Criminal Code criminalizing homosexual relations between consenting adults (Belgium);

Repeal section 250 of the Criminal Code Act with a view to decriminalizing same-sex sexual conduct between consenting adults (Canada);

Repeal section 250 of the Criminal Code, with a view to decriminalizing same-sex conduct between consenting adults, in line with the International Covenant on Civil and Political Rights (Ireland);

Repeal the criminalization of consensual sexual relations between adults of the same sex (Argentina);

Repeal all laws that criminalize persons based on their sexual orientation and gender identity (Iceland);

Take necessary measures to eliminate discrimination and protect the rights of vulnerable groups, including migrant workers (Nepal);

Continue to provide effective remedies to victims of racial discrimination (South Africa);

Increase efforts to address social exclusion of older persons and discrimination against minorities (Guyana);

Continue addressing remaining discriminatory practices and other challenges in order to comply with human rights standards (Mozambique);
Continue efforts to eliminate discrimination by supporting the Equal Opportunities Commission to execute its mandate (Uganda);

Continue to take into account the vulnerabilities, needs and views of women, children and persons with disabilities in developing projects, policies or programmes on issues related to climate change and disaster risk management (Fiji);

Develop policies to mitigate the impact of climate change and other disaster-related challenges on the full enjoyment of the human rights of the vulnerable (Lesotho);

Continue to take into account in a concrete way the vulnerabilities, needs and viewpoints of marginalized groups when drafting policies or programmes on issues relating to climate change (Haiti);

Ensure that a human rights-based approach is taken when formulating policies and enacting measures on the mitigation of and adaptation to climate change (Seychelles);

Reinforce human and financial resources for the National Disaster Risk Reduction and Management Council to better adapt to climate change (Senegal);

Take necessary legislative steps to abolish the death penalty (Ukraine);

Incorporate the provisions of the Convention against Torture in the domestic legal framework, with a view to absolutely prohibiting torture (Spain);

Secure an absolute ban on torture in legislation (Ukraine);

Take effective measures to ensure accountability for abuses perpetrated by police, security forces and other officials (United States of America);

Take steps to prevent abuse by police and ensure investigations progress in a timely manner (Australia);

Continue efforts on the Government’s proposal for the Police and Criminal Justice Bill so that a law will be drawn up to identify practices to be observed by police officers (Libya);

Enforce laws penalizing officials for corruption, decreasing instances of impunity for abuses by officials and security forces and reinforcing a climate of accountability (United States of America);

Intensify efforts aimed at improving detention conditions in prison (Georgia);

Ensure the conclusion and implementation of its national counterterrorism strategy, which is currently being prepared (Nigeria);

Enhance efforts to fight against corruption (Ethiopia);

Continue to take necessary steps to further improve transparency and accountability in its financial sector, with a view to eliminating loopholes, if any, that may contribute to illicit financial flows (Haiti);

Ensure fair and equitable representation of different population groups in public and political affairs in the context of the new electoral system, with their full participation, with a view to removing obstacles linked to the political representation of certain groups (Haiti);
115.77 Take a series of measures to ensure the adequate application of the law on combating trafficking in persons, in particular by initiating proceedings against perpetrators of crimes linked to this phenomenon (Democratic Republic of the Congo);

115.78 Finalize the drafting of the national plan of action to combat trafficking in persons (Gabon);

115.79 Adopt a comprehensive national action plan to combat human trafficking (Côte d’Ivoire);

115.80 Adopt a comprehensive action plan to prevent, combat and prosecute all forms of trafficking in persons (Honduras);

115.81 Effectively curb and combat human trafficking, safeguarding the rights of victims (Nepal);

115.82 Continue fortifying efforts in addressing human trafficking, particularly in children, including by developing capacity for trafficking investigations and prosecutions (Indonesia);

115.83 Continue its endeavours to combat child labour and trafficking in persons, including women and children (Islamic Republic of Iran);

115.84 Continue to strengthen efforts to combat child trafficking (Maldives);

115.85 Continue its efforts to enhance legal measures and programmes to address violence against women and children and to respond to trends in trafficking in persons (Philippines);

115.86 Further strengthen partnership between governments, civil society and the business sector to eliminate forced and bonded labour from supply chains in Mauritius (United Kingdom of Great Britain and Northern Ireland);

115.87 Take necessary measures to eliminate discrimination against domestic workers in order for them to enjoy their human rights as all other workers do (Islamic Republic of Iran);

115.88 Continue to promote sustainable economic and social development and fight against poverty, so as to provide a solid foundation for the enjoyment of all human rights by its people (China);

115.89 Continue its efforts to empower people living in poverty (Bolivarian Republic of Venezuela);

115.90 Roll out its social empowerment programmes countrywide in order to further improve the living standards of all citizens (Zimbabwe);

115.91 Continue successful efforts to ensure an adequate standard of living for Mauritians (Malaysia);

115.92 Continue efforts aimed at the protection of vulnerable groups, particularly the elderly (Tunisia);

115.93 Continue working to improve health-care and education services to ensure a better standard of living for its population (Cuba);

115.94 Strengthen its efforts to improve the nutritional status of infants, children and mothers (Islamic Republic of Iran);

115.95 Continue to guarantee access to free health care for its population (Bolivarian Republic of Venezuela);

115.96 Revise the Criminal Code so that women can access legal, safe and voluntary termination of pregnancy, and guarantee the provision of the respective medical services (Iceland);

115.97 Continue its efforts to implement its anti-drug awareness campaigns and national prevention programmes (Philippines);
Continue to take positive measures to better protect the rights of women and children, and continue to make progress in the field of education (China);

Continue consolidating the school feeding programme and the fight against school absenteeism (Bolivarian Republic of Venezuela);

Step up efforts to ensure full access to education for Creole-speaking children (Georgia);

Continue efforts to improve educational opportunities for children in rural areas (Maldives);

Consider utilizing human rights education and training programmes to further mainstream the promotion of rights of women and children (Philippines);

Continue efforts in awareness-raising, training and human rights education programmes at all levels of education (Libya);

Intensify international cooperation through partnerships, with the aim of assisting national authorities in affirming and opening up quality higher education to regional vocations (Angola);

Strengthen efforts towards a better promotion of gender equality, in particular the finalization and adoption of the Gender Equality Bill (Armenia);

Strengthen protection against gender-based discriminatory practices (Zimbabwe);

Continue to promote gender equality, work to end violence against women and remove barriers to women’s active participation across all spheres of life (Australia);

Expand activities aimed at educating and empowering women and girls on gender-based violence and the resources available to them, for instance through awareness campaigns and support services (Canada);

Combat domestic violence and ensure integration and more equitable representation of women in the political sphere (France);

Expand measures being taken to address attitudes and stereotypes that lead to discrimination and violence against women and girls (Guyana);

Accelerate efforts towards eliminating violence against women and consider adopting relevant legislation (Georgia);

Pursue the effective implementation of measures to combat violence against women (Djibouti);

Take urgent steps to address gender-based violence by strengthening investigations, prosecutions and convictions, and by introducing public information campaigns to encourage victims to report such crimes and to deter further offences (United Kingdom of Great Britain and Northern Ireland);

Hold accountable those responsible for acts of violence against women, including those responsible for domestic violence and sexual and gender-based violence (United States of America);

Improve the effective implementation of existing legislation on domestic violence, including by strengthening efforts to bring perpetrators to justice (Belgium);

Strengthen access to justice for victims of gender-based and domestic violence, investigate all allegations of sexual violence, bring perpetrators to justice and provide training to law
enforcement and the judiciary on how to properly interact with possible victims when their claims are brought forth and on how to manage cases accordingly (Canada);

115.117 Strengthen efforts to set up an integrated support service against domestic violence (Ethiopia);

115.118 Continue to strengthen application of the law to combat gender and domestic violence (Spain);

115.119 Take further measures to guarantee the realization of the rights of women and girls, especially to fight against all forms of violence and to eradicate child, early and forced marriage (Portugal);

115.120 Continue to promote women’s empowerment, gender equality and representation in decision-making bodies, especially through the active participation of women in social, economic and political fields (South Africa);

115.121 Continue reforms to increase women’s participation in political life at higher levels (United Arab Emirates);

115.122 Continue positive steps to the achievement of gender equality by taking further measures to promote women’s full and equal participation in political and public life (Iceland);

115.123 Promote increasing the number of women participating in the National Assembly and decision-making bodies (Iraq);

115.124 Step up efforts to promote gender equality, particularly with regard to the underrepresentation of women in political and decision-making positions (Rwanda);

115.125 Improve representation of women in the parliament (Senegal);

115.126 Take adequate measures in order to provide more women to be presented in the national parliament and decision-making institutions and bodies (Serbia);

115.127 Enforce existing legislation and strengthen programmes to ensure equality of wages between men and women (Spain);

115.128 Continue efforts to eliminate discrimination against women, particularly in the labour market (Tunisia);

115.129 Solve the problem of the stereotyped distribution of professions in the labour market (Congo);

115.130 Consider setting up a follow-up mechanism for the implementation of the Code of Corporate Governance of 2017 regarding greater representation of women on boards of directors (United Arab Emirates);

115.131 Finalize and adopt the Children’s Bill agreed to during the second review cycle and take measures to further strengthen legal mechanisms for the protection of the rights of child victims and child offenders (Bhutan);

115.132 Work for the improvement of the bill on children’s rights (Cameroon);

115.133 Adopt as soon as possible the consolidated Children’s Bill, addressing key issues such as children’s access to justice and the prohibition of corporal punishment in all spheres of society, promoting the adoption of non-violent disciplinary measures (Uruguay);

115.134 Finalize the drafting and adoption of the Children’s Bill and the bill on adoption (Gabon);
Adopt the consolidated Children’s Bill, including a prohibition of all forms of corporal punishment of children in all settings (Germany);

Strengthen measures to ensure protection of women’s and children rights, including by implementing fully the relevant laws as well as finalizing adoption of the consolidated Children’s Bill (Ireland);

Step up efforts towards the adoption of a bill on children in order to ensure the best standards of health and protection for children (Jordan);

Consider taking further steps to finalize the Children’s Bill, which will, inter alia, abolish corporal punishment in all settings (Namibia);

Complete the legislative process for the adoption of the Children’s Bill (Algeria);

Enact and effectively implement the Children’s Bill (Seychelles);

Adopt, without delay, a consolidated Children’s Bill allowing the Convention on the Rights of the Child to be properly domesticated (Slovenia);

Continue efforts to finalize the passing of the Children’s Bill and Adoption Bill (Uganda);

Continue its endeavour to promote and protect the rights of the child in light of the Government’s finalization and adoption of the draft Children’s Bill (Armenia);

Put further amendments in its legal frameworks in the field of child protection in compliance with international human rights standards (Afghanistan);

Ensure compliance with the minimum age for marriage, established at 18 years (Chile);

Consider reviewing the Civil Code that allows marriage for girls below the age of 18 (Namibia);

Amend the Child Protection Act and raise the age of marriage to 18 years (Kenya);

Enact and implement legislation that protects children’s rights, with a specific focus on fighting against child, early and forced marriage (Italy);

Integrate the principle of taking into account the best interests of the child into all legislative and judicial procedures as well as into policies concerning children (Congo);

Adopt a strategy to combat child labour, in particular in its worst forms; strengthen labour inspection to detect and punish child labour; and improve protection and reinsertion programmes (Democratic Republic of the Congo);

Continue efforts to empower youth (Egypt);

Guarantee the rights of children and better assist children in vulnerable situations (France);

Strengthen laws and policies aimed at protecting children’s rights, particularly those aimed at prohibiting, preventing and responding to the sale and sexual exploitation of children (Botswana);

Ensure that its domestic legislation relating to sexual exploitation of children meets international standards, and provide adequate access to recovery and reintegration measures to child victims of sexual abuse (Germany);

Continue to sensitize both adults and children to the rights of children, particularly in the context of child poverty and child sexual abuse (Malaysia);
115.156 Continue to strengthen efforts to combat child abuse in all its forms, by adopting and implementing the Children s Bill, with particular attention on issues such as corporal punishment, early and forced marriage, trafficking, sexual exploitation and forced prostitution (Netherlands);

115.157 Continue efforts to promote children s rights and their protection from trafficking and sexual exploitation (Tunisia);

115.158 Redouble efforts to strengthen measures to protect the rights of the child, including by preventing violence against children and improving quality education for children (Indonesia);

115.159 Establish an action plan to prevent and counter the abuse of children, and eradicate violence against children (Iraq);

115.160 Ensure enhanced coordination among the law enforcement agencies in terms of proceeding cases of child abuse (Afghanistan);

115.161 Adopt a legislative mechanism to prohibit and punish all forms of violence against and ill-treatment of children (Madagascar);

115.162 Intensify efforts to formulate a comprehensive strategy for preventing and combating child abuse, including the prohibition of corporal punishment in all settings (Ukraine);

115.163 Take the necessary measures to ensure adequate and effective protection against all forms of discrimination against different ethnic groups and minorities, through awareness-raising and education programmes aimed at highlighting the contribution of each ethnic group (Argentina);

115.164 Adopt concrete measures within the framework of the Convention on the Elimination of All Forms of Discrimination against Women, with a view to materializing social inclusion of minorities (Angola);

115.165 Provide further opportunities for simultaneous training and access to information in Mauritian Creole/Kreol Morisien (Trinidad and Tobago);

115.166 Continue to remedy the economic disadvantages and cultural, structural and informal disadvantages of Mauritian Creoles by implementing policies conducive to their economic development, with their full participation (Haiti);

115.167 Continue developing actions to promote the rights of persons with disabilities and their participation in the country s development (Cuba);

115.168 Continue efforts to strengthen the rights of persons with disabilities (Egypt);

115.169 Pursue work to prepare a bill on persons with disabilities in order to combat discrimination against them (Jordan);

115.170 Continue to provide further protection to persons with disabilities, notably children (South Africa);

115.171 Ensure that access to education for children with disabilities is guaranteed and respected, as well as their inclusion in all human rights spheres (Madagascar);

115.172 Support the inclusion of children with disabilities in mainstream schools, as far as possible (Trinidad and Tobago);
Continue to promote and protect the rights of persons with disabilities, particularly by prevent violence and abuse against them (Islamic Republic of Iran);

Reinforce all measures to combat violence and ill-treatment against persons with disabilities and to ensure that all those responsible for such acts are held accountable under the law (Madagascar);

Adopt measures to combat violence against and abuse and neglect of persons with disabilities and persons with mental health conditions, including by prohibiting forced sterilization and respecting their autonomy and free and informed consent, while promoting their inclusion in the community and combating institutionalization (Portugal);

Introduce legal safeguards to protect children born in the country from statelessness (Kenya).

All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.

Composition of the delegation

The delegation of Mauritius was headed by H.E. MR. MANEESH GOBIN, Attorney General and Minister of Justice, Human Rights and Institutional Reforms and composed of the following members:

Mrs. Asha Devi BURRENCHOBAY, Senior Chief Executive, Ministry of Justice, Human Rights and Institutional Reforms;

Mr. Rajkumar SOOKUN, Acting Permanent Representative, Embassy and Permanent Mission of Mauritius to the United Nations, Geneva;

Mrs. Prameeta GOORDYAL-CHITTOO, Assistant Solicitor-General;

Mrs. A. PILLAY-NABABSING, State Counsel, Attorney General’s Office;

Mr. Parasram GOPAUL, Counsellor, Embassy and Permanent Mission of Mauritius to the United Nations, Geneva;

Mr. A.D. RUGHOOBUR, Temporary Financial and Governance Analyst, Ministry of Justice, Human Rights and Institutional Reforms;

Mr. Nikesh HEEROWA, Second Secretary, Embassy and Permanent Mission of Mauritius to the United Nations, Geneva;

Mrs. Fee Young LI PIN YUEN, Second Secretary, Embassy and Permanent Mission of Mauritius to the United Nations, Geneva.
Mauritius response to the recommendations from the third cycle of the Universal Periodic Review

1. The following sets out Mauritius response to the 176 recommendations received during Mauritius’s third Universal Periodic Review (UPR) in November 2018.

2. Consultations regarding the recommendations were held in Mauritius with ministries, departments and national human rights institutions and the civil society organizations, through the national mechanism for reporting and follow-up (NMRF).

3. Mauritius reports that it accepts 133 out of the 176 recommendations, either in full or in part. Recommendations that Mauritius accepts are those that it will support and undertake to implement through appropriate measures. Recommendations that are noted, are those that call for specific actions that are presently not yet under consideration.

International human rights instruments and framework

4. Mauritius accepts the following recommendations:


5. Mauritius takes note of the following recommendations:
National human rights institutions

LGBTI, sexual orientation and gender identity
7. Mauritius takes note the following recommendations:

Climate change and disaster risks
8. Mauritius accepts the following recommendations:
115.60, 115.61, 115.62, 115.63, 115.64.

Abuses by security forces and police
9. Mauritius accepts the following recommendations:
115.68, 115.69, 115.70, 115.71.

Democracy, rule of law and good governance
10. Mauritius accepts the recommendations 115.38, 115.74 and 115.75.

Human trafficking
11. Mauritius accepts the following recommendations:
115.77, 115.78, 115.79, 115.80, 115.81, 115.82, 115.83, 115.84, 115.85, 115.86.

Poverty and standard of living
12. Mauritius accepts the following recommendations:
115.88, 115.89, 115.90, 115.91, 115.92, 115.93, 115.94, 115.95, 115.166.

Education and human rights awareness
13. Mauritius accepts the following recommendations:

Gender equality and gender based violence
14. Mauritius accepts the following recommendations:

Protection and empowerment of women
15. Mauritius accepts the following recommendations:


Rights of the child

17. Mauritius accepts the following recommendations:

18. Mauritius takes note of the recommendation 115.176.

Rights of persons with disabilities

19. Mauritius accepts the following recommendations:

Discrimination against vulnerable groups and minorities

20. Mauritius accepts the following recommendations:
115.55, 115.56, 115.57, 115.58, 115.87, 115.163.

Terrorism, torture and prison condition

21. Mauritius accepts the recommendations 115.66, 115.67, 115.72 and 115.73.

Other recommendations

22. Mauritius accepts the recommendations 115.76 and 115.97.

23. Mauritius takes note of the recommendation 115.129.


I. INTRODUCTION

1. The Republic of Mauritius (Mauritius) is a State Party to the African Charter on Human and Peoples’ Rights (the African Charter), having ratified the same on 19 June 1992.


3. The present Report, submitted to the Commission on 28 April 2016, is the 6th to 8th Combined Report, encompassing the period between May 2009 and December 2015.

4. The Commission considered the present Report during its 59th Ordinary Session, which was held in Banjul, Islamic Republic of The Gambia, from 21 October to 04 November 2016.

5. The Report was presented to the Commission by the Delegation from Mauritius, led by Mr. Om Kumar Dabidin, Permanent Secretary in the Prime Minister’s Office. The following were part of the Delegation:

   - Mrs. Chittoo, Acting Assistant Solicitor General;
   - Mrs. Pillay-Nababsing, State Counsel.
6. The Report highlights developments which have taken place in the area of the promotion and protection of human and peoples’ rights, in addition to the legislative, administrative and other measures put in place to comply with the country’s obligations under the African Charter.

7. The present Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern based on the content of the Report and information given during consideration of the Report. Finally, the Commission makes recommendations on measures needed to strengthen the enjoyment of human rights as guaranteed by the African Charter, as well as other relevant regional and international human rights instruments.

8. The Commission commends the Delegation for its constructive dialogue during the presentation of the Report, in addition to the comprehensive presentation of the Report and additional information provided which responded to the concerns raised by Members of the Commission.

II. POSITIVE ASPECTS

The Commission:

9. Commends the efforts made by Mauritius in preparing and presenting its Periodic Report, in accordance with the provisions of Article 62 of the African Charter and the Commission’s Guidelines for National Periodic Reports;

10. Takes note of the information provided on the participation of civil society organizations in a consultative meeting on the draft Periodic Report, which was held on 10 December 2015;

11. Commends the inclusion of information in the Present Report on the implementation of the Commission’s recommendations contained in the Concluding Observations and Recommendations on the 2nd, 3rd, 4th and 5th Periodic Reports of the Republic of Mauritius;

12. Commends the inclusion of a section on ‘duties’ under the African Charter;
13. Takes note of the information provided on the measures taken to implement the recommendations contained in the Commission’s Promotion Mission Report of 2006;

14. Notes that Mauritius has ratified or acceded to a number of relevant regional and international instruments on the promotion and protection of human rights, including:

- The Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (the Court Protocol);
- The African Charter on the Rights and Welfare of the Child;
- The African Youth Charter;
- The International Covenant on Civil and Political Rights;
- The Optional Protocol to the International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Convention on the Elimination of all Forms of Racial Discrimination;
- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);
- The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and
- The Convention on the Rights of Persons with Disabilities (CRPD);
- The Rome Statute of the International Criminal Court.
15. Notes that Mauritius has enacted laws to promote and protect human rights, including:

- The Combating of Trafficking in Persons Act, 30 July 2009;
- The International Criminal Court Act, 15 January 2012;
- The Equal Opportunities Act, 01 January 2012;
- The Protection of Human Rights (Amendment) Act, in 2012;
- The Police Complaints Act, in 2012;
- The National Preventive Mechanism Act, in 2012;
- The Legal Aid and Legal Assistance Act, in 2012.

16. Welcomes the amendment of the following laws:

- The Criminal Code, amended in 2012 to provide for the termination of pregnancies in specified circumstances;
- The Criminal Appeal Act, amended in 2013 to enable referral of convictions of accused parties, in specific cases, to the Court of Criminal Appeal for a review of the proceedings relating to the conviction;
- The Criminal Procedure Act, amended in 2007 to allow persons convicted of mandatory minimum sentences to apply for a review of their sentence before the Supreme Court;

17. Commends the establishment of the following institutions to ensure the promotion and protection of human rights:

- The National Human Rights Commission (NHRC), following enactment of the law in 2012;
- The Equal Opportunities Commission, established on 24 April 2012;
- The Truth and Justice Commission, which came into operation on 20 March 2009.

18. Welcomes the adoption of the National Human Rights Action Plan 2012-2020, in addition to the database of human rights indicators, which enables Government Ministries and departments monitor progress on implementation of recommendations made by the various Human Rights Committees;
19. Takes note of the adoption of the National Gender Policy Framework to oversee, coordinate, monitor and evaluate the gender mainstreaming policies, strategies and programs at the national level, in addition to the National Steering Committee on Gender Mainstreaming to monitor implementation of the policy framework;

20. Welcomes establishment of a National Preventive Mechanism Division, within the NHRC, which conducts prisons visits, sensitizes Prison officers and conducts investigations into allegations of violations against detainees;

21. Commends the establishment of an Inter-Ministerial Committee to ensure a concerted response to human trafficking;

22. Welcomes the establishment, within the NHRC, of a Police Complaints Division to investigate complaints made against members of the Police Force;

23. Takes note of the establishment of the Mother and Child Care Unit in the Women’s prison, which caters for the needs of female prisoners with children and pregnant inmates;

24. Commends the provision of four meals a day to inmates;

25. Welcomes the existence of recreational and rehabilitation programs and facilities for inmates, including music and painting classes, craftsmanship, carpentry, cooking and gardening, in addition to the possibility of distance learning;

26. Notes the setting up of specialized divisions of the Supreme Court, to ensure the right to be tried with minimum delay;

27. Welcomes the establishment of the Bail and Remand Court, which has exclusive jurisdiction with regard to remand or release of persons charged with an offence, which also operates on weekends and public holidays;

28. Takes note of the development and implementation of an electronic filing of cases and case management system;

29. Welcomes the establishment of the Institute for Judicial and Legal Studies, to promote efficiency among law practitioners;
30. Commends the amendment to Article 23 of the Constitution to provide that any parent who is a citizen of Mauritius can confer his/her citizenship to a child born in Mauritius;

31. Notes that the enjoyment of the right of freedom of association extends to migrant workers, as provided in the Employment Relations Act, which provides for the right of migrant workers to be members of a trade union and to participate in trade union activities;

32. Welcomes the creation of the Ministry of Social Integration and Economic Empowerment with the main objective to eradicate absolute poverty;

33. Takes note of the implementation of the second National Plan of Action on Nutrition in 2015;

34. Takes note of the establishment of a policy with the overall objective of mandating registered companies to pay 2% of their profit towards programs that contribute to the social and environmental development of the country;

35. Welcomes the three-pronged strategy adopted to eradicate poverty, which includes three main programs, namely the Social Housing and Community Empowerment, Child Development and Family Welfare, and Training and Placement, in addition to the establishment of a Monitoring and Evaluation Unit to evaluate the impact of these programs;

36. Notes the measures put in place to ensure that the entire population has access to piped potable water;

37. Commends the efforts by the Government to increase the ownership of housing among the economically and socially disadvantaged members of the population, in addition to the ‘Rights to Buy Policy’ to enable the sale of State Land to Mauritians;

38. Takes note of the establishment of a Truth and Justice Commission, which came into operation on 20 March 2009, established to conduct inquiries on, inter alia, complaints made by persons aggrieved by dispossession or prescription of any land in which they claim to have an interest, in addition to setting up a Land Research and Mediation Unit to research on possible dispossession of land;
39. Commends the provision of free health services to the entire population;
40. Welcomes the provision of free sexual and reproductive health services, which are available in all hospitals;
41. Commends the efforts undertaken by the Government to achieve Millennium Development Goal 6, that is to halt and begin to reverse the trend of the HIV epidemic, which has resulted in reduction of the transmission of HIV;
42. Welcomes the provision of free education from pre-primary to tertiary level, in addition to free transport facilities to and from educational institutions;
43. Takes note of the measures undertaken to include and integrate children with special needs into the education system;
44. Commends the implementation of the Human Rights Education Program in all youth centres, developed by the Prime Minister’s Office in collaboration with the Ministry of Youth and Sports;
45. Welcomes the efforts undertaken to address violence against women, including establishing the National Coalition against Domestic Violence Committee and the National Action Plan to End Gender-Based Violence, in addition to establishing an Advisory Committee, in the Ministry of Gender Equality, Child Development and Family Welfare, which makes recommendations on measures to reinforce the framework for the protection of women against domestic violence;
46. Commends the prohibition of corporal punishment in schools;
47. Welcomes the measures put in place by the Police, in collaboration with the Ministry of Social Security, National Solidarity and Reform Institutions, to combat the commercial exploitation of children;
48. Welcomes the enactment of laws which promote the rights of persons with disabilities, including: the Training and Employment of Disabled Persons Act in 2012; the Building Control Act in 2012 which provides for enhanced accessibility for all categories of persons with disabilities to public infrastructure; the amendment to the Excise Act which came into operation on 31 July 2014, to provide for duty exemptions for the purchase of a motor car to parents of children with disabilities; and the Copyright Act
which came into force on 25 October 2013, and provides for blind persons to have access to published works in an accessible format;

49. Welcomes the enactment of the Protection of Elderly Persons Act, in addition to the establishment of the Protection of the Elderly Network, an Elderly Persons Protection Unit, and an Elderly Watch in every region;

50. Takes note of the provision of a Universal Basic Retirement Pension to all elderly persons aged 60 and above, in addition to provision of other allowances under the Social Aid Act;

51. Takes note of the measures undertaken by the Government to provide assistance to Chagossians who were evicted from the Chagos Archipelago, including donation of land for the construction of houses, and the establishment of the Chagossian Welfare Fund Act;

52. Notes the establishment of a National Climate Change Adaption Policy Framework, to foster the development of policies, strategies, plans and processes to avoid, minimize and adapt to the negative impacts of climate change;

53. Commends the re-accreditation of the NHRC with Status A in 2008 and 2014, following restructuring to align its functions with the Paris Principles, in addition to broadening and strengthening of its powers;

III. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS

54. Mauritius has enjoyed sustained political stability and economic growth, which has contributed to the promotion and protection of human rights, in addition to achievement of many of the Millennium Development Goals. However, the Government is still facing challenges in achieving gender equality, which negatively affects the rights of women in the country.

55. Furthermore, the Commission notes that despite the efforts by the Government to address poverty, the country has been facing increasing inequality in recent years with
the income of the bottom 40% of the population growing at a slower pace than the rest of the population.

IV. AREAS OF CONCERN

While recognising the significant efforts made by the Government to promote and protect human rights, the Commission is however concerned about the following:

Submission of Periodic Reports

56. The 6th to 8th Combined Periodic Report, which was submitted in accordance with the Article 62 of the African Charter, was overdue;

Ratification and domestication of international instruments

57. The non-domestication and incorporation of the African Charter within the domestic legal system;

58. The non-ratification of the following regional and international human rights instruments:

- The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Maputo Protocol);
- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
- The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention);
- The African Charter on Democracy, Elections and Governance;
- The African Union Convention on Preventing and Combating Corruption;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
59. The existing reservations on Articles 29(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Articles 9(2)(d), 11, 24(2)(b) of the Convention on the Rights of Persons with Disabilities (CRPD), which have effect of curtailing the rights contained in these human rights instruments;

60. The Government has not made the declaration under Article 34(6) of the Court Protocol accepting the jurisdiction of the Court to hear cases brought by individuals and NGOs;

Adoption of legislative or other measures to give effect to the African Charter

61. The delay in reviewing and enacting the following legislation and policies:
   - The Sexual Offences Bill;
   - The Prison Bill;
   - The Disability Bill;
   - The Child Protection and Care Bill;
   - The Juvenile Justice Bill;
   - The Climate Change Bill;
   - The National Heritage Fund Bill;
   - The Police and Criminal Evidence Bill;
   - The Protection of Elderly Persons Act;

Equality and Non-Discrimination

62. The provision in Article 16(4) of the Constitution, which provides for an exemption to the prohibition on discrimination with regards to personal status law, including adoption, marriage, divorce, burial and devolution of property on death, which may be discriminatory towards women;

63. Despite the efforts of the Government, it is noted that the country is ranked 106 out of 142 countries in gender ranking (WEF 2014), which is illustrated by the fact that out of the 70 members of the National Assembly, only 8 women were elected in the last elections;
Right to security of persons, right to life and the death penalty
64. In spite of the enactment of the Abolition of Death Penalty Act, the Constitutional provision on the imposition of the death penalty has not been repealed or amended;
65. The lack of information on the legal or policies measures put in place to prevent extra-judicial and arbitrary killings;

Prohibition of torture, cruel, inhuman and degrading treatment
66. The lack of a regulatory framework on torture which: specifically criminalizes torture; prohibits the admission of evidence obtained through torture; ensures that victims of torture and other ill-treatment, their families, witnesses, those conducting investigations etc. are protected; and guarantees the right of victims of torture and other ill-treatment to redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
67. The centres for victims of human trafficking, stipulated under the Combating of Trafficking in Persons Act, have not yet been established;

Right to liberty and security of person, conditions of prisons and detention centres
68. The lack of information on the existence of training manuals for law enforcement officers which specifically include or reference the African Charter, the Guidelines and Measures on the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment (the Robben Island Guidelines) and the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial detention in Africa (the Luanda Guidelines);
69. Following the enactment of the Independent Police Complaints Act in 2016, the delay in the establishment of the Independent Police Complaints Commission;
70. The high number of inmates in pre-trial detention, which is presently 37.52% of the prison population;
71. The provision of special cells and dormitories for inmates with HIV, which may result in discrimination against the inmates with HIV;
72. In spite of the information provided on the number of prisoners in the country, the Report does not include information on the capacity of the respective prisons and centers of detention, which would enable the Commission to make a determination on the issue of prison overcrowding;

Freedom of expression and access to information
73. The criminalization of defamation, sedition, insult and publishing false news, which have the effect of curtailing the right of freedom of expression;
74. The delay in drafting a law on access to information;
75. The absence of legislation or policy which provides for the safety of journalists;

Refugees and internally displaced persons
76. The absence of legislation or policy on refugees, internally displaced persons and stateless persons, which would ensure protection of the rights of these vulnerable groups;

Protection of the rights of persons living with HIV/AIDS
77. Provision is only made for the free distribution of condoms to female sex workers;

Protection of the rights of women and children
78. It is noted in the Report that the number of domestic violence cases have been increasing, with cases of tragic deaths of women victims of domestic violence in 2014;
79. The existence of the provision in Article 242 of the Criminal Code, which provides that “Manslaughter committed by any person on his spouse, as well as on his accomplice, at the very moment he finds them in the act of adultery is excusable;”
80. The failure to amend the Criminal Code to provide that marital rape is an offence, as stipulated in the amendment to the Protection from Domestic Violence Act;
81. In spite the establishment of the Office of the Ombudsperson for Children, it is noted in the Report that its recommendations are not implemented, in addition to a lack of awareness on the Office;
82. The existence of an exception to the minimum age for marriage in Article 144, Title V of the Civil Code, which provides that a person of sixteen (16) years can get married with the consent of his or her parents or legal guardian;

Protection of the rights of older persons

83. In spite of the measures put in place to protect the elderly, it is noted in the Report that 7,533 cases of abuses against the elderly were reported to the Ministry of Social Security, National Solidarity and Reform Institutions since 2006;

Extractive Industries, environment and human rights violations

84. The absence of specific legislation or policy to ensure that that the Mauritian population benefit from the extraction of natural resources, in light of the bi-lateral treaties between the Republics of Mauritius and Seychelles to explore and exploit the marine resources in the joint extended continental shelf area of the Mascarene Plateau region;

85. The lack of information on the existing legal framework which ensures that multi-national corporations are taxed for the activities they have undertaken in the country;

86. The lack of finalization of the Seabed Mineral Resource Bill which will establish a legal framework for the extraction of seabed minerals;

87. The absence of information in the Report on the measures to be taken by the Government in order to reverse the reported environmental and biodiversity loss;

V. RECOMMENDATIONS

Submission of Periodic Reports

   i. Ensure that Periodic Reports are submitted every two years, in a timely manner;
   
Ratification and domestication of international instruments

   ii. Ensure domestication of the African Charter within the legal system;

   iii. Expedite the ratification and domestication of all relevant and international human rights instruments;
iv. Consider the expeditious withdrawal of all the reservations to CEDAW and CRPD;
v. Make the declaration under Article 34(6) of the Court Protocol accepting the jurisdiction of the Court to hear cases brought by individuals and NGOs;

Adoption of legislative or other measures to give effect to the African Charter
vi. Expedite the revision and enactment of the various legislation which will have the effect of enhancing enjoyment of human rights;
Equality and Non-Discrimination
vii. Amend Article 16(4) of the Constitution which provides an exemption to the prohibition on discrimination on personal status law, which is discriminatory towards women;
viii. Take measures to address the issue of gender inequality, including the low level of representation of women in the National Assembly, in all levels of public sphere/decisions making positions;

Right to security of persons, right to life and the death penalty
ix. Repeal the Constitutional provision which provides for imposition of the death penalty;
x. In the next Periodic Report include information on the legal or policies measures put in place to prevent extra-judicial and arbitrary killings;
Prohibition of torture, cruel, inhuman and degrading treatment
xi. Enact a regulatory framework on torture providing for: criminalization of torture; prohibition of admission of evidence obtained through torture; protection for victims of torture and other ill-treatment, their families, witnesses, those conducting investigations etc.; the right of victims of torture and other ill-treatment to redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
xii. Urgently take measures to ensure establishment of the centres for victims of human trafficking, which are provided for in the Combating of Trafficking in Persons Act;

Right to liberty and security of person, conditions of prisons and detention centres

xiii. Develop training manuals for law enforcement officers which specifically include or reference the African Charter, the Robben Island Guidelines and the Luanda Guidelines;

xiv. Expedite the establishment of the Independent Police Complaints Commission;

xv. Take the necessary measures to reduce the number of pre-trial detainees;

xvi. Urges the State to do away with use of cells and dormitories specifically for inmates with HIV, which may contribute to discrimination against inmates with HIV;

xvii. In the next Periodic Report, include information on the capacity of each prison and center of detention, in addition to the number of prisoners in the respective prisons, to enable the Commission make a determination on the issue of prison overcrowding;

Freedom of expression and access to information

xviii. Revise the laws which criminalize defamation, sedition, insult and publishing false news, in line with the Commission’s Resolution on Repealing Criminal Defamation Laws in Africa1 which calls on State Parties to repeal criminal defamation laws or

1 ACHPR/Res.169 (XLVIII)10, Adopted by the Commission during its 48th Ordinary Session, held in Banjul, The Gambia, November 2010 insult laws which impede freedom of speech, in addition to Principle XII of the Declaration of Principles on Freedom of Expression in Africa;
xix. Expedite the process of drafting and enacting a law on access to information, in accordance with the Commission’s Model Law on Access to Information in Africa;

xx. Establish a regulatory framework to ensure the safety of journalists;

Refugees and internally displaced persons

xxi. Enact laws and establish policies to ensure protection of the rights of refugees, internally displaced persons and stateless persons;

Protection of the rights of persons living with HIV/AIDS

xxii. Put measures in place to ensure the free distribution of condoms;

Protection of the rights of women and children

xxiii. Intensify efforts to address all forms of violence against women, in addition to ensuring effective monitoring and evaluation of the different mechanisms established to address violence against women;

xxiv. Urgently repeal Article 242 of the Criminal Code;

xxv. Amend the Criminal Code in line with the amendment to the Protection from Domestic Violence Act, to provide that marital rape is an offence;

xxvi. Establish measures to raise awareness on the Office of the Ombudsperson for Children, in addition to enacting legal requirement to ensure implementation of its recommendations;

xxvii. Repeal the section in Article 144, Title V of the Civil Code which provides an exception to minimum age of consent for marriage;

Protection of the rights of older persons

xxviii. Adopt laws and policies to ensure protection of elderly, and ensure prosecution of the perpetrators and redress for the victims;

Extractive Industries, environment and human rights violations

xxix. Adopt a regulatory framework to ensure that the Mauritian population benefit from the extraction of natural resources;

xxx. Expedite enactment of the Seabed Mineral Resource Bill;
xxx. Include in the next Periodic Report, information on the measures to be taken by the Government to reverse the reported environmental and biodiversity loss;

Information to be included in the next Periodic Report

xxxii. Inform the Commission on the measures which have been taken to implement the recommendations of the present Concluding Observations in the next Report;

xxxiii. Comply with the Commission’s State Party reporting guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (the Tunis Reporting Guidelines);

xxxiv. Comply with the recommendations of the Commission in the following Guidelines:

- The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, 2008;
- The Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa, 2015;

Adopted at the 60th Ordinary Session of the African Commission on Human and Peoples’ Rights, held from 08 to 22 May 2017,
in Niamey, Republic of Niger
Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 Summary of the Advisory Opinion

On 25 February 2019, the International Court of Justice gave its Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965.

I. HISTORY OF THE PROCEEDINGS (PARAS. 1-24)

The Court first recalls that the questions on which the advisory opinion of the Court has been requested are set forth in resolution 71/292 adopted by the General Assembly of the United Nations on 22 June 2017. It further recalls that these questions read as follows:

(a) “Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?”;

(b) “What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?”.

II. EVENTS LEADING TO THE ADOPTION OF THE REQUEST FOR THE ADVISORY OPINION (PARAS. 25-53)

The Court begins by recalling that the Chagos Archipelago consists of a number of islands and atolls. The largest island is Diego Garcia, located in the south-east of the archipelago. Between 1814 and 1965, the Chagos Archipelago was administered by the United Kingdom as a dependency of the colony of Mauritius.
On 14 December 1960, the General Assembly adopted resolution 1514 (XV) entitled “Declaration on the Granting of Independence to Colonial Countries and Peoples”. On 27 November 1961, the General Assembly, by resolution 1654 (XVI), established the Committee of Twenty-Four, a special committee on decolonization, to monitor the implementation of resolution 1514 (XV).

In February 1964, discussions commenced between the United States of America and the United Kingdom regarding the use by the United States of certain British-owned islands in the Indian Ocean. The United States expressed an interest in establishing military facilities on the island of Diego Garcia. On 29 June 1964, the United Kingdom also commenced talks with the Premier of the colony of Mauritius regarding the detachment of the Chagos Archipelago from Mauritius. At Lancaster House, talks between representatives of the colony of Mauritius and the United Kingdom Government led to the conclusion on 23 September 1965 of an agreement in which the Premier and other representatives of Mauritius agreed to the principle of detachment of the Chagos Archipelago from the territory of Mauritius for the purpose of establishing a military facility on the island of Diego Garcia, it being understood, however, that the archipelago could be returned to Mauritius at a later date.

On 8 November 1965, by the British Indian Ocean Territory Order 1965, the United Kingdom established a new colony known as the British Indian Ocean Territory (the “BIOT”) consisting of the Chagos Archipelago, detached from Mauritius, and the Aldabra, Farquhar and Desroches islands, detached from Seychelles. On 16 December of the same year, the General Assembly adopted resolution 2066 (XX) on the “Question of Mauritius”, in which it expressed deep concern about the detachment of certain islands from the territory of Mauritius for the purpose of establishing a military base and invited the “administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”.

On 20 December 1966, the General Assembly adopted resolution 2232 (XXI) on a number of territories including Mauritius. The resolution reiterated that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)”. The talks between the United Kingdom and the United States resulted in the conclusion on 30 December 1966 of the “Agreement concerning the Availability for Defence Purposes of the British Indian Ocean Territory” and the conclusion of an Agreed Minute of the same date. Based on the Agreement, both States agreed that the Government of the United Kingdom would take any “administrative measures” necessary to ensure that their defence needs were met.
The Agreed Minute provided that, among the administrative measures to be taken, was “resettling any inhabitants” of the islands.

On 15, 17 and 19 June 1967, the Committee of Twenty-Four adopted a resolution on Mauritius. In this resolution, the Committee “[d]eplores the dismemberment of Mauritius and Seychelles by the administering Power which violates their territorial integrity, in contravention of General Assembly resolutions 2066 (XX) and 2232 (XXI) and calls upon the administering Power to return to these Territories the islands detached therefrom”. Between 1967 and 1973, the entire population of the Chagos Archipelago was either prevented from returning or forcibly removed and prevented from returning by the United Kingdom. The main forcible removal of Diego Garcia’s population took place in July and September 1971.

On 12 March 1968, Mauritius became an independent State and on 26 April 1968 was admitted to membership in the United Nations. Sir Seewoosagur Ramgoolam became the first Prime Minister of the Republic of Mauritius. Section 111, paragraph 1, of the 1968 Constitution of Mauritius, promulgated by the United Kingdom Government before independence on 4 March 1968, defined Mauritius as “the territories which immediately before 12th March 1968 constituted - 3 -
the colony of Mauritius”. This definition did not include the Chagos Archipelago in the territory of Mauritius.

In July 1980, the Organisation of African Unity (“OAU”) adopted resolution 99 (XVII) (1980) in which it “demands” that Diego Garcia be “unconditionally returned to Mauritius”. On 9 October 1980, the Mauritian Prime Minister, at the thirty-fifth session of the United Nations General Assembly, stated that the BIOT should be disbanded and the territory restored to Mauritius as part of its natural heritage. In July 2000, the OAU adopted a decision expressing its concern that the Chagos Archipelago was excised by the colonial Power from Mauritius prior to its independence in violation of United Nations resolution 1514.

On 30 December 2016, the 50-year period covered by the 1966 Agreement came to an end; however, it was extended for a further period of twenty years, in accordance with its terms. On 30 January 2017, the Assembly of the African Union adopted resolution AU/Res.1 (XXVIII) on the Chagos Archipelago which resolved, among other things, to support Mauritius with a view to ensuring “the completion of the decolonization of the Republic of Mauritius”. On 23 June 2017, the General Assembly adopted resolution 71/292 requesting an advisory opinion from the Court.

III. JURISDICTION AND DISCRETION (PARAS. 54-91)

When the Court is seised of a request for an advisory opinion, it must first consider whether it has jurisdiction to give the opinion requested and, if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request.

The Court’s jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute which provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”. The Court notes that the General Assembly is competent to request an advisory opinion by virtue of Article 96, paragraph 1, of the Charter, which provides that “[t]he General Assembly . . . may request the International Court of Justice to give an advisory opinion on any legal question”.

The Court then turns to the requirement in Article 96 of the Charter and Article 65 of its Statute that the advisory opinion must be on a “legal question”. In the present proceedings, the first question put to the Court is whether the process of decolonization of Mauritius was lawfully completed having regard to international law when it was granted independence following the separation of the Chagos Archipelago.
The second question relates to the consequences arising under international law from the continued administration by the United Kingdom of the Chagos Archipelago. The Court considers that a request from the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question. The Court therefore concludes that the request has been made in accordance with the Charter and that the two questions submitted to it are legal in character. The Court accordingly has jurisdiction to give the advisory opinion requested by resolution 71/292 of the General Assembly.

The fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it. The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met. The discretion whether or not to respond to a request for an advisory opinion exists so as to protect the integrity of the Court’s judicial function as the principal judicial organ of the United Nations. The Court is, nevertheless, mindful of the fact that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”. Thus, the consistent jurisprudence of the Court is that only “compelling reasons” may lead the Court to refuse its opinion in response to a request falling within its jurisdiction.
Some participants in the present proceedings have argued that there are “compelling reasons” for the Court to exercise its discretion to decline to give the advisory opinion requested. Among the reasons raised by these participants are that, first, advisory proceedings are not suitable for determination of complex and disputed factual issues; secondly, the Court’s response would not assist the General Assembly in the performance of its functions; thirdly, it would be inappropriate for the Court to re-examine a question already settled by the Arbitral Tribunal constituted under Annex VII of UNCLOS in the Arbitration regarding the Chagos Marine Protected Area; and fourthly, the questions asked in the present proceedings relate to a pending bilateral dispute between two States which have not consented to the settlement of that dispute by the Court. The Court will thus examine whether such reasons exist in these proceedings.

1. Whether advisory proceedings are suitable for determination of complex and disputed factual issues
The Court observes that an abundance of material has been presented before it, including a voluminous dossier from the United Nations. Moreover, many participants have submitted written statements and written comments, and made oral statements which contain information relevant to answering the questions. Thirty-one States and the African Union filed written statements, ten of those States and the African Union submitted written comments thereon, and twenty-two States and the African Union made oral statements. The Court notes that information provided by participants includes the various official records from the 1960s, such as those from the United Kingdom concerning the detachment of the Chagos Archipelago and the accession of Mauritius to independence. The Court is therefore satisfied that there is in the present proceedings sufficient information on the facts before it for the Court to give the requested opinion. Accordingly, the Court cannot decline to answer the questions put to it.

2. Whether the Court’s response would assist the General Assembly in the performance of its functions
The Court considers that it is not for the Court itself to determine the usefulness of its response to the requesting organ. Rather, it should be left to the requesting organ, the General Assembly, to determine whether it needs the opinion for the proper performance of its functions. It follows that in the present proceedings the Court cannot decline to answer the questions posed to it by the General Assembly in resolution 71/292 on the ground that its opinion would not assist the General Assembly in the performance of its functions.
3. Whether it would be appropriate for the Court to re-examine a question allegedly settled by the Arbitral Tribunal constituted under UNCLOS Annex VII in the Arbitration regarding the Chagos Marine Protected Area

The Court recalls that its opinion is given not to States, but to the organ which is entitled to request it. The Court also observes that the principle of res judicata does not preclude it from rendering an advisory opinion. In any event, the Court further notes that the issues that were determined by the Arbitral Tribunal in the Arbitration regarding the Chagos Marine Protected Area are not the same as those that are before the Court in these proceedings. It follows from the foregoing that the Court cannot decline to answer the questions on this ground. - 5 -
4. Whether the questions asked relate to a pending dispute between two States, which have not consented to its settlement by the Court

The Court notes that the questions put to it by the General Assembly relate to the decolonization of Mauritius. The General Assembly has not sought the Court’s opinion to resolve a territorial dispute between two States. Rather, the purpose of the request is for the General Assembly to receive the Court’s assistance so that it may be guided in the discharge of its functions relating to the decolonization of Mauritius.

Moreover, the Court observes that there may be differences of views on legal questions in advisory proceedings. However, the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute. In these circumstances, the Court does not consider that to give the opinion requested would have the effect of circumventing the principle of consent by a State to the judicial settlement of its dispute with another State. The Court therefore cannot, in the exercise of its discretion, decline to give the opinion on that ground.

In light of the foregoing, the Court concludes that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly.

IV. THE FACTUAL CONTEXT OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS

(PARAS. 92-131)

Before addressing the questions submitted to it by the General Assembly relating to the separation of the Chagos Archipelago from Mauritius and the legal consequences arising from the continued administration by the United Kingdom of the Chagos Archipelago, the Court deems it important to examine the factual circumstances surrounding the separation of the archipelago from Mauritius, as well as those relating to the removal of the Chagossians from this territory. In this regard, the Court notes that, prior to the separation of the Chagos Archipelago from Mauritius, there were formal discussions between the United Kingdom and the United States and between the Government of the United Kingdom and the representatives of the colony of Mauritius.

In February 1964, the United Kingdom and the United States thus commenced formal discussions during which the latter expressed an interest in establishing a military communication facility on Diego Garcia. It was agreed that the United Kingdom delegation would recommend to its Government that it should be responsible for acquiring land, resettling the population and providing compensation at the United Kingdom Government’s expense; that the Government of the United States would be responsible for construction and maintenance costs and that the United Kingdom Government would assess quickly the feasibility of the transfer of the administration of Diego Garcia and the other islands of the Chagos Archipelago from
Mauritius. These formal discussions led to the conclusion of the 1966 Agreement for the establishment of a military base by the United States on the Chagos Archipelago.

Discussions were also held between the Government of the United Kingdom and the representatives of the colony of Mauritius with respect to the Chagos Archipelago. During the Fourth Constitutional Conference, which commenced in London on 7 September 1965 and ended on 24 September 1965, there were several private meetings on defence matters. At the first such meeting, held on 13 September 1965, the Premier of Mauritius stated that Mauritius preferred a lease rather than a detachment of the Chagos Archipelago. Following the meeting, the United Kingdom Foreign Secretary and the Defence Secretary concluded that if Mauritius would not agree to the detachment, they would have to adopt their Government’s recommendation of forcible detachment and compensation. On 20 September 1965, during a meeting on defence matters chaired by the United Kingdom Secretary of State, the Premier of Mauritius reiterated his
position. As an alternative, the Premier of Mauritius proposed that the United Kingdom first concede independence to Mauritius and thereafter allow the Mauritian Government to negotiate with the Governments of the United Kingdom and the United States on the question of Diego Garcia. During those discussions, the Secretary of State indicated that a lease would not be acceptable to the United States and that the Chagos Archipelago would have to be made available on the basis of its detachment.

On 23 September 1965, a meeting on defence matters was held at Lancaster House between Premier Ramgoolam, three other Mauritian Ministers and the United Kingdom Secretary of State. At the end of that meeting, the United Kingdom Secretary of State enquired whether the Mauritian Ministers could agree to the detachment of the Chagos Archipelago on the basis of undertakings that he would recommend to the Cabinet, which included the payment of compensation totalling up to £3 million to Mauritius over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Archipelago, and the return of the latter to Mauritius when the need for the facilities there disappeared. The Premier of Mauritius informed the Secretary of State for the Colonies that the proposals put forward by the United Kingdom were acceptable in principle, but that he would discuss the matter with his other ministerial colleagues. On 24 September 1965, the Government of the United Kingdom announced that it was in favour of granting independence to Mauritius. On 6 October 1965, the Secretary of State for the Colonies communicated to the Governor of Mauritius the United Kingdom’s acceptance of the additional understanding that had been sought by the Premier of Mauritius, including that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to Mauritius. This additional understanding was eventually incorporated into the final record of the meeting at Lancaster House and formed part of the Lancaster House agreement. On 5 November 1965, the Governor of Mauritius informed the United Kingdom Secretary of State that the Mauritius Council of Ministers confirmed agreement to the detachment of the Chagos Archipelago.

Between 1967 and 1973, the inhabitants of the Chagos Archipelago who had left the islands were prevented from returning. The other inhabitants were forcibly removed and prevented from returning to the islands. On 16 April 1971, the BIOT Commissioner enacted an ordinance which made it unlawful for any person to enter or remain in the Chagos Archipelago without a permit (the “Immigration Ordinance 1971”). By virtue of an agreement concluded between Mauritius and the United Kingdom on 4 September 1972, Mauritius accepted payment of the sum of £650,000 in full and final discharge of the United Kingdom’s undertaking given in 1965 to meet the cost of resettlement of persons displaced from the Chagos Archipelago.
On 7 July 1982, an agreement was concluded between the Governments of Mauritius and the United Kingdom, for the payment by the United Kingdom of the sum of £4 million on an ex gratia basis, with no admission of liability on the part of the United Kingdom, in full and final settlement of all claims whatsoever of the kind referred to in the Agreement against the United Kingdom by or on behalf of the Ilois. This Agreement also required Mauritius to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims.

In 1998, Mr. Louis Olivier Bancoult, a Chagossian, instituted proceedings in the United Kingdom courts challenging the validity of legislation denying him the right to reside in the Chagos Archipelago. On 3 November 2000, judgment was given in his favour by the Divisional Court which ruled that the relevant provisions of the 1971 Ordinance be quashed. The United Kingdom Government did not appeal the ruling and it repealed the 1971 Ordinance that had prohibited Chagossians from returning to the Chagos Archipelago. The United Kingdom’s Foreign Secretary announced that the United Kingdom Government was examining the feasibility of resettling the Ilois. On the same day that the Divisional Court rendered the judgment in Mr. Bancoult’s favour, the United Kingdom made another immigration ordinance applicable to the Chagos Archipelago, with the exception of Diego Garcia. The ordinance provided that restrictions on entry into and residence in the archipelago would not apply to the Chagossians, given their - 7 -
connection to the Chagos Islands. Chagossians were however not permitted to enter or reside in Diego Garcia.

On 6 December 2001, the Human Rights Committee, in considering the periodic reports submitted by the United Kingdom under Article 40 of the International Covenant on Civil and Political Rights, noted “the State party’s acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful”. It recommended that “the State party should, to the extent still possible, seek to make exercise of the Ilois’ right to return to their territory practicable”.

In June 2002, a feasibility study commissioned by the BIOT Administration concerning the Chagos Archipelago was completed. The study indicated that, while it may be feasible to resettle the islanders in the short term, the costs of maintaining a long-term inhabitation were likely to be prohibitive. Even in the short term, natural events such as periodic flooding from storms and seismic activity were likely to make life difficult for a resettled population. In 2004, the United Kingdom issued two orders in Council: the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004. These orders declared that no person had the right of abode in the BIOT nor the right without authorization to enter and remain there. That same year, Mr. Bancoult challenged the validity of these orders in the courts of the United Kingdom. He succeeded in the High Court. An appeal was brought by the Secretary of State for Foreign and Commonwealth Affairs against the decision of the High Court. The Court of Appeal upheld the High Court’s decision.

On 30 July 2008, the Human Rights Committee, in considering another periodic report submitted by the United Kingdom, took note of the aforementioned decision of the Court of Appeal. On the basis of Article 12 of the International Covenant on Civil and Political Rights, the Committee recommended that: “The State party should ensure that the Chagos islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard. It should consider compensation for the denial of this right over an extended period.”

The Secretary of State for Foreign and Commonwealth Affairs appealed the decision of the Court of Appeal upholding Mr. Bancoult’s challenge of the validity of the British Indian Ocean Territory (Constitution) Order 2004. On 22 October 2008, the House of Lords upheld the appeal by the Secretary of State for Foreign and Commonwealth Affairs.
On 20 December 2012, the United Kingdom announced a review of its policy on resettlement of the Chagossians who were forcibly removed from, or prevented from returning to, the Chagos Archipelago. A second feasibility study, carried out between 2014 and 2015, was commissioned by the BIOT Administration to analyse the different options for resettlement in the Chagos Archipelago. The feasibility study concluded that resettlement was possible although there would be significant challenges including high and very uncertain costs, and long-term liabilities for the United Kingdom taxpayer. Thereafter, on 16 November 2016, the United Kingdom decided against resettlement on the “grounds of feasibility, defence and security interests and cost to the British taxpayer”.

To date, the Chagossians remain dispersed in several countries, including the United Kingdom, Mauritius and Seychelles. By virtue of United Kingdom law and judicial decisions of that country, they are not allowed to return to the Chagos Archipelago.
V. THE QUESTIONS PUT TO THE COURT BY THE GENERAL ASSEMBLY (PARAS. 132-182)

The Court considers that there is no need for it to reformulate the questions submitted to it for an advisory opinion in these proceedings. Indeed, the first question is whether the process of decolonization of Mauritius was lawfully completed in 1968, having regard to international law, following the separation of the Chagos Archipelago from its territory in 1965. The General Assembly’s reference to certain resolutions which it adopted during this period does not, in the Court’s view, prejudice either their legal content or scope. In Question (a), the General Assembly asks the Court to examine certain events which occurred between 1965 and 1968, and which fall within the framework of the process of decolonization of Mauritius as a non-self-governing territory. It did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius. In Question (b), which is clearly linked to Question (a), the Court is asked to state the consequences, under international law, of the continued administration by the United Kingdom of the Chagos Archipelago. By referring in this way to international law, the General Assembly necessarily had in mind the consequences for the subjects of that law, including States.

It is for the Court to state the law applicable to the factual situation referred to it by the General Assembly in its request for an advisory opinion. There is thus no need for it to interpret restrictively the questions put to it by the General Assembly. When the Court states the law in the exercise of its advisory function, it lends its assistance to the General Assembly in the solution of a problem confronting it. In giving its advisory opinion, the Court is not interfering with the exercise of the General Assembly’s own functions.

1. Whether the process of decolonization of Mauritius was lawfully completed having regard to international law (Question (a))

The Court explained that, in order to pronounce on whether the process of decolonization of Mauritius was lawfully completed having regard to international law, it must determine, first, the relevant period of time for the purpose of identifying the applicable rules of international law and, secondly, the content of that law. In addition, since the General Assembly has referred to some of the resolutions it adopted, the Court, in determining the obligations reflected in these resolutions, must examine the functions of the General Assembly in conducting the process of decolonization.

(a) The relevant period of time for the purpose of identifying the applicable rules of international law

In Question (a), the General Assembly situates the process of decolonization of Mauritius in the period between the separation of the Chagos Archipelago from its territory in 1965 and its independence in 1968. It is therefore by reference to this period that the Court is required to identify the rules of international law.
that are applicable to that process. The Court is of the view that, while its determination of the applicable law must focus on the period from 1965 to 1968, this will not prevent it, particularly when customary rules are at issue, from considering the evolution of the law on self-determination since the adoption of the Charter of the United Nations and of resolution 1514 (XV) of 14 December 1960. Indeed, State practice and opinio juris, i.e. the acceptance of that practice as law (Article 38 of the Statute of the Court), are consolidated and confirmed gradually over time. The Court may also rely on legal instruments which postdate the period in question, when those instruments confirm or interpret pre-existing rules or principles.
(b) Applicable international law

The Court notes that it must determine the nature, content and scope of the right to self-determination applicable to the process of decolonization of Mauritius, a non-self-governing territory recognized as such, from 1946 onwards, both in United Nations practice and by the administering Power itself.

It begins by recalling that “respect for the principle of equal rights and self-determination of peoples” is one of the purposes of the United Nations (Article 1, paragraph 2, of the Charter). Such a purpose concerns, in particular, the “Declaration regarding non-self-governing territories” (Chapter XI of the Charter), since the “Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government” are obliged to “develop [the] self-government” of those peoples (Article 73 of the Charter). In the Court’s view, it follows that the legal régime of non-self-governing territories, as set out in Chapter XI of the Charter, was based on the progressive development of their institutions so as to lead the populations concerned to exercise their right to self-determination.

Having made respect for the principle of equal rights and self-determination of peoples one of the purposes of the United Nations, the Charter included provisions that would enable non-self-governing territories ultimately to govern themselves. It is in this context that the Court must ascertain when the right to self-determination crystallized as a customary rule binding on all States.

The adoption of resolution 1514 (XV) of 14 December 1960 represents a defining moment in the consolidation of State practice on decolonization, in so far as this resolution clarifies the content and scope of the right to self-determination. The Court notes that the decolonization process accelerated in the 1960s, as the peoples of numerous non-self-governing territories exercised their right to self-determination and achieved independence. In the Court’s view, there is a clear relationship between resolution 1514 (XV) and the process of decolonization following its adoption.

The Court considers that resolution 1514 (XV) has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption. It also has a normative character, in so far as it affirms that “[a]ll peoples have the right to self-determination”. Its preamble proclaims “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations” and its first paragraph states that “[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations”. Resolution 1514 (XV) further provides that “[i]mmediate steps shall be
taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire”. In order to prevent any dismemberment of non-self-governing territories, paragraph 6 of resolution 1514 (XV) provides that: “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”

The nature and scope of the right to self-determination of peoples, including respect for “the national unity and territorial integrity of a State or country”, were reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. By recognizing the right to self-determination as one of the “basic principles of international law”, the Declaration confirmed its normative character under customary international law.
The means of implementing the right to self-determination in a non-self-governing territory, described as “geographically separate and . . . distinct ethnically and/or culturally from the country administering it”, were set out in Principle VI of General Assembly resolution 1541 (XV), adopted on 15 December 1960: “A Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State”. The Court recalls that, while the exercise of self-determination may be achieved through one of the options laid down by resolution 1541 (XV), it must be the expression of the free and genuine will of the people concerned. However, “[t]he right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized”.

The Court recalls that the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory. Both State practice and opinio juris at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination. No example has been brought to the attention of the Court in which, following the adoption of resolution 1514 (XV), the General Assembly or any other organ of the United Nations has considered as lawful the detachment by the administering Power of part of a non-self-governing territory, for the purpose of maintaining it under its colonial rule. States have consistently emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law. The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power. It follows that any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination.

In the Court’s view, the law on self-determination constitutes the applicable international law during the period under consideration, namely between 1965 and 1968. The Court has in the past noted the consolidation of that law.

(c) The functions of the General Assembly with regard to decolonization
The General Assembly has played a crucial role in the work of the United Nations on decolonization, in particular, since the adoption of resolution 1514 (XV). It has overseen the implementation of the obligations of Member States in this regard, such as they are laid down in Chapter XI of the Charter and as they arise
from the practice which has developed within the Organization. It is in this context that the Court is asked in Question (a) to consider, in its analysis of the international law applicable to the process of decolonization of Mauritius, the obligations reflected in General Assembly resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

In resolution 2066 (XX) of 16 December 1965, entitled “Question of Mauritius”, having noted “with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof”, the General Assembly, in the operative part of the text, invites “the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”. In resolutions 2232 (XXI) and 2357 (XXII), which are more general in nature and relate to the monitoring of the situation in a number of non-self-governing territories, the General Assembly “[r]eiterates its declaration that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is - 11 -
incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)“.

In the Court’s view, by inviting the United Kingdom to comply with its international obligations in conducting the process of decolonization of Mauritius, the General Assembly acted within the framework of the Charter and within the scope of the functions assigned to it to oversee the application of the right to self-determination. The General Assembly assumed those functions in order to supervise the implementation of obligations incumbent upon administering Powers under the Charter. It thus established a special committee tasked with examining the factors that would enable it to decide “whether any territory is or is not a territory whose people have not yet attained a full measure of self government” (resolution 334 (IV) of 2 December 1949). It has been the Assembly’s consistent practice to adopt resolutions to pronounce on the specific situation of any non-self-governing territory. Thus, immediately after the adoption of resolution 1514 (XV), it established the Committee of Twenty-Four tasked with monitoring the implementation of that resolution and making suggestions and recommendations thereon (resolution 1654 (XVI) of 27 November 1961). The General Assembly also monitors the means by which the free and genuine will of the people of a non-self-governing territory is expressed, including the formulation of questions submitted for popular consultation. Finally, the General Assembly has consistently called upon administering Powers to respect the territorial integrity of non-self-governing territories, especially after the adoption of resolution 1514 (XV) of 14 December 1960.

The Court then examines the circumstances relating to the detachment of the Chagos Archipelago from Mauritius and determines whether it was carried out in accordance with international law.

(d) Application in the present proceedings

The Court begins by recalling that, at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory. In the Lancaster House agreement of 23 September 1965, the Premier and other representatives of Mauritius, which was still under the authority of the United Kingdom as administering Power, agreed in principle to the detachment of the Chagos Archipelago from the territory of Mauritius on condition that the archipelago could be returned to Mauritius at a later date.

The Court observes that when the Council of Ministers agreed in principle to the detachment from Mauritius of the Chagos Archipelago, Mauritius was, as a colony, under the authority of the United Kingdom. Having
reviewed the circumstances in which the Council of Ministers of the colony of Mauritius agreed in principle to the detachment of the Chagos Archipelago on the basis of the Lancaster House agreement, the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned.

In its resolution 2066 (XX) of 16 December 1965, adopted a few weeks after the detachment of the Chagos Archipelago, the General Assembly deemed it appropriate to recall the obligation of the United Kingdom, as the administering Power, to respect the territorial integrity of Mauritius. The Court considers that the obligations arising under international law and reflected in the resolutions adopted by the General Assembly during the process of decolonization of Mauritius require the United Kingdom, as the administering Power, to respect the territorial integrity of that country, including the Chagos Archipelago.

The Court concludes that, as a result of the Chagos Archipelago’s unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968. - 12 -
2. The consequences under international law arising from the continued administration by the United Kingdom of the Chagos Archipelago (Question (b))

Having established that the process of decolonization of Mauritius was not lawfully completed in 1968, the Court must now examine the consequences, under international law, arising from the United Kingdom’s continued administration of the Chagos Archipelago (Question (b)).

The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State. It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.

The modalities necessary for ensuring the completion of the decolonization of Mauritius fall within the remit of the United Nations General Assembly, in the exercise of its functions relating to decolonization. As the Court has stated in the past, it is not for it to “determine what steps the General Assembly may wish to take after receiving the Court’s opinion or what effect that opinion may have in relation to those steps”.

Since respect for the right to self-determination is an obligation erga omnes, all States have a legal interest in protecting that right. The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect. As regards the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, this is an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonization of Mauritius.

In response to Question (b) of the General Assembly, relating to the consequences under international law that arise from the continued administration by the United Kingdom of the Chagos Archipelago, the Court concludes that the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that all Member States must co-operate with the United Nations to complete the decolonization of Mauritius.
VI. OPERATIVE PARAGRAPH (PARA. 183)

For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By twelve votes to two,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: Judges Tomka, Donoghue;
(3) By thirteen votes to one,

Is of the opinion that, having regard to international law, the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago;

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;
AGAINST: Judge Donoghue;

(4) By thirteen votes to one,

Is of the opinion that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible;

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;
AGAINST: Judge Donoghue;

(5) By thirteen votes to one,

Is of the opinion that all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;
AGAINST: Judge Donoghue.

* Vice-President XUE appends a declaration to the Advisory Opinion of the Court; Judges TOMKA and ABRAHAM append declarations to the Advisory Opinion of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Advisory Opinion of the Court; Judges CANÇADO TRINDADE and ROBINSON append a joint declaration to the Advisory Opinion of the Court; Judge DONOGHUE appends a dissenting opinion to the Advisory Opinion of the Court; Judges GAJA, SEBUTINDE and ROBINSON append separate opinions to the Advisory Opinion of the Court; Judges GEVORGIAN, SALAM and IWASAWA append declarations to the Advisory Opinion of the Court.
## Sensitization Campaigns 2018

### Citizen Advice Bureau

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EUROPEAN UNION FUNDED PROJECT

National Human Rights Commission in collaboration with the National Women Council

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**TOTAL** 1100
EUROPEAN UNION FUNDED PROJECT

National Human Rights Commission in collaboration with the Ministry of Education and Human Resources, Tertiary Education and Scientific Research

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National Human Rights Commission in collaboration with the Ministry of Youth and Sports

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