April 2016

Her Excellency
The President of the 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 2015 to 31 December 2015.

Yours faithfully,

Dheerujlall B. Seetulsingh, S.C.
Chairman
THE NATIONAL HUMAN RIGHTS COMMISSION
SET UP UNDER THE PROTECTION OF HUMAN RIGHTS ACT

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Mr. Vijay RAMANJOOLOO

Secretary to the Commission
Mr. Geeandave GUKHOOL
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Mauritius is known to be a country highly respectful of Human Rights. It is one of the few former colonies which has maintained its original Constitution after independence with a few amendments consolidating the fabric of democracy. The unreserved acceptance of the Constitution as the Supreme Law has promoted social stability which in turn has contributed largely to economic development. Although economic, social and cultural rights are not listed in the Constitution, they are firmly protected by the continued existence of a Welfare State with free education, free transport for school children and persons over sixty, free health services, social security benefits and facilities for access to housing. The right to drinkable water and to a clean environment are clearly recognised. The recent increase in old age pension is a testimony to the consolidation of the Welfare State and to an acknowledgement of the rights and needs of older persons to maintain a decent standard of living in the face of economic difficulties affecting people globally. The ultimate aim of Mauritian citizens is to build a strong Mauritian nation while preserving the rights of minorities.
CHAPTER I
OVERVIEW

This Chapter provides a general survey of human rights issues which have an impact on the situation in Mauritius. Annexes to the Report provide more information about these issues in furtherance of the mandate of the National Human Rights Commission for the promotion of human rights.

1.1 Human Rights are in constant evolution to respond to modern situations and arising needs. Though human rights are universal and indivisible, civil and political rights like the right to life, the right to liberty, freedom from torture, freedom of expression, freedom of conscience, freedom of movement, protection from discrimination have been considered as first generation rights. The consolidation of Economic and Social rights, like the rights to health, housing, education, Social Security which depend on the adequacy of economic resources and which therefore can be progressively realised, have been described as second generation rights. New rights like the right to development or the right to a clean environment graft themselves onto existing rights and becomes “third generation” rights. Thus the right to communicate, the access to connectivity, the exchange of views and information go hand in hand with economic development. To quote Mark Zuckerberg, the founder of Facebook: "Everyone has the right to basic internet services – Connectivity is a human right". Social media have helped to push for change for the benefit of people and are even used as a tool for electioneering. Connectivity can change living conditions and improve service delivery, especially of basic services, as long as the demands are reasonable. The internet is having a strong influence on life in Mauritius, with both positive and negative consequences.

1.2 Has democracy become an absolute right? Although more and more countries seem to be evolving under the umbrella of freedom with regular, free and fair elections, democracy is far from being an acquired right. Some states tend to slip back into dictatorships, crushing the will of the people. Mauritius is fortunately not in this predicament and has an active democracy.
NATIONAL HUMAN RIGHTS COMMISSION

POWERS OF THE NHRC

1.3 The powers of the NHRC are limited by Law. Its Human Rights Division deals mainly with civil and political rights listed in Chapter II of the Constitution. The HRD cannot deal with complaints against the private sector or with any complaint dealing with economic, social and cultural rights since the latter are not entrenched in the Constitution. Many complainants still tend to refer labour disputes or cases of alleged harassment at work to the NHRC. These have to be dealt with at the level of the Labour Inspectorate. It is worthwhile to note that some Human Rights Commissions, like the South African Human Rights Commission, have the power to take cases to Court. They may provide financial assistance to enable proceedings to be taken to a competent Court or to bring proceedings in a court or tribunal in their own name, or on behalf of a person or a group or class of persons. Such powers have not been entrusted to the Mauritian Human Rights Commission.

NHRIS and the UN GENERAL ASSEMBLY

1.4 In 2015 a United Nations resolution called for national human rights institutions that are fully compliant with the Paris Principles (“A” Status NHRIs) to be given the opportunity to contribute independently to the work of different bodies within the General Assembly. A research report details the ways in which NHRIs can in future help to ensure that UN human rights debates are informed by independent expert advice about the human rights situation in Member states and also better enable the implementation of UN mandated rights standards at the national level.

HUMAN RIGHTS DAY 2015

1.5 On 10 December 2015 a year-long campaign was launched to celebrate the 50th anniversary of two most important international human rights treaties:
(1) The International Covenant on Civil and Political Rights and

(2) The International Covenant on Economic, Social and Cultural Rights.

The theme for Human Rights Day was “Our Freedoms, Now and Always” and referred to four fundamental freedoms
- Freedom from fear
- Freedom from want
- Freedom of speech and;
- Freedom of thought, conscience and religion.

New issues like digital privacy, counter terrorism measures and climate change have cropped up since 1966. As pointed out by the High Commissioner for Human Rights “respect for freedom continues to be the foundation for peace, security and development for all”.

The National Human Rights Commission started the campaign by organising an Essay Competition on the theme for University Students. Forty entries were received all of a good level. The best essays displayed originality of thought and applicability of the theme to the local situation.

MEMBERSHIP

1.6 The NHRC continued to be a member of

(1) The International Coordination Committee of NHRI (ICC) in Geneva, (now known as the Global Alliance of National Human Rights Institutions or GANHRI);

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

(3) The Association Francophone des Commissions Nationales des Droits de l’Homme (AFCNDH)

(4) The Commonwealth Forum of National Human Rights Institutions (CFNHRI)

Members attended workshops held by NANHRI especially those organised in conjunction with the NGO – ‘Association for the Prevention of Torture’, the meeting of the African Commission
on Human Rights in Banjul, Gambia as well as the meeting of the AFCNDH in Dakar, Senegal. One Member also participated in the meeting held by the European Union in Brussels to enhance cooperation with National Human Rights Commissions.

**ELECTORAL REFORM**

1.7 The Electoral System in Mauritius comprises a best loser provision which requires compulsory declaration by every candidate of his or her communal appurtenance. The Human Rights Committee set up under the International Covenant on Civil and Political Rights expressed Views, following a complaint that was submitted from Mauritius in 2007, which led to the government enacting a temporary exceptional measure for the General Elections of December 2014. This measure then lapsed. The reform of the Electoral System has therefore again come to the fore. A Ministerial Committee has been set up in December 2015 to make recommendations on electoral reforms including, inter alia, the introduction of proportional representation, better women representation, the mandatory declaration of community by candidates and the financing of political parties for elections.

**RODRIGUES**

1.8 Complainants in Rodrigues have to send their complaints by post to the NHRC office in Port Louis, or lodge complaints when members of the NHRC visit Rodrigues. Steps have been taken with the concurrence of the office of the Chief Commissioner in Rodrigues to have a permanent office in the island and to designate an officer who will be able to receive complaints about alleged breaches of human rights and complaints against the police, and will impart advice to complainants. Complaints against the Police may also continue to be lodged at Police Stations in Rodrigues to be transmitted to the Police Complaints Division.

**INTERNATIONAL OBLIGATIONS**

1.9 In 2015 Mauritius presented two Country Reports, the first to the Committee on the Rights of the Child and the second to the Committee on the Rights of Persons with Disabilities. The Concluding Observations are reproduced in the ANNEXES I & II. The Ministry
for Gender Equality and Family Welfare was responsible for the first Report and the Ministry of Social Security, National Solidarity and Reform Institutions submitted the second report. Every effort is being made to ensure that the rights of children and the rights of persons with disabilities are protected. The new Ombudsperson for Children who was appointed in December 2015 is someone who has devoted her whole working life to the cause of children and who has been responsible for an NGO caring for children.

1.10 Government has set up an agency to cater for the protection of persons with disabilities. (The National Council for the Rehabilitation of Disabled Persons). The Government has also produced a National Strategic Paper and Action Plan on Disability.

1.11 In 2016 Mauritius is due to present its Fifth Periodic Report to the Human Rights Committee, its Fourth Periodic Report to the Committee against Torture, and its Sixth to Eighth Reports to the African Commission on Human and People’s Rights. In many countries the submission of Reports suffers delays as a lack of manpower/resources is claimed. In most instances, the extensive legal content in the report entails that it is the Attorney General’s office which has to centralise information and prepare the Reports. A UN Expert from the Office of the High Commissioner for Human Rights has recommended that a Ministerial Committee be set up in Mauritius to monitor the submission of Reports as obtains in some countries, for example, Mozambique.

THE JUDICIARY

1.12 Judges in Mauritius actively protect human rights in Mauritius in line with the Constitution which is our Supreme Law. Assize sessions are held regularly to deal with important criminal cases especially drug trafficking cases. There are still plans to set up a full-fledged Court of Appeal while retaining the Judicial Committee of the Privy Council in London as the ultimate Appellate Court.
SOMALI PIRATES

1.13 The Supreme Court reversed the acquittal of the Somali pirates by the Intermediate Court and ordered a new trial. The Court determined that the constitutional rights of the accused parties had not been breached. (Supreme Court Judgment No. 452 of 2015).

NATIONAL IDENTITY CARD

1.14 The National Identity Card Act provides that every person applying for the new identity card must allow his fingerprints and other biometric information about himself to be taken and recorded and also allow his photo to be taken. Some members of the public filed a complaint at the NHRC, alleging that their rights under sections 4 (right to life), 5 (right to liberty), 7 (protection from inhuman treatment), 13 (freedom of assembly and association), 15 (freedom of movement) and 16 (protection from discrimination) had been breached. They also referred to section 9 (the right to privacy of home and property). Since a similar case had been entered before the Supreme Court, it was deemed more appropriate that the Supreme Court should rule on the issue. The Court found that there were no breaches of Section 4, 5, 7, 13, 15 and 16 of the Constitution.

1.15 The Court also ruled that the compulsory taking and recording of fingerprints for the purposes of obtaining a national identity card, while it discloses an interference with the person’s right against the search of his person guaranteed under section 9(1) of the Constitution, constitutes a permissible derogation, in the interests of public order, under Section 9(2) of the Constitution. The Court considered that it was not proved that this was not reasonably justifiable in a democratic Society.

1.16 The Court declared that the provisions in the National Identity Card Act and the Data Protection Act for the storage of personal biometric data, including fingerprints collected for the purpose of the biometric identity card of the plaintiff, are unconstitutional and granted a permanent writ of injunction prohibiting the defendants from storing, or causing to be stored any fingerprints or biometric information data obtained under the Acts. Being dissatisfied with the decision,
one plaintiff has now appealed to the Judicial Committee of the Privy Council.

**DELAYS AND RIGHT TO A FAIR TRIAL**

1.17 Generally it is not the responsibility of the Court if there are delays in lodging cases in Court. At times, police enquiries take an inordinate amount of time or the DPP’s Office has to seek further clarification from the Police before a case is lodged in Court. Where a person is on remand and is subsequently convicted, the time spent on remand is generally deducted from the sentence. However, in a major murder case the accused was held on remand for more than four years and subsequently acquitted in a jury trial. He is now suing the State for compensation for deprivation of liberty. Similarly, a foreigner acquitted in a drug case has expressed his intention to sue the State for having been detained on remand for a prolonged period. Another foreigner has been detained on remand for murder for more than a year. His application for bail has been rejected twice by the court on the ground that he may leave the country.

**HUMAN TRAFFICKING**

1.18 The NHRC has not received any complaint about human trafficking. Reports about child trafficking for prostitution are dealt with by the Ombudsperson for Children and the Child Development Unit of the Ministry for Gender Equality, Child Development and Family Welfare. The UN Special Rapporteur on Child Prostitution visited Mauritius in 2013.

The United States Department of State Report on Human Trafficking gives a critical account of the situation in Mauritius. On occasion, the information given may have relied on unverified press articles.

1.19 Some 37,000 foreign migrant workers from Bangladesh (20,515), China (2,733), India (7,598), Sri Lanka (1,556), Nepal (422), France (193) and Madagascar (3505) are employed in the manufacturing and construction sectors. A few of them are in the agricultural sector where planters or farmers have found it difficult to recruit local labour. At least one trade union has pronounced itself against the importation of foreign labour when there is unemployment in Mauritius. It is alleged...
that foreign workers are willing to work for lower wages, longer hours and less advantageous conditions of work than Mauritian workers. They are still better paid here than in their own country and manage to send money back home.

1.20 Mauritius has not ratified the Convention on the Rights of Migrant Workers and has clearly stated its position during the Universal Periodic Review that it would not be economically viable in a small island state to afford all the rights in the Convention to migrant workers.

1.21 Most migrant workers have satisfactory accommodation provided by the employers but there have been cases of workers living in degrading conditions and overcrowded dormitories. These have been the subject of enquiries by the Labour Inspectorate.

1.22 A number of foreign workers are victims of recruiting agents who take a hefty commission from them and deceive them about employment conditions to lure them to Mauritius.

FREEDOM OF INFORMATION

1.23 The Special Rapporteur on Freedom of Information and Access to Information in Africa of the African Commission of Human and Peoples’ Rights visited Mauritius in April 2015 at the head of a high level delegation. She paid visits to several dignitaries and to the NHRC and explained the Model Law which her team has devised. It is the aim of the African Commission to persuade as many states members as possible to adopt the Model Law to ensure freedom of information.

The following extract from her Report is of utmost relevance:-

“Access to information is of growing international and regional concern and is a topic on which African States are increasingly undertaking legislative reform. Properly implemented access to information legislation holds the promise of fostering good governance by improving information management, and by enhancing transparency, accountability and greater participation of the populace in public affairs. By exposing corruption, maladministration and mismanagement of resources, increased transparency and accountability is likely to lead to better management of public resources, improvements in the enjoyment of socio-economic rights and to contribute to the eradication of under-development on the continent.”
The Mauritian Government had already provided an undertaking that it will enact freedom of information legislation by the year 2016 and enhance good governance.

1.24 It is to be noted that the Standing Orders of the Police constitute a confidential document to be used for Police Operations. However the compilation contains useful information which should be made available to the public on the work of the police and which would enhance public confidence in police methods. Obviously, matters of a fully confidential nature should not be disclosed if they concern public security or operational tactics. On the other hand, information about duties at a police station and responsibilities entrusted to different officers, the supervision of police cells etc. should be known to the public which can then cooperate with the police and even provide assistance.

**LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) RIGHTS**

1.25 The LGBT community in Mauritius now claims wider recognition and has the support of the press. The Mauritian population generally practices tolerance and has not openly persecuted LGBTs. It is equally true that LGBTs have been the subject of mockery. With the advent of TV and films which feature LGBT actors and actresses, there seems to be more acceptance that such conduct is not a sign of any abnormality. Sexual orientation has been entrenched in our Equal Opportunities Legislation. It may even be construed that ‘sex’ in section 16 of the Constitution can encompass sexual orientation.

**AGEING POPULATION**

1.26 Progress in medicine and a commitment to a better and healthier style of living have enabled human beings to live longer. An ageing population in many countries of the world implies having to cater for the rights of older people. Mauritius has evolved its own response in terms of a National Ageing Policy. In 2015 the country received the visit of the UN Special Rapporteur on Ageing who submitted her Report on the local situation to the Human Rights Council in September 2015. The Recommendations are reproduced as ANNEX III.
RIGHT TO A HEALTHY ENVIRONMENT

1.27 The protection of the Environment and the path to development are journeys in the same direction. The right to a clean environment has become one of the most important third generation rights. The right to development does not imply excessive use of pesticides, herbicides, genetical modification of crops, emission of fumes and pollutants, proliferation of plastic bags etc. In a small country like Mauritius the dangers are on a smaller scale, but can have wide ranging repercussions – soil erosion, killing of corals and sea life on the coast coupled with other threats like the multiplication of stray dogs and cats and the widespread craze for the tuning of cars and motorcycles. The authorities have become aware of the multiplication of these threats and are increasingly taking strong positive action like the banning of plastic bags and better control of use of pesticides and herbicides, more severe control of the vehicles which pollute by noise and fumes and a national campaign for planting more trees.

CLIMATE CHANGE

1.28 The concept of climate justice links human rights and development and is crucial to the achievement of the Sustainable Development Goals. (ANNEX IV) Small island developing states which are members of the Commonwealth have taken the stand that climate change issues are an important human rights consideration and affect water supply, food security and health services on account of extreme weather events and rising sea levels. It has been said that climate change will affect mostly those segments of the population who are in vulnerable situations owing to factors like poverty, gender, age or disability. (ANNEX V). At the level of the Commonwealth Forum of National Human Rights Institutions (CFNHRI) which met just before the gathering of Commonwealth Heads of Government in Malta in November 2015, the Plenary Assembly adopted the St Julian Declaration on Climate Justice. (ANNEX VI). The Conference of State Parties (COP 21) of the United Nations Framework Convention on Climate Change (UNFCCC) followed just after.
SUSTAINABLE DEVELOPMENT GOALS

1.29 The 2030 Agenda for Sustainable Development was adopted by all the Member States of the UN General Assembly on 25 September 2015. The Sustainable Development Goals (SDGs) will take effect from 1 January 2016 and represent an integrated vision of sustainable development in the economic, social and environmental fields. 169 targets are set out to measure progress. The 2030 Agenda will map out global and national policies of sustainable development for the next 15 years. It will require that policies, strategies and national monitoring and reporting should comply with human rights. The document reproduced at ANNEX VII shows the link between the SDGs and international human rights standards.

1.30 National human rights institutions are expected to act as a bridge between stakeholders and to ensure that governments adopt a human rights - centered approach to implement the SDGs. The principles of equality and non-discrimination should be respected. Planning policies should be implemented in a participatory, transparent and accountable manner. NHRIs will play a major role in promoting greater understanding, awareness and respect for human rights in achieving the SDGs. NHRIs can promote remedies for human rights violations, carry out investigations to address serious human rights concerns linked to the implementation of the 2030 Agenda.
CHAPTER II

NEW HUMAN RIGHTS ISSUES

NEW POLICE COMPLAINTS COMMISSION

2.1 The creation of a new Police Complaints Commission in 2016, to replace the Police Complaints Division (PCD) is envisaged. The new Commission should have wider powers than the PCD has had, to issue warnings to Police Officers on being delegated such powers from the Disciplined Forces Service Commission (DFSC). (See Annual Report of 2014)

The new law should make it clear that a Police Complaints Commission does not deal with disciplinary matters within the Police or with disputes between police officers and their superiors nor would it deal with administrative matters, such as clearances to members of the public for a permit to pursue an economic activity.

2.2 The Complaints Investigation Bureau which existed previously was dissolved in 2012 and a Police Complaints Division created within the NHRC which became operational in July 2014. Sufficient attention was not given to the nature and range of responsibilities under its purview. Provision has to be made for an internal mechanism within the Police Department to deal with simple complaints against the police, for example, against police officers on duty involved in road accidents. An independent unit within the police can investigate the circumstances of such occurrences. However the investigation should not be left in the hands of the police of the same locality or police station, more especially if the alleged culprit is posted at that station. Again, where an overzealous police officer books a driver for multiple minor road traffic offences, a senior police officer should be able to oversee this excessive zeal to ascertain the police officer’s motives, especially when there are allegations of bad blood between the police officer and the driver of the motor vehicle or motorcyclist. Instances of verbal abuse should also be dealt with at the level of the police, not necessarily at the level of a Police Complaints Commission. It is for senior police officers to call their men to order in such cases instead of indiscriminately passing on complaints to the PCD. A protracted enquiry usually ends in a general denial by the officer or officers involved.
2.3 The role of Station Orderlies should be reviewed. Now that the Police Department has more staff, should this role continue to be entrusted to a Constable or a Corporal as provided in the Standing Orders? A Station Orderly of the rank of a Sergeant would have more authority to man a station and to deal with the public. Such a change may help to diminish the number of complaints from members of the public who express dissatisfaction when their grievances are not given the attention they deserve.

THE PROVISIONAL CHARGE

2.4 Section 5(3) of the Constitution provides that -

“Any person who is arrested or detained and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a Court.”

2.5 Section 27 of the District and Intermediate Courts (Criminal Jurisdiction) Act (DICA) provides that -

“An officer who arrests a person without warrant or who arrests any person who assaults him while he is in the execution of his duty should, as soon as possible, take such a person before a Magistrate.”

2.6 Section 13 F of the Police Act provides that -

(1) A police officer who has reason to suspect that a person has committed or is about to commit an offence which will endanger public safety or public order, may arrest that person and use such force as may be necessary for that purpose.

(2) A person arrested under subsection (1) shall be brought within 48 hours of his arrest before a Court.

The 48 hour period is actually overruled by the Constitutional provisions.

2.7 It would appear from the Standing Orders of the Police that it is in the application of Section 27 of DICA that the Police have adopted the practice of lodging a provisional information in Court. However, there is no piece of legislation in the Statute Books on which a provisional charge can be grounded.
2.8 The practice is that on working days the person is brought to Court on the same day. Arrangements have now been made for a Magistrate to be on duty during weekends and on public holidays so that the person may be taken to Court on Saturdays and Sundays. Thus, there is judicial control over his arrest.

2.9 In Mauritius there is an established practice of laying a provisional charge against the person arrested on, amongst others, the following grounds:-

(1) the police enquiry has just started and the police need time to interrogate the suspect, victims and other witnesses,

(2) if the person is released, the person arrested

(a) will not be available for questioning or

(b) may interfere with victims or witnesses or destroy evidence or

(c) may re-offend - as in the case of a common thief who would not hesitate to commit repeated offences, knowing that in the majority of cases the sentences imposed upon him will be concurrent, and not consecutive if he is convicted.

2.10 It is to be noted that the person may apply for bail on his very first appearance before the Magistrate. In a number of cases the police object on the grounds listed above. It is alleged that in some cases, using the provisional charge as a weapon, the Police manage to obtain confessions from arrested persons. The very act of detention, especially in a police cell, results in pressure on the detainee during the enquiry and provides an added advantage to police officers to obtain a confession in order to resolve a case.

2.11 The provisional charge may have its usefulness and legitimate purpose, if it is used lawfully and in total respect for human rights. But criticism has been levelled at it because of an alleged abuse by the police in laying charges which are not subsequently proved or substantiated or to obtain confessions by duress. The more severe criticism is to the effect that the Police tend to arrest somebody on the mere allegation of a victim
or on mere suspicion without having taken the trouble to carry out a preliminary investigation to check the version of the victim or to check the facts. What constitutes reasonable suspicion before arresting and provisionally charging a suspect has been dealt with in our jurisprudence, following English case law -

“a police officer effecting an arrest must take into consideration the totality of the circumstances including the explanations of the suspect and the motive of the declarant. We feel that whatever suspicion the police may harbour against the suspect should be weighed against any factors which tell in favour of the suspect. A total neglect of the explanations that the suspect may have to offer may well lead to the conclusion that the suspicion is not reasonable – (see Holgate Mohammed v Duke (1984) AC 437).

Obviously, it is not always possible to fully enquire and then arrest in circumstances where the alleged perpetrator may dispose of the proceeds or object of a crime or get rid of other evidence. As far as drugs cases are concerned, the ADSU secures a search warrant before effecting a search and arresting a suspect in the process. At the same time, there must be at least reliable prima facie evidence as to the involvement of the suspect. Similarly, where there is no possibility about disposing of evidence or the probability of commission of other offences or otherwise interfering with the enquiry and witnesses, there is no urgency in arresting a person and laying a provisional charge until a more thorough enquiry has been carried out.

2.12  It is claimed by the police that if they do not lay a provisional charge, the ‘suspect’ will not make himself available to the police. But they may still arrest the ‘suspect’ after they have gathered enough direct evidence, from surrounding circumstances or from witnesses. If it is apprehended that the suspect may ‘abscond’ or leave the country, the police is able to lodge an objection to departure at the Passport and Immigration Office even if there is no provisional charge against the ‘suspect’.

2.13  In the past, the National Human Rights Commission has already raised the issue of police arresting people on mere allegations or suspicion and then conducting an enquiry, but no solution has yet been prescribed to that effect. The problem comes to the fore from time to time in high profile cases but is ignored when ordinary citizens are victimised. On
the mere allegation of sexual misconduct, the practice of the police is to arrest immediately without making a serious enquiry, even if the incident has occurred a number of years before.

2.14 One must add that there are many cases where a provisional charge is lodged and the person is released on bail. Nevertheless in these cases the person’s reputation is considerably tarnished if he has to report to the police on a regular basis or he has to appear regularly before Court for his bail to be enlarged.

2.15 District Court Magistrates now take it upon themselves to strike out provisional charges if the police take too long with their enquiry. It is an administrative burden for the Court to have cases called on a regular basis for long periods merely because the police enquiry is not completed or the prosecution is not ready with a main case. At least this has the benefit of putting pressure on the police to complete the enquiry or the prosecution to take a decision without further delay. Where the suspect is on remand, our Courts make sure that there is no abuse of powers of detention. On the other hand it would be difficult to entrust magistrates with the task of examining the merits or necessity of a provisional charge in each and every case as they are already overburdened with work. The issue is often raised at the level of the Bail and Remand Court. Better judicial control of detention could be exercised if the Court were to ask the Police to report on an enquiry after a few days, not a week. This could be applied in cases where the prima facie evidence looks weak depending upon the discretion of the Magistrate.

2.16 It is proposed to introduce legislation on the lines of the UK Police and Criminal Evidence Act 1984 (PACE) in Mauritius. Section 37(2) of PACE provides that, where a person is arrested without a warrant and the custody officer does not have sufficient evidence to charge him, the person arrested must be released either with or without bail -

“unless the custody officer, has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him”

2.17 The above makes no provision for a ‘provisional charge’ but allows for continued detention which would be under judicial control. For this to
work in Mauritius it is essential that the powers and responsibility of the Police Station Enquiring Officer which are defined in the Police Standing Orders be carefully reinforced and defined.

2.18 The Station Enquiring Officer is responsible for organising and leading enquiry teams for the proper conduct and supervision of all enquiries, falling within the ambit of his Police Station Manager and maintaining the necessary liaison with the Divisional Prosecution Office, Police Prosecution Officer, Line Barracks and Courts.

Ideally, a Station Enquiring Officer would have a degree in Law and be fully aware of the rules of evidence. In the past, the practice has been for Enquiring Officers to liaise closely with the officer in the DPP’s Office who is in charge of his District. Adequate training will have to be given to Station Enquiring Officers before they can become Custody Officers.

ROAD ACCIDENTS AND THE RIGHT TO LIFE

2.19 Most unfortunately the number of fatal road accidents is not decreasing. The conduct of many drivers of vehicles leaves a lot to be desired. It is too easy to lay the blame at the door of the Police. Many drivers show a complete lack of discipline on the road and a certain amount of aggressiveness, or ‘ME FIRST” attitude without any respect for road traffic regulations and rules. Motorcyclists do not have a lane reserved for them on the motorways and ride recklessly in the middle lane putting their life at risk and obstructing other traffic. A certain number of motorcyclists have unfortunately been the victims of fatal road accidents. The authorities have introduced new rules to control the issue of licences for motorcycles. There is an increase in the number of hit and run cases, showing recklessness and complete disregard for the life of others. Aggressive driving, car racing endangering the life of other road users and road rage require that remedial action be taken. The authorities have proposed amendments to the law to provide for more severe penalties. More frequent and visible police patrols do act as a deterrent against reckless drivers.

2.20 It has yet to be ascertained how far speed is a direct cause of road accidents or whether the latter must be attributed to drunken driving, sheer imprudence or criminal negligence. Speed cameras do help considerably in controlling speed and contribute to imposing discipline on the roads.
2.21 The points system has been abrogated, but consideration may still be given to a new system which would apply to excessive speeding or drunken driving, including cancellation of drivers’ licences which would not be mandatory and automatic or applied indiscriminately. Each case could be considered on its merits and left to the discretion of the Magistrate. For example, a person who earns his livelihood as a driver should not be unduly penalised.

2.22 A person learns to drive by taking driving lessons under the responsibility of tutors of Driving Schools. The Traffic Police could usefully conduct specific courses for all tutors who will have to be duly certified and also for learner drivers to teach them about their responsibilities and about exercising caution on the road. Courtesy and respect for other users of the road should form part of the lessons. The authorities may be warranted to charge for this exercise.

Newly licensed drivers could also be required to affix a sign to their vehicle for one year identifying them as such.

2.23 The tuning of vehicles has become a lucrative business in Mauritius. Few countries have such a large proportion of adepts of tuning. There is little control on the level of noise made by such vehicles, as it seems the authorities are having difficulty in getting adequate equipment to measure noise levels. People buy old cars, have the engines reconditioned or increased in power with larger exhaust pipes, completely ignoring the interest of other users of roads. It would appear that there is little official control over the increase in engine power of certain vehicles. A proportional road tax could be levied for such vehicles by which users would pay for the noise pollution.

2.24 The prices of petrol and diesel have gone down. It is suggested that the authorities could use part of this windfall gain to create a Motor Vehicle Insurance Fund to provide for compensation to victims or their relatives in car accidents, more especially in hit and run cases.

**DANGEROUS DRUGS**

2.25 In 2015 Government set up a Commission of Inquiry on Drugs Trafficking with the following terms of Reference,

“to inquire into, and report on, all aspects of drug trafficking in Mauritius, including:-
(i) the scale and extent of the illicit drug trade and consumption in Mauritius and their economic and social consequences;

(ii) sources/points of origin/routes of illicit drugs;

(iii) the channels of entry and distribution of drugs in Mauritius;

(iv) the channels of entry and distribution of drugs in prisons;

(v) the availability of new types of drugs, including synthetic and designer drugs, in Mauritius;

(vi) linkages between drug trafficking, money laundering, terrorist financing and other crimes;

(vii) the adequacy of existing legislation;

(viii) the operational effectiveness of the various agencies involved in the fight against drug trafficking;

(ix) the adequacy of the existing resources including human expertise, technology and equipment, to detect and counter any attempt to introduce drugs including designer and synthetic, in Mauritius;

(x) the need for fostering linkages and coordination among the various agencies and other local, regional and international entities dealing with drugs related matters for better strategic direction;

(xi) the effectiveness of drug treatment and rehabilitation programmes as well as harm reduction strategies, national prevention, education and drug repression strategies, with emphasis on youth;

(xii) the tracking of funds in order to identify illicit activities;

(xiii) whether there is any evidence of political influence in the drug trafficking trade; and

(xiv) any other matter connected with, or relevant or incidental to paragraphs (i) to (xiii) above, and make recommendations as appropriate, including:-

A. such action as is deemed necessary to fight the problem of importation, distribution and consumption of illicit drugs in the Republic of Mauritius; and

B. any statutory amendments as may be necessary to better safeguard the interests of the public at large.

2.26 In spite of all the efforts made by the Police and the authorities, drugs trafficking, drugs dealing and consumption remain on the high side. More than half of the prison population consists of detainees convicted for drugs offences. A new approach to deal with the problem
is necessary as well as a study of the problems of drugs users. Some have proposed the legalisation of ‘soft’ drugs like gandia but it is still difficult in Mauritius to accept this.

2.27 Heavy sentences have not proved to be an adequate deterrent to discourage the proliferation of drugs. The Courts tend to impose very heavy sentences on convicted persons, thus compounding a difficult situation in prison. For example, the number of drug couriers (mules) in prison is quite high. Many of them are foreigners who do not or cannot receive visits from relatives in Africa, Madagascar and other places.

ANNEX VIII to XI show the heavy sentences meted out at the level of the Supreme Court in 2012, 2013, 2014 and 2015.

2.28 The very fact that detainees convicted for drugs offences do not benefit from remission creates a tense situation in prisons. There is no incentive for them to be of good conduct to benefit from remission. They become depressed because of the long sentences inflicted on them and may become more dependent on dangerous drugs themselves. The NHRC has on several occasions recommended that they should benefit from remission, whether it is based on one third, one fourth or one fifth of their sentence, depending on good conduct in prison. The National Human Rights Commission reiterates this recommendation.

2.29 A number of detainees spend a long time on remand, awaiting their trial. One detainee has now spent seven years on remand. When queried, the Police have explained that the delay is attributed to the fact that the detainee continued to raise several issues and made allegations about the involvement of international drugs traffickers which had to be checked by Interpol. The trial is scheduled to be heard in early 2016. If convicted, the detainee’s sentence will be reduced by the period spent on remand. But if he is found not guilty, he would have been deprived of his liberty for a rather long time.

2.30 Drug couriers, when convicted do not seem to benefit, or only minimally, from any discount on their sentence even when they enable the ADSU in a successful operation of controlled delivery to arrest the recipients of the drugs. A reasonable discount would mean shorter sentences and would allow for a more rapid repatriation of drug couriers.
2.31 Transfers of convicted prisoners are subject to lengthy administrative procedures. Since in European countries the sentences for drugs offences are on the low side, it seems that there is some hesitation on the part of Mauritian authorities to send a convicted foreigner home unless he or she has served a considerable part of the sentence here.

2.32 Two foreigners convicted for drugs offences saw their convictions reversed on appeal in 2015. The first one (who had spent four years on remand) saw his appeal allowed when he had been prosecuted for attempting to possess dangerous drugs with an allegation of drugs trafficking, whereas it was not proved that he had sought to take delivery of drugs brought by a courier from South Africa. The Court of Criminal Appeal came to the conclusion that there had never been a ‘commencement d’exécution’. The courier pleaded guilty and was convicted. In the second case the appellant was found not to have the requisite knowledge that she was bringing more than a thousand tablets of Subutex in the country when her male friend in France requested her to take packets of biscuits for his mother in Mauritius. She claimed that she had not verified the contents of the parcel.

2.33 A separate Drug Court should be set up to deal with all drugs cases. The Drug Court could consist of one Judge, two senior Magistrates and two Magistrates. In more complex cases the Judge could sit with one Magistrate to decide issues of guilty knowledge and sentencing.

2.34 Some convicted persons challenge the street value attributed to the drugs by Anti-Drug and Smuggling Unit (ADSU) and consider it to be exaggerated. This is an important consideration when it comes to sentencing since the Courts look at the street value to determine if an accused party is a drug trafficker.

WITNESS PROTECTION

2.35 The police continue to insist on confessions rather than on eye witness evidence or scientific evidence to secure a conviction. Eye witnesses may be reluctant to come forward. A witness protection scheme may be set up to shield witnesses from threats or other harm. This would help curb the excessive practice of the police relying on confessions for the purpose of prosecution and securing a conviction.
3.1 Under its new jurisdiction to entertain applications for review of criminal convictions and subsequent reference to the Supreme Court, (Section 4 A of The Protection of Human Rights Act as amended) the Human Rights Division dealt with the case of the four persons convicted for the offence of Arson causing death at LAmicale gaming house. The HRD found that there was no fresh and compelling evidence to justify a reference for the Supreme Court.

3.2 BACKGROUND TO THE CASE

(1) On Sunday 23 May 1999 a Football match took place at Anjalay Stadium in the North between two teams, Scouts and Fire Brigade. Fire Brigade won the match. After the match the fans of Scouts expressed their discontent all the way from the stadium to Port Louis. The four Applicants (supporters of the Scouts) were present at the match.

(2) After reaching Khadafi Square in Port Louis, a group of persons proceeded to the Headquarters of the Mauritius Football Association at Chancery House near Jules Koenig Street and damaged glass panes. There were also incidents at Pope Hennessy Police Station.

(3) At around 6.45 p.m. there was a fire at L’Amicale gaming house at Royal Road, Port Louis. Cars and motorcycles were set upon fire in front of L’Amicale by a group of persons. It was alleged that Molotov cocktails were also thrown at the building. Seven persons died in the fire.

(4) In the following days seven persons were arrested, among whom the four applicants. They denied their participation in the crime when they gave their statements to the Police. Applicants Nos. 1, 2 and 3 maintained that on reaching Port Louis they returned home. Applicant No. 1 stayed at Vallée Pitot where he owned a bakery. Applicant No. 2 left home at Vallée Pitot to go and work in his bakery at Desforges Street. He was at his bakery at Desforges Street when there was a power cut and he met a Security Guard called
SN at Mohamedally Court in Desforges Street, from whom he borrowed a torch. Applicant No. 3 went home in Port Louis and then accompanied his wife to see a seamstress. Applicant No. 4 claimed he returned to Pamplemousses where he lived.

(5) On the other hand, a number of persons (including AT and RT) implicated the four applicants. AT and RT were present at the football match, at the MFA incident and at L’Amicale. They gave their statements to the Police on 2 June 1999. One LT witnessed the incident but the Police did not ask him to identify any of the culprits. His car was set on fire during the incident.

(6) On 10 June 1999 AT related to a journalist of L’Express newspaper, Mr. VA and to Lawyers (Mr. RV and others) that he had been subjected to police brutality to implicate the four applicants.

(7) On 14 June 1999 AT, who later became the star witness at the Assizes, gave a statement to the Police to state that he and his brother RT had been sequestrated by persons close to the Applicants Nos 1 and 2 to be compelled to change the version they gave to the Police about the implication of Applicants Nos. 1 and 2 in the arson.

(8) At the trial of the persons who were charged with the sequestration AT reiterated that he had been beaten by the Police to implicate the applicants and that the sequestration was a pure invention. Subsequently his inconsistent conduct and contradictory versions were heavily dwelt upon by the Defence at the Assizes to impugn his credibility.

(9) From 25 October 1999 to 14 July 2000 a Preliminary Enquiry was held in the case before the District Court of Port Louis where 9 suspects (including the 4 applicants) were charged with Arson causing death. The eyewitnesses (including AT and RT) retracted and were treated as hostile. They claimed they were brutalised by the police in order to incriminate the suspects.

(10) The witnesses who retracted were charged with the offence of perjury and prosecuted. On 14 December 1999 AT was arrested for perjury, released on bail on 15 January 2000 and pleaded not guilty to the offence on 29 February 2000.
NOTE: LT did not depose at the Preliminary Enquiry although his name was on the list of witnesses.

(11) The Magistrate committed 6 suspects (including the four applicants) to trial at the Assizes.

(12) Around 25 October 2000 witness AT went back on the version he gave at the PE and gave another statement to the Police implicating the four applicants. He and his brother RT got Police protection.

(13) On 6 November 2000 the 4 applicants were tried at the Assizes before a jury. The main witnesses were

(i) AT – who as an eyewitness of the arson had implicated the four applicants in his statements first given in June 1999 and then in October 2000.
(ii) LT – an eyewitness who implicated Applicants Nos. 3 and 4 when he gave a further statement after the PE and who identified them in the dock at the Assizes.
(iii) KP, the petrol station attendant, who stated that Applicant No. 4 bought petrol in a bottle at the petrol station before the arson. He did not witness the arson.

(14) The four Applicants did not depose at the Assizes. The defence called SP, the Security Guard at Mohamedally Court, who deposed in favour of Applicant No. 2 to testify that the latter was present at the bakery at Desforges Street at the time of the arson on 23 May 1999.

One A was called to depose in favour of Applicant No. 1 to testify to the fact that at the time of the arson he went to leave a piece of his birthday cake at Applicant No. 1’s place at Vallée Pitot and did meet Applicant No. 1.

(15) The case for the Defence was that AT was a most unreliable witness who had frequently changed his version, that LT had only identified Applicants Nos. 3 and 4 in the dock at the Assizes, but not previously. He claimed he had recognised them at the Preliminary Enquiry.

(16) The relatives of the Applicants were not called although some of them were on the lists of witnesses for Applicants.
(17) After Counsel for the Prosecution and Counsel for the Defence had made their submissions, the Presiding Judge in his summing up addressed the issues of co-authorship, corroboration, identification and summed up the versions of the prosecution witnesses, the applicants and their witnesses and left it to the jury to decide on the credibility of the star witness, AT and the other witnesses.

(18) On 25 November 2000 the jury by a majority of 8 to 1 found the 4 applicants guilty of the offence charged and the presiding judge sentenced them to penal servitude for life.

(19) On 28 November 2000 the Director of Public Prosecutions filed a Nolle Prosequi in the sequestration case.

(20) The 4 applicants appealed to the Court of Criminal Appeal setting out some 30 grounds of appeal.

(21) On 10 June 2004 they made a motion to the Supreme Court to adduce fresh evidence on the grounds that -

(a) the sequestration case was dropped by the DPP in November 2000 after the applicants had been convicted so that a court of law could not rule on the veracity of the RT’s and AT’s allegations that they had been sequestrated by persons close to the Applicants Nos 1 and 2.

(b) they were in possession of a taped conversation between AT and a brother of Applicants Nos 1 and 2 which would tend to show that the former’s evidence was tainted.

The motion was rejected.

(22) In October 2004 the applicants made a second motion to ask for a digital recording of the summing up of the Judge in Assizes case, alleging that the Judge had adopted a hostile tone which had caused prejudice to the applicants. The motion was rejected in October 2004 as there was no affidavit evidence to support the allegations of the applicants.

(23) The Court of Criminal Appeal delivered judgment in the Applicants’ appeal in March 2005. The evidence of LT regarding the dock identification of Applicants nos. 3 and 4 was rejected. However,
applying Section 6 of the Criminal Appeal Act, the Court found that no miscarriage of justice had occurred and dismissed the appeal.

FINDINGS

3.3 During its investigation the Human Rights Division heard 54 witnesses and examined 34 documents. The HRD reached the following conclusion:-

(24) In examining fresh and compelling evidence and when deciding whether to make a reference to the Supreme Court we stand guided by the principles laid down by the Court of Appeal in England in the case of R v. Kenneth Noye; Reference by the Criminal Cases Review Commission (2011) EWCA Crim. 650 which in turn refers to the decision of the Privy Council in Dial and another v. State of Trinidad and Tobago (2005), WLR 1660. The Chief Justice of England and Wales, Lord Judge, stated the following –

(25) The approach of this court to appeals brought on the basis of fresh evidence admitted under section 23 of the Criminal Appeal Act 1968, as amended by the Criminal Appeal Act 1995, should now be regarded as settled. It was decided by the House of Lords in Stafford v. DPP [1974] AC 878 that the ultimate responsibility for deciding whether a conviction was safe rested with the court. This principle was re-affirmed in the House of Lords in R v Pendleton [2002] 1 WLR 72 in a short phrase in the speech of Lord Bingham of Cornhill that” the principle laid down in Stafford was, in the opinion of the House, correct.“

(26) For a while it was thought that Pendleton was authority for a different approach, and there was a great deal of emphasis on the observations by Lord Bingham that the Court of Appeal/should remind itself that it has

“an imperfect and incomplete understanding of the full process which led the jury to convict. The Court of Appeal can make an assessment of the fresh evidence that it has heard, but save in a clear case it is at a disadvantage in seeking to relate that evidence to the rest of the evidence which the jury heard. For these reasons it will usually be wise for the Court of Appeal, in a case of any difficulty, to test their provisional view by asking whether the evidence, if given at the trial, might reasonably
have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe”.

(27) Any doubts on the issue were resolved by the decision of the Privy Council in Dial and another v State of Trinidad and Tobago [2005] 1 WLR 1660 where Lord Brown of Eaton-under-Heywood gave a judgment expressing the view of Board that:

“The law is now clearly established and can simply be stated as follows. Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, always assuming that it accepts it; to evaluate its importance in the context of the remainder of the evidence in the case ... The primary question is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury”.

(28) It is relevant to underline, first, that Lord Bingham of Cornhill was himself a member of the constitution, and party to the majority judgment given by Lord Brown; that Lord Brown was expressing the view of the Board as a whole; and that although Lord Steyn and Lord Hutton disagreed with the conclusion that the conviction under consideration was safe, neither suggested that the essential principle was in doubt: indeed Lord Hutton expressly repeated it.

(29) This approach has been consistently followed in this court (see for example R v Hakala [2002] EWCA Crim 730; R v Hanratty, deceased [2002] 3 All ER 534; R v Ishtiaq Ahmed [2002] EWCA Crim 2781; R v Harris [2006] Cr App R 5; R v Dunne and others [2009] EWCA Crim 1371; R v Burridge [2010] EWCA Crim 2874, where the authorities to date are carefully analysed at paragraphs 99-101).

(30) The same principle applies to whatever form or type of fresh evidence is admitted under section 23 of the 1968 Act, whether it appears to strengthen or weaken the case for the appellant or weakens or strengthens the Crown’s contention that the conviction is safe.

(31) The responsibility therefore rests with this court. In reaching our decision we reflect on how best to examine the fresh evidence and its possible impact on the safety of the conviction, and test our analysis to ensure that we have reached the right conclusion.
The Human Rights Division interviewed a number of persons who can be grouped according to the location where they were found and the role they played on the eventful day. The main issue is whether they provided fresh and compelling evidence which is reliable, substantial and could not have been adduced at the trial even if reasonable diligence had been exercised. Secondly would there be a real possibility that the conviction of the four applicants will not be upheld in the light of that evidence?

The Human Rights Division has considered carefully all of the issues raised and is not satisfied that there exists fresh and compelling evidence in this case.

Having come to the conclusion that there is no fresh and compelling evidence as defined in the law. The Human Rights Division finds that it cannot refer the conviction to the Court under Section 19A (4) of the Criminal Appeal Act.

PART IV

GENERAL REMARKS ON OUR MANDATE

In the publication on “The Criminal Cases Review Commission” in England edited by Michael Naughton, the latter is highly critical of the CCRC because he views the CCPR’s mandate as being limited and as not being geared to look for proof of innocence of an applicant.

“It (the CCRC) will ‘investigate’ or review only partially, within the terms of the Real Possibility Test and the general criteria of the criminal appeals system to seek out possible forms of fresh evidence that may suggest that convictions may be unsafe in law. In its review, the CCRC seeks to find fresh evidence that undermines the reliability of the evidence that led to the conviction, as opposed to evidence of innocence or, even guilt.

However, CCRC referrals are not regarded as first appeals and must take account of the appeal judgments in any cases that it considers. In the context of Real Possibility Test, this means that the CCRC is not merely looking forward in a predictive attempt to second guess how the appeal courts might view potential referrals, it is
also looking backwards at how the appeal courts have previously considered the applicant’s appeal, whereby, inevitably, possible lines of inquiry are likely to be excluded by the CCRC if they relate to evidence already considered but rejected by the appeal courts.”

(45) In the present case we are confronted with the same difficulty pointed out by Naughton, as many of the issues raised by the Applicants (and in the Report) relate to matters which were already before the jury or which were canvassed on appeal or by way of motion after the conviction. The attention of the Jury was drawn to such matters (for example, what may be termed the erratic conduct A.T) and they still decided to convict. The grounds of appeal were again a frontal attack on the evidence adduced, the composition of the jury, the tone used by the judge and connected issues, but these points were rejected outright by the Court. As to the motion to adduce fresh evidence regarding a tape conversation, this was disallowed by the Court.

(46) As we have already pointed out, the applicants could not bring forward any fresh and compelling evidence. They could not criticise the way Defence Counsel conducted their defence. During the trial they opted not to give evidence and availed themselves of their right to silence. The difficulty is further compounded by the fact that Applicants Nos. 1, 2 and 4 lied in their statements to the police about their presence in front of the MFA at Chancery House after the football match. The lies are detrimental to their case as they corroborate the version of A.T about their presence at Chancery House and about the mood, the frame of mind and the anger of the participants, more especially of Applicants Nos. 1 and 2.

(47) The Human Rights Division (HRD) has perforce to look at the way issues were treated by the Court of Criminal Appeal and cannot reopen issues which have been ruled upon, if there are no new elements which can shed additional light on them.

(48) The way the police conducted their investigation was another matter fully argued before the Jury and the Appellate court. The latter could find no fault with the investigation e.g. the police explained that it was no use sending the clothes of applicants for examination since they were interviewed days after the fire and
also that there was no need to interview all the persons applicants mentioned to provide alibis.

(49) The HRD has to look for fresh and compelling evidence, and cannot rely on rumours or hearsay evidence. The latter do not suffice to cast a reasonable doubt on the evidence for the prosecution.

(50) The alibis provided before us do not fall within the category of compelling evidence. The football match ended at five p.m. Applicants Nos. 1 and 2 claimed they were at Khadafi Square by ten past six. Applicants 1, 2 and 4 admit having proceeded to Cathedral Square and Chancery House. The Fire at L’Amicale broke around 6.30 p.m. The Fire Service received a call around 7.08 p.m. The first two applicants claimed they were back home at around 7.10 p.m. Thus all the witnesses who claimed they had seen them at home and at the bakery before seven p.m. are either mistaken or are not telling the truth. They may explain why Applicants’ Counsel decided not to call members of the family to provide alibis at the Assizes.

The evidence as to the exact time applicants Nos. 1, 2 and 3 returned home was not strong enough for a referral as there was no real possibility that the convictions would be overturned on the issue of alibis.

MITIGATING FACTORS (Extracts from decision)

(51) There are certain disquieting features in this case which it is our duty to highlight, even though they do not pertain to fresh and compelling evidence which would justify referring the conviction to the Supreme Court. It is to be noted that the members of the jury at the Assizes were made aware of many of these disturbing features and yet chose to believe the version of the Prosecution including the testimony of witness AT and witness LT to convict the four applicants.

(52) These disturbing features could have become the ground for a reference had the amendment to the Criminal Appeal Act included “exceptional circumstances to lead to a reference”, but this is not the case. The Mauritian legislation does not follow Section 13 of the Criminal Appeal Act 1995 of the UK which stipulates as follows –
Section 13 Conditions for making of references -

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

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

(b) The Commission so consider –

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

(ii) In the case of a sentence, because of an argument on a point of law, or information, not so raised, and

(c) An appeal against the conviction, verdict, finding or sentence has been determined or leave for appeal against it has been refused.

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

We also hasten to add that the Court of Criminal Appeal was presented with most of these “features” but chose to apply Section 6(1) (b) of the Criminal Appeal Act to maintain the finding of the Jury. We note that some of these features have been mentioned in the application to the Judicial Committee of the Privy Council for granting special leave to appeal to the four applicants.

(53) The first ‘disturbing’ feature is that the four applicants were convicted on the sole evidence of AT who was considered as an accomplice at the trial (he had confessed having participated in at least part of the ‘transaction’ leading to the arson). On 2 June 1999 this witness first gave a statement to the police implicating the four applicants. On 14 June 1999 he showed certain spots relevant to the arson. On the same date, he also gave a statement to the Police claiming he had been sequestrated by persons close to Applicants Nos. 1 and 2 to compel him to change his original version on 2
June 1999. The evidence concerning the sequestration appears to be questionable as he and his brother were taken to a small hotel and later to a beach bungalow where they were free to swim and to receive relatives and to leave to visit his fiancée. There was no evidence of threats. The persons he mentioned were arrested and prosecuted (but there was no Court judgment on this issue as the DPP filed a Nolle Prosequi).

When he deposed at the Preliminary Enquiry in December 1999 in the Amicale Case he went back on his original version and alleged he was beaten by the Police to implicate the four applicants.

He deposed in the sequestration case in December 1999, but instead of confirming the sequestration he again claimed to have been beaten by the police when he gave his original version implicating the four applicants.

During the PE on 14 December 1999 he was arrested for perjury. He was remanded to jail in the same association yard at Beau Bassin Prison as the four applicants. On 15 January 2000 he was released on bail. On 29 February 2000 he pleaded not guilty to the charge of perjury which was fixed to 30 October 2000.

He got married on 28 October 2000.

On 25 October 2000, a few days before the Assize case started on 6 November 2000 he gave a statement confirming his original version. Such inconsistent conduct on the part of a main witness in an Assize Case is surprising. We do appreciate that the members of the jury were perfectly aware of these inconsistencies and 8 members of the jury chose to believe his explanations, knowing full well that the sentence for the offence of arson causing death was penal servitude for life.

At the Assizes in November 2000 he stated that he had changed his version at the PE because he had been sequestrated and threatened by persons close to applicants’ nos 1 and 2. The four applicants were found guilty by the Jury on 25 November 2000. Before judgement could be delivered in the sequestration case, the Director of Public Prosecutions filed a Nolle Prosequi on 28 November 2000 so that there was no opportunity for the Court to pronounce on his version. The Court of Criminal Appeal dismissed the argument that a judgment testing the credibility of AT could have worked in favour of Applicants.
Furthermore, according to the first 2 applicants they were involved in a dispute with the main witness AT, and claimed that his evidence was tainted because he had acted in retaliation. The first two applicants stated the main witness AT had worked with them at the bakery in the past and had pocketed money belonging to the applicants from clients (which was denied by him at the Assizes). He had been slapped by Applicant No. 2. These matters were put to AT at the trial and therefore the Jury was made aware of these allegations.

It is worth mentioning that AT’s brother, (RT) had also implicated the four applicants in the police enquiry and then gone back on his version at the PE. He was not called to depose at the Assizes. Thus, there was another major witness to support AT’s version. The Court of Criminal Appeal did take this into consideration when rejecting the appeal.

Both AT and RT were given police protection and housed in police quarters at Coromandel and SMF quarters in Vacoas with an allowance of Rs 5000 per month. This protection continues until today, though they have not been subjected to any threat from people close to the applicants. Counsel for Applicants Nos. 1 and 2 referred to this inducement to discredit AT’s evidence but this had no impact on the jury at the Assizes.

The four applicants did not make any complaint about legal representation although many of the people who could have deposed in their favour were not called by applicants’ Counsel at the Assizes. (One A and the Security Guard were called). Even though many of them were relatives, it would have been up to the jury to decide on their credibility. However as mentioned above, their evidence, years later, does not qualify as fresh and compelling evidence.

Finally, regarding the participation of the applicants, according to AT, the first two applicants seemed to have been the ringleaders. But AT himself stated that there were other participants who lent a strong helping hand.

This issue could only be a mitigating factor in terms of sentencing.
The four participants were sentenced for life. In 2000 at the time of their conviction the principle of a mandatory sentence was acceptable. All mandatory sentences may now be reviewed by the Supreme Court, paying attention to relevant factors surrounding the commission of the offence. Evidence has to be heard before a Court sentences a convicted person.

(59) The applicants may apply to the Supreme Court for a review of their mandatory sentence, as they are entitled to do by law. Section 5 of the Criminal Procedure (Amendment) Act 2007 states as follows -

(1) Any person who has, before the commencement of this Act, been sentenced, in respect of an offence other than the offence of manslaughter, to penal servitude for life or for a mandatory term of 45 or 30 years, which he is still serving, may make an application to the Supreme Court for the Court to review the sentence.

(2) The Court, in considering an application under subsection (1) –

(a) may consult the record of the original case; and

(b) may take into consideration a report on the original case by the Judge or Magistrate, as the case may be, who presided at the trial, or, where a report cannot be obtained from that Judge or Magistrate, a report by the Chief Justice, together with such other information derived from the record of the original case or from any other relevant official source.

(3) The Court, after considering an application under subsection (1), shall –

(a) in the case of a sentence of penal servitude for life, either maintain that sentence or substitute therefor a sentence of penal servitude for a term not exceeding 60 years;

(b) In the case of a mandatory sentence of penal servitude for a term of 45 or 30 years, substitute therefor a sentence of penal servitude for a term not exceeding 45 or 30 years, as the Court may determine to be appropriate.

(4) For the purposes of this section, ‘original case’ means the case in which the person who is the subject of the application was tried at first instance before the Supreme Court or the Intermediate Court, as the case may be.
Another pertinent issue is the time factor in this case. The Amicale was set on fire between 18.30 and 19.00 hours on 23 May 1999. That the Arson took place so quickly lends support to the fact that other participants were actively involved in its execution. There was a crowd of more than 200 people in front of the Amicale who had moved there from Cathedral Square. However, no witness was prepared to come forward to denounce any of the other participants, probably for fear of reprisals. However, the references to the participation of the so called Escadron de la Mort (EM) in the Counsel’s ‘Report’ and before us have not been backed by compelling evidence. Some former members denied any outside participation. One N alluded to the involvement of the EM, but could not provide solid evidence. It was based on what others told him.

It is to be noted that on 25 May 1999 the then Prime Minister when answering a Private Notice Question in Parliament on the disturbances of 23 May 1999 alluded to the possibility that the incidents were more than spontaneous and to indications “that the attack was organised in one way or another.” The reply must have been based on information from the Police and the National Intelligence Unit, but the officers who deposed did not provide concrete evidence on the issue.

In another reply to a PNQ on 21 June 1999 the then Prime Minister stated that “There was too much of a coincidence that there should have been eighteen fire calls to the Fire Brigade after the football match” as there was a rumour that it was intended that the attention of the Fire Services should be diverted away from the Amicale.

As mentioned before an article had been published in the daily ‘Le Mauricien’ in 1999 giving the account of a visiting French military man who was of the view that the attack on the Amicale was systematically planned and professionally executed. Unfortunately the journalist has passed away and the tourist could not be traced.

Even if there was co-authorship on the part of the four applicants the participation of others may be a mitigating factor as far as sentencing is concerned.
The applicants were sentenced to penal servitude for life. In the case of Boucherville v. The State of Mauritius (Privy Council Appeal No. 70 of 2007) the Judicial Committee of the Privy Council came to the conclusion that the imposition of a mandatory life sentence does not mean that the convicted person forfeited his liberty for the rest of his days, quoting at paragraph 19 Lord Justice Laws in another case “Yet a prisoner’s incarceration without hope of release is in many respects in like case to a sentence of death. He can never atone for his offence.”

The alternative is for the applicant to petition the Commission on the Prerogative of Mercy. Unlike the Criminal Cases Review Commission in England and Wales, the Mauritius Human Rights Commission is not empowered to make a reference to the Supreme Court on the issue of sentence. The factors that may be taken into account are the nature of the evidence and the surrounding circumstances concerning the extent of participation of the applicants in the arson. As so well put by William Shakespeare in the “Merchant of Venice” –

\[
\begin{align*}
\text{The quality of mercy is not strain'd,} \\
\text{It droppeth as the gentle rain from heaven} \\
\text{Upon the place beneath: it is twice blest;} \\
\text{It blesseth him that gives and him that takes:} \\
\text{Tis mightiest in the mightiest: it becomes} \\
\text{The throned monarch better than his crown;}
\end{align*}
\]

Finally, the applicants may prefer to await the outcome of application to the Judicial Committee of the Privy Council for leave to appeal against the decision of the Court of Criminal Appeal.

3.4 The HRD advised the applicants to apply anew to the Commission on the Prerogative of Mercy for a review of their sentence.

3.5 The Supreme Court had denied the applicant leave to appeal to the Judicial Committee of the Privy Council in 2005. In 2014 their legal advisers lodged an application for leave to appeal directly to the Committee. The application was first rejected in December 2015 on the ‘that no good reason for delay had been shown and that the matters relied upon to challenge the Appeal’s judgement
dated 18 June 2004 and 18 March 2005 do not establish risk of a serious miscarriage of justice justifying extensions of time”

3.6 More recently the Judicial Committee granted the application for extension of time to enable the application to be made for disclosure of the sound recording of the judge’s summing up, as it was alleged that the tone used by the judge had not been fair to the convicted persons. The permission to appeal has been granted on this point on the understanding that the recording is still available. The order was granted after consideration of the further information provided by the Appellants’ agents as to the conclusions of the National Human Rights Commission.

3.7 Subsequent to the decision of the Human Rights Division, the Commission on the Prerogative of Mercy reduced the sentence of life imprisonment of the four applicants to one of 18 years penal servitude.

3.8 APPLICATION OF L FOR REVIEW OF CONVICTION

(1) An application was received from a detainee who had been convicted for the murder of a girl in a brothel in 1999. He asked that DNA tests be conducted to prove his innocence as he alleged that a foreign sailor had been responsible for the murder. He could not himself bring forward any fresh and compelling evidence apart from the allegation. The mandatory sentence of forty five years imposed upon the applicant had been reduced to thirty years.

(2) It must be pointed out that there was witness testimony against him at the trial, which was accepted by the Jury. The HRD could not obtain from the Forensic Science Laboratory that new tests be carried out in this case as the samples were no longer available. Slides made from positive specimen swabs and all used specimen swabs as well as stains produced from reference blood samples are retained at the FSL for ten years. All extracts from DNA analysis are retained for a period of ten years.

(3) The Commission recommended that exhibits and samples should be kept for an indefinite period. The logistical and administrative implications for safekeeping have to be looked into. Furthermore,
all exhibits produced in Court should be returned to the police and to the FSL for safekeeping after disposal of the case.

3.9 CASE OF R.A – APPLICATION FOR REVIEW

A person who had been dealing in drugs made an application to have his conviction reviewed. He had been convicted with two other accomplices and claimed that he was an innocent bystander in the transaction, thereby transferring the whole responsibility to his former girlfriend. The other accomplice gave evidence in his favour before the HRD but did not depose at the trial. Again there was no fresh and compelling evidence justifying a reference to the Supreme Court. The conclusions were as follows -

(1) In the exercise of its powers under the Protection of Human Rights Act (PHRA) the Human Rights Division has considered the application for a review of the conviction of the above named.

(2) The applicant was convicted in 2010 for possession of dangerous drugs for the purpose of distribution together with one Ms DDS. On 8 April 2008 they were found in joint possession of 104.3 grams of heroin in a parcel which they were going to deliver to an unknown person when they were arrested by ADSU. Having been found guilty of drug trafficking, they were both sentenced to undergo 35 years penal servitude. Following his appeal to the Court of Criminal Appeal, the applicant’s sentence was reduced to 25 years on 25 April 2011. Otherwise, his appeal was dismissed on factual issues and on the issue of ‘guilty knowledge’.

(3) One VB had been convicted separately for his role in the same transaction as he was the one who supplied the drugs to applicant and Ms DDS.

(4) Applicant has applied for a review of the proceedings relating to his conviction on the ground that there is fresh and compelling evidence that would disculpate him. That evidence purports to emanate from VB who was ready to state that applicant was innocent regarding the whole transaction and that he (VB) contacted Ms DDS to sell the heroin to latter’s client. Allegedly applicant’s role was limited to driving the van which took the three of them from Dagotièrè to the yard of the Municipality of Quatre- Bornes where the heroin was going to be delivered to the unknown person.
VB’s name was on the list of the prosecution witnesses at applicant’s trial, but the prosecution declined to call him as it was felt that his evidence, which first implicated applicant, could no longer be relied upon. In fact, the judge at the trial rejected the motion made by applicant’s counsel to the effect that VB should be called by the prosecution and tendered for cross-examination. The judge ruled that the defence was at liberty to call VB as its own witness, but the defence failed to do so. The ruling of the judge was also appealed against. The Court of Appeal maintained that the stand taken by the judge was the correct one and did not cause any prejudice to applicant. It also found that applicant had the requisite guilty knowledge about the contents of the parcel as shown by his conduct throughout and the evidence of the ADSU officers regarding his reaction when he was arrested.

Applicant also raised before us the issue about the value of the drugs. As the value exceeded one million rupees the accused parties were found guilty of trafficking in drugs. The Court of Criminal Appeal ruled on this issue and concluded there was ample evidence to establish that the street value of the drugs exceeded one million rupees.

Under Section 4A of the Protection of Human Rights Act the Human Rights Division has to conduct a preliminary investigation on receiving an application for review and has to determine, within a period of 30 days from receipt of the application, whether it will conduct an enquiry into the matter. Our Division has conducted a preliminary investigation after a thorough consultation of the police file and the Court Record regarding the matter. We have also called VB and the applicant to make an assessment of any fresh and compelling evidence applicant claimed could be adduced in his favour.

First, there is no fresh evidence as VB’s evidence, supposedly in favour of the applicant, could have been adduced at the trial. Secondly VB’s evidence was not compelling as we did not find it to be reliable in the context of the whole transaction. There were important discrepancies between VB’s evidence and that given by the applicant at his own trial. Furthermore, it is difficult to believe that applicant did not ask DDS for more information about what was going on during the journey from Dagotière to Quatre Bornes when she had been his girlfriend for the preceding three years,
especially after he heard VB asking her for a handkerchief and then saw him returning the handkerchief to her. The Police Enquiry revealed that the heroin was in the handkerchief.

(9) In the light of the above, we find that it is not necessary to conduct an enquiry into the matter, the more so that the trial Court and the Court of Criminal Appeal have already not lent any credence to applicant’s version that he was an innocent bystander during the whole transaction. The application for review is therefore rejected.

3.10 Finally a person who had been convicted for contempt of court by the Supreme Court for insulting judges wished to have his conviction reviewed. There was no fresh and compelling evidence for a reference.

3.11 The Human Rights Division received complaints against Ministries. As these were not breaches of Chapter II of the Constitution and concerned alleged maladministration, they were referred to the Ombudsman. In some cases where the HRD could intervene, the views of the Responsible Officers of Ministries were called for and solutions were found to the complainants’ grievances. In other cases the HRD used its powers of conciliation to resolve problems.
CHAPTER IV

POLICE COMPLAINTS DIVISION

The Police Complaints Division (PCD) is one of the 3 divisions of the National Human Rights Commission (NHRC) and it is overseen by the Chairman, the Deputy Chairperson and two full time members. The PCD is an independent body established by the Police Complaints Act 2012 and became operational in June 2014. The PCD replaced the Complaints Investigation Bureau.

4.1 PURPOSE

The primary purpose of the PCD is to foster and enhance public confidence in the police complaints system in Mauritius. It aims to carry out investigations more openly, timely and fairly.

4.2 INDEPENDENCE

The PCD can increase public confidence as it is not part of the police and makes its decisions independently of the police, political parties, the government and the complainants. Pursuant to the Police Complaints Act, no one who has served as a police officer can be part of its staff to avoid misconception and to guarantee impartiality. The PCD is a place where the police have no power and cannot intervene and they can be held to account when they abuse their position. The PCD is in a unique position to be able to look impartially at individual complaints coming from the whole island.

4.3 ACCESSIBILITY

The police complaints system is accessible and this is important to encourage potential complainants from making complaints. Complaints can be lodged in the following ways:

(a) The most convenient way is to lodge a complaint at the seat of the NHRC with the help of an NHRC officer. The complaint can be recorded in Creole, French or English. Recording a complaint means that it has a formal status, as it has to be recorded in writing
and signed by the person making the complaint.

In order to simplify procedures regarding a complaint, the PCD has provided a standardised form on which complainant can give details of the complaint (date, place, nature of the incident and witnesses and any information that might be of assistance during an investigation). The different types of police misconduct have even been categorised.

(b) To give a declaration in the form of a complaint at the district police station. District stations which are scattered all over the island are open 24 hours a day. All police officers are required to receive complaints courteously and to assist the public. Within 2 days of the receipt of the complaint, the police officer will have to forward a copy of the written complaint to the Commissioner of Police who, in turn, will forward it to the Secretary of the NHRC.

(c) To send a signed letter detailing the incident to the seat of the National Human Rights Commission.

(d) Make a complaint online/by fax

N.B. A complaint can be made by a third party or the responsible party accompanied by the minor. A complaint can be withdrawn at any time during the process. A complaint will not be accepted more than one year after the alleged incident occurred, unless under exceptional circumstances.

4.4 COMPLAINTS PROCESS

The complaint’s process is designed to deal with each case factually and fairly. The PCD has control of the complaints process and decides what constitutes a complaint and how it should be investigated.

4.5 COMPLAINTS

A complaint expresses dissatisfaction with the work of the police. A complaint is strictly confidential. For the year 2015, the PCD had investigated into 568 complaints, amongst which 153 are related to cases of alleged assault by police are related to police brutality.
4.6 TYPES OF COMPLAINTS

Police misconduct can manifest itself in many ways: police siding with the opponents, harassment on the part of police officers, rudeness, abuse of authority and police brutality.

The more common types of complaints received by PCD include:

• **Verbal abuse**

Verbal abuse is among the most common forms of complaint where complainants are booked for road traffic offences and they are severely reprimanded in foul language by the police officers; where suspects are intimidated during their interrogation or where police officers misbehave when they are drunk and cannot control their behaviour. Verbal abuse also takes place when police officers answer phone calls or are travelling in police vehicles. Police officers may be rude when citizens call in at the station to give a declaration or when they need help for police intervention re private dispute between members of the family and/or neighbours. Minors who are students waiting at the bus stop also report cases of verbal abuse against police officers.

• **Favouring one party**

The PCD receives a fair number of complaints where the police has favoured one party in family disputes or disputes among neighbours.

• **Police brutality**

Police brutality occurs when police officers desperately need evidence which they are unable to get through their investigative skills for instance, when they have to extract confessions from suspects or when suspects refuse to sign certain documents or blank sheets of paper. Another instance where police brutality prevails is when investigating police officers are pressurised to finalise investigation within a given time as the general public impatiently waits for justice to be done.
The PCD has received quite a few cases where the victims are still traumatised, cannot pursue further studies, and have to stop working or tremble with fear at the sight of police officers. Consequently these victims of police brutality often sustain not only undue physical injury but also emotional injury.

- **Excessive length of pre-trial detention**

For detainees who can neither afford bail nor be granted bail, they are detained on a provisional charge for an excessive period until the main case is lodged. In some cases the suspect is detained for years, mostly in drug cases. The reasons put forward justifying such excessive detention are that other suspects or accomplices had to be found first and or they could not be traced out or that the medical report and/or report from Forensic Science Laboratory was not forthcoming.

- **Search warrant**

The search warrants are not signed or are not shown to the occupants of the searched premises. At times, search warrants are even executed in the presence of minors only.

- **Refusal to take declaration**

Complainants also express dissatisfaction with the response of the police to take declarations at the police station. In some cases, the complainants are asked to attend another police station, sometimes miles away from their residence. Refusal to take declarations is recurrent in cases related to domestic violence.

4.7 **INVESTIGATION PROCESS**

Once the matter has been referred to the PCD, the PCD has the duty to carry out an independent investigation process with thoroughness, impartiality and integrity. All findings are based on impartial evidence. The investigation may include: analysing police documents, extracts of Diary Book and the Occurrence Book or Log Book of police vehicles, taking statements from police officers involved, obtaining certified copies of medical reports and/or PF
58, if there is alleged physical brutality and securing the production of exhibits like torn pictures or clothes or damaged spectacles.

The investigator cannot be a police officer. Therefore, pursuant to the Police Complaints Act 2012 section 10, the civilian investigator designated to undertake an investigation has the powers to record a statement from any person, to enter and search any premises on the basis of a search warrant and inspect any document on the premises or take copies of document. In fact investigators should be given more powers if they are to obtain the evidence they need.

After having gathered the evidence, the Police Complaints Division has three options which are: filing, conciliation or hearing.

(i) Filing

The PCD has filed 320 complaints for the year 2015 on the grounds that the subject matter is trivial, frivolous, vexatious or not made in good faith or unfounded or lacking insufficient evidence. Examples are

- When the action of the police officers was determined to be lawful, proper and in accordance with the rules and procedures.
- When complaints do not refer at all to police misconduct but to a private dispute.
- Where the police officers who have allegedly assaulted complainants are not named or identified.
- Where the alleged incident never took place as there had been no entry in diary book or at the police station to prove the presence of the complainant at the time of the incident.
- Another good reason for filing cases is when the complainant expresses his intention of not proceeding further with the matter or he does not turn up when he is duly summoned for a hearing.
- The investigation cannot be completed as the police officer had passed away or left the country permanently.
- There is indication that the complainant suffers from psychiatric problems.
N.B. A disagreement which contests the validity of a traffic violation is not a complaint.

(ii) Conciliation

Citizen complaints can also be handled by way of mediation. It is focused on the resolution of a conflict, that is, to see if the complainant and the police officer may reach an agreement on the issue, bearing in mind the power imbalance between the citizen and the security force represented by the police.

For the year 2015 the Police Complaints Division has been successful in reaching only 3 conciliations between the parties. It is to be noted that an analysis of the unsatisfactory outcome of conciliation meetings indicates that the Police Complaints Division has to modify its strategy.

It is to be highlighted that conciliation is not recommended for any type of complaint. A complaint regarding verbal abuse is an ideal case for an informal resolution between the two parties. For instance, mediation is successful when the police officer and the complainant accept to shake hands at the end of the meeting. But conciliation cannot take place, where there are allegations of serious police brutality or where the complainant has still to appear in court and answer outstanding criminal charges connected with the complaint, as a charge of rogue and vagabond, assaulting police officer and damaging government property.

(iii) Hearing

A hearing would facilitate the fact finding process.

• Pursuant to section 5(1) (a) of the Police Complaints Act, the PCD has the power to summon the complainant and his witnesses and the police officers to depone at the hearing. They can choose whatever language they wish to give their versions of the incident. They have the right to be assisted by a counsel during the hearing but this is not mandatory. The hearing is structured to be investigatorial and not adversarial. The PCD is not a court of law or a substitute for a court. The legal, technical rules of evidences do not apply. There is no cross examination of witnesses.
The complainant and the witnesses are not compelled to give evidence but whatever evidence they give, may be used against them subsequently in both civil and criminal proceedings. They may refuse to give evidence which would incriminate them. It is important that the complainant attends the hearing even if he did not request for it, as his absence may alter the outcome of the complaint.

Advantages of a hearing

(i) The PCD after having heard all the parties can form a better opinion of the circumstances of the complaint as the PCD is in presence of the facts and contradictions of the case and also of the demeanour of the witnesses. At the same time the PCD gives the complainant the opportunity to vent out his feelings about the incident involving the alleged police misconduct.

(ii) The PCD has an opportunity to remind the police officers of their responsibilities, of their abuse of authority and of their failure to help when there has been a need for assistance. They are made aware that they are expected to take all complaints seriously and to act in a fair and balanced way to seek to put things right.

(iii) The PCD makes the public and the police aware of the existence and accessibility of the police complaints system.

Possible outcomes

If the complaint has been substantiated, the options available for the Police Complaints Division are to make recommendations to the Director of Public Prosecutions, the Attorney General and/or to the Disciplined Forces Service Commission.

4.8 CASES TO DIRECTOR OF PUBLIC PROSECUTIONS

Cases are referred to the DPP when a police officer may have committed an offence.
Examples of cases submitted to the DPP.

Case No. 1

On 30 March 2012, at about 9.30 a.m. three CID officers arrested the complainant and brought him to CID office for enquiry into a case of larceny. He stated that two CID officers verbally abused and assaulted him causing effusion of blood from his head. He was then compelled to read and sign a document. Later he took a PF 58 and attended Flacq hospital.

The evidence on record shows that the injuries sustained by the complainant “simultaneous injury to middle scalp, neck and both knees” could not be attributed to his hitting against a closing automatic door as averred by the CID police officers. The PCD concluded that he must have been assaulted whilst he was in their custody.

Case No. 2

On Monday 2 March 2015 along La Balise Marina, Black River, three police officers from the ERS stopped Mr. X who was driving a private car. He was booked for two road traffic offences. As he looked suspicious and there were doubts about the ownership of the car he was arrested and handed over to the CID. There is no evidence that Mr. X bore any injuries when he was handed over to the CID officers.

Mr X was always in the custody of the five CID officers until the next morning when he passed away and was certified dead at 10:50 hours. The injuries sustained by Mr. X, particularly on the soles, the back and the buttocks point to the fact that he had been assaulted whilst in custody of CID officers.

Case No. 3

On 18.08.13 at about 18.00 hrs. the complainant was asked by a CID officer to give a statement concerning a case of threat lodged against him. He alleged that the same CID officer gave him about 40 slaps and blows at his face and at his head because he refused to give a statement. He got a scratch mark, a bump at his right wrist
and felt pain at his head and face. He was issued with a PF 58 and brought to J. N. hospital for treatment as he complained of being beaten by the said police officers. On the next day he appeared before the Mahebourg District court on the charge of threat and he then complained of police brutality to the Magistrate.

Circumstantial evidence points to the fact that he must have been beaten by the said police officer because when he first came to the station to give a statement he did not bear any injury. He attended J. Nehru hospital on the very day he reported police brutality.

4.9 CASES REFERRED TO DFSC

The PCD refers cases to the Disciplined Forces Service Commission where a police officer may have been guilty of misconduct.

4.10 ATTORNEY GENERAL

In one case, the warrant of arrest has been issued for non payment of fines and the complainant has been arrested, handcuffed and even put into cell when it is found out late in the afternoon in court that he has in fact already settled his fine. This case has been referred to the Attorney General to award compensation to the complainant.

4.11 STATISTICS

<table>
<thead>
<tr>
<th>POLICE COMPLAINTS DIVISION</th>
<th>COMPLAINTS TO THE POLICE COMPLAINTS DIVISION STATISTICS 2015</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>No. of Complaints</td>
</tr>
<tr>
<td>Assault</td>
<td>153</td>
</tr>
<tr>
<td>Verbal Abuse</td>
<td>59</td>
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<td>Service Delivery</td>
<td>356</td>
</tr>
<tr>
<td>Total</td>
<td>568</td>
</tr>
</tbody>
</table>
THE POLICE COMPLAINTS DIVISION
From January to December 2015

| No. of Talks delivered to police officers and Citizens Advice Bureaux | 35 |
| No. of Talks delivered on Radio | 3 |
| Workshops attended | 5 |

It is the role of the PCD to produce guidance for police forces about how they should deal with the complaints. That is why the PCD has delivered talks to trainers, constables, inspectors and traffic officers.

As for the public, the PCD is fully conscious that the citizens of Mauritius are not aware of the duties of the police and some get angry when the police officers book them for traffic offences (re conditions of vehicles and lane discipline offences).

Some of them even make false allegations against the police as a retaliation. In order to sensitize the citizens about their rights and the work of the police, the PCD has delivered talks to some citizens at the Citizen’s Advice Bureaux scattered all over the island throughout 2015. The PCD has participated in radio and television programmes to sensitize the public about the police complaints system. In addition, the PCD have produced a leaflet named “Vos droits et la police” with the aim of informing the public about their rights and the free and accessible services of the PCD.

4.12 RODRIGUES

On a mission to Rodrigues in September 2015 the PCD delivered talks to students of three secondary schools, non-governmental organisations and police officers and visited police stations.

4.13 CURRENT CHALLENGES

- In order to be effective investigators, the civilian investigators must be given training and knowledge of the police practices and procedures.
- Should the police officers have the right to communicate with
each other over a complaint matter until interviews have been conducted?

- Timing of when to deal with complaints when there are outstanding criminal charges as police brutality, rogue and vagabond, damaging government property and assaulting a police officer.
- Should disclosure of outcome of case be made to the complainant after the conclusion of any criminal proceedings?
- What should the PCD do when there is retaliary action on the part of the police officer or when there has been malicious denunciation in writing?

4.14 RECOMMENDATIONS

A. Amendment of the Police Complaints Act

- To increase the powers of PCD so that it may issue warnings, severe warning or reprimands. It is more appropriate that after a hearing, warnings can be given to police officers in cases of minor assaults, a slap or verbal abuse.
- To give powers to civilian investigators to hold identification exercises.
- To recommend counselling for offending police officers and victims of police brutality.
- Specific provision should be made for a comprehensive training programme for civilian investigators.

B. Introduction of a Police and Criminal Evidence Bill

The Police and Criminal Evidence Bill in line with PACE in the UK will, amongst others, make it compulsory for the police to record confessions on video. This will help to reduce the number of allegations of the police having used any form of duress to extract confessions.

C. Measures

- A protocol to be established between the Office of the DPP and the PCD so that both parties are aware of cases of police brutality and/or verbal abuse which are connected with any complaint.
• Legal protocols to govern interactions between police officers and civilian investigators to ensure a framework for co-operation.

• To prevent police officers from arresting a person on the mere allegations of another person and that a purposeful enquiry should first be carried out to verify the allegations before any arrest is made.

• To promulgate a clear and consistent procedure for accepting complaints as this is a standard basic principle of good law enforcement.

• To introduce new standardised forms for a request to discontinue with investigation and notification of a withdrawn complaint.

• To make the forms available on internet as they are the quickest way to send information to the NHRC and also at public facilities such as post offices, Citizen’s Advice Bureaux and Municipalities and District Councils.

• To discourage the practice of issuing warrants of arrest outright for nonappearance in court or nonpayment of fines. It is suggested that the police or usher should warn the culprits in the first instance and an arrest should be a measure of last resort.

• To include the complaint into the police officer’s personal file. In the event this behaviour is repeated the police department can take corrective action to help the officer to alter the offending behaviour.

• Any allegation of retaliatory action by police officers should be brought to the attention of the NHRC immediately.

• To develop a human rights culture by striking a right balance between the rights of the non-law abiding citizens and the need to safeguard law and order.

• Imposition of a legal regulation preventing the police officers from communicating with each other over a complaint matter until interviews have been conducted.

• To refer cases of verbal abuse amounting to insult to D.P.P.
D. The following are pertinent to the handling of complaints -

Complaint, a matter already before the courts

“If the subject matter of the complaint or the investigation becomes a Court matter the Authority cannot commence or even continue an investigation it started, until the Courts have a final ruling on the matter.”

Source: Police Complaints Authority, Trinidad & Tobago

Timing of when to deal with complaints when there are outstanding criminal charges

“One of the problems with the current system for dealing with complaints against police officers is the time taken to complete investigations. This is particularly so where an individual who has made a complaint is also the subject of a criminal charge arising out of the same incident. In these cases, complaints are not normally investigated until after the criminal trial has been completed. One of the reasons for this is that, if the complainant makes a statement to the officer investigating the complaint, this statement would then be disclosed in the criminal proceedings. From the complainant’s perspective, making a statement about a complaint may be an unnecessary risk since the statement made for the purpose of the complaint could undermine any defence at a criminal trial. Similarly, any statement made by a police officer could also be used by the defence in the criminal case to undermine the police officer’s evidence.”

Source: an independent Police Complaints Commission, James Harrison & Mary Cunneen

E. Sensitisation

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

• To inform suspects of their constitutional rights and their right to Legal aid in certain cases, that is, to be assisted by a lawyer at the very initial stages of the enquiry.
• To make all possible efforts to eradicate police brutality completely.

• To issue leaflets about the complaints process, the police duties and powers and the duties of the citizens.

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

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

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

• To develop Human Rights Culture by striking a right balance between the rights of the non-law abiding citizens and the need to safeguard law and order.
CHAPTER V

NATIONAL PREVENTIVE MECHANISM DIVISION

5.1 INTRODUCTION

In accordance with the National Preventive Mechanism Act 2012 (‘NPMA 2012’) and the Optional Protocol to the Convention Against Torture, the National Preventive Mechanism Division is empowered to:

a. visit places of detention of its choice on a regular basis.

b. have full access to all information regarding treatment afforded to detainees,

c. have the opportunity to interview detainees in private and,

d. make recommendations and submit its observations to the Minister responsible for places of detention and the relevant authorities for improvement of treatment of persons deprived of their liberty and legislation relating to places of detention.

5.2 MEMBERSHIP OF NPMD

The NPMD consists of the Chairperson of the National Human Rights Commission as its head, a Deputy Chairperson and two Members. The two members work on a part-time basis.

5.3 METHOD OF WORK OF THE NPMD

During the year 2015, the NPMD made several specific and general recommendations regarding the conditions of detention to the Commissioner of Police, the Commissioner of Prisons and to relevant Ministries. The starting point for making recommendations is preliminary research (Data collection and analysis) and investigation.

For the purpose of investigation, the Division may summon any person it considers fit, to bring and produce documents relevant to an enquiry and to give evidence. Between January and December 2015, the NPMD issued thirty nine summons upon police officers,
police medical officers, representatives of the Forensic Science Laboratory, doctors in private practice, prison officers and civil servants. The issue of a summons is an efficient tool of enquiry. To ensure a proper follow-up of recommendations made, NPMD adopted the following system:

a. Specific recommendations are monitored through telephone calls to the appropriate authorities and visits to complainants. Regular free correspondence with the prisoners is maintained. The NPMD recommended to the authorities to forward letters addressed to the Division promptly without reading them.

b. General recommendations are followed up through a regular check. The usual modus is in the form of a letter that is sent to the relevant authority, enquiring about the measures initiated, following receipt of the initial recommendation.

This report reviews the recommendations and actions implemented by the NPMD for the year 2015. The report is divided into three parts.

**Part I – General and Specific Recommendations made by the NPMD following visits effected to prisons, hospitals and shelters.**

**Part II – Future Recommendations based on outcomes of complaints received from detainees as well as observation and analysis.**

**Part III – Statistics providing detailed data that support the NPMD’s performance or activities in the year 2015.**

5.4 **PART I – GENERAL AND SPECIFIC RECOMMENDATIONS**

**Section 1: General Recommendations regarding Prisons Staff**

To improve the working conditions of Prison Officers to ensure a better atmosphere and to enhance the chances of rehabilitation of detainees, the following recommendations were made by the NPMD:

1. Psychological assistance for female staff working at the female wing to counsel them on their duties and responsibilities within the prisons. During monitoring exercises conducted in April 2015, the Division was notified that the scheme of service for the post of
Psychologist was prescribed on August 2015. Requests had to be made to the Ministry of Finance for funds enabling the filling of the vacancy as the post was not funded yet. The vacancy has been reported to the Disciplined Forces Services Commission on 27 October 2015. Necessary action has been taken.

II. For the female wing, the Division has recommended the recruitment of two Welfare Officers due to the heavy schedule of duties and responsibilities. The appropriate authorities notified the NPMD that the posts would be filled in 2016. The interviews will be carried out by the Disciplinary Forces Service Commission in January 2016.

Section 2: Conditions of Detention

(2.1) General Recommendations on Infrastructure of Prisons / Cells and treatment of detainees

(2.1.1) Eastern High Security Prison (EHSP) – Melrose

(I) To carry out repairs at the Hibiscus Unit Two with regards to unprotected openings that allows water to pour in during rainfall thus causing the stairs to be slippery. Upon follow-up, the Division was informed that plastic protections were installed and measures were taken to ensure that the stairs would not be slippery.

(II) To cover concrete benches found in the yard of the EHSP with wooden planks due the cold in winter. The work is still in progress.

(III) A Committee was set up to look into the situation at the EHSP regarding the necessity of ventilation in summer. The Division was informed that provision for 40 electric fans had been made for dormitories. The Division visited the EHSP and noted that four fans were being placed in dormitories of about two hundred and fifty square feet housing twenty detainees. The installation of the others should follow. Another system of airflow is being devised for the individual and double cells. Following correspondence from the NPMD to the Prison Authorities, the Ministry of Public Infrastructure and Land Transport visited the shoemaking workshop and advised the installation of a double gate system to allow uninterrupted airflow.
(IV) Warm water for showers was unavailable to detainees in winter 2015, except for those detained in the geriatric ward. The Division was informed that implementation of a warm water system necessitated funds which had not been provided for in the current budget. However, a Solar Water Heater system would be installed on a phase-wise basis to all units. A self-care home fitted with warm water was created within the EHSP compound. More follow-up will be carried out by the Division to ensure the provision of warm water for the benefit of all detainees of EHSP.

(2.1.2) Poor conditions at the Rehabilitation Youth Centre and Correctional Youth Centre

(I) Cameras - During a visit at the RYC and CYC of Beau-Bassin in April 2015, it was noted that the CCTV cameras installed within both institutions were not in good working condition. Upon enquiry, the Division was made aware that no funds were available for the installation of cameras in CYC for the year 2015. Funds would be earmarked for the financial year 2016-2017. The Ministry of Social Security was addressed a similar correspondence for the RYC.

(II) Access to yard of the RYC - The Division noted that the inmates on remand were being denied access to the yard of the RYC building, following a policy decision to keep inmates on remand inside the RYC building for security reasons. The Division found that there was no written instruction on this matter. As a result, the Division recommended that remand detainees of the RYC should be allowed to go in the yard and to have activities outside. Most juvenile detainees are remanded to the RYC on account of minor offences. The risk of absconding was low. The recommendation of the NPMD was taken into consideration by the RYC authorities.

(III) Interior of RYC and CYC - The buildings looked like an adult prison and were unfit for Juvenile detainees. The Division recommended that the walls be painted in livelier colour to avoid creating a depressing atmosphere.

(IV) Regular re-appraisal on the grounds for internment of youngsters – In general, juvenile delinquents are placed at the RYC and CYC up to the age of 18. The length of internment at these institutions is excessive in many cases. It is therefore important to ensure that
these inmates go to school and/or undergo a sound education and training. Their stay within these institutions, especially the Rehabilitation Youth Centre, must be geared towards education, training and rehabilitation. An adequate number of able teachers trained to deal with difficult cases must be employed. Actually, there are primary school teachers seconded for duty by the Ministry of Education who cater for educational needs of juveniles who are above 12 when such needs should have been addressed by staff of secondary level with expertise in various subjects. Only basic subjects of primary level are taught to juveniles. Though many are CPE dropouts, a few of them may do well at secondary level.

(2.1.3) Police Cells for juveniles

The NPMD visited the cells for juveniles of Petite Rivière Station and found that six cells are reserved for male juveniles. It was noted that there was poor ventilation. Polycarbonate sheets were riveted to the windows despite the presence of iron bars. There was no air extractor and for security reasons there were no fans. The Division recommended that the polycarbonate sheets be withdrawn. Further, there was much filth at the windows between the inner and outer polycarbonate sheets which created unhealthy conditions. It was recommended that more aeration and hygiene was needed. A follow-up correspondence was sent to the authorities.

The Division also recommended that there is need to make provision for detention cells for male juveniles in other districts of Mauritius. Youngsters from Mahebourg who are detained at Petite Riviere received fewer visits from their family on account of the distance and the travel costs. The Division finds it equally necessary to have a juvenile detention cell for females. The only place of detention for female juveniles is the RYC, Barkly.

(2.2) Population of detainees

(2.2.1) General Recommendation - Balanced distribution of detainees for the purpose of security, safety and comfort

(I) In February 2015, it was noted that the old Central Prisons at Beau Bassin were close to congestion with 689 prisoners. On the
other hand, the new EHSP at Melrose accommodated only 505 detainees despite having a capacity of 700 to 1000 places. In one association yard of Beau-Bassin Central Prison, it was noted that there were 200 detainees while at GRNW Prison, there were only 118. The GRNW Prison is equipped with 3 association yards for remand detainees and one recreation yard for convicts.

(II) The excessive concentration of high profile convicts at Beau-Bassin Prison can create security hazards. The Division therefore recommended the transfer of such detainees to Melrose. Such transfers were processed.

(2.3) Suicide in detention places

(2.3.1) General Recommendation

A deeper study of suicides, their modes, the reasons, the methods and the history of the detainees must be carried out. Deaths by suicide occur in detention places. In Mauritius there were 3 suicides in 2015. One suicide is one too many. They ought not to occur. The causes must be eradicated. “Jails and prisons are responsible for protecting the health and safety of the inmate population and failing to do so can be open to legal challenges. Further fuelled by media interest, a suicide can easily escalate into a political scandal” – “Preventing Suicide, A resource for Prison Officers” – World Health Organisation Geneva 2000. A Committee has been set up to look into the causes of suicide, the mental health of the detainees and into a list of related matters. A member of the NPMD has been appointed to sit on this Committee since November 2015.

(2.4) Amendment of Prisons procedure for better treatment and respect of confidentiality

(2.4.1) General Recommendations

(I) Increase the time with regards to weekly phone calls. NPMD has recommended an increase from ten to fifteen minutes conversation. Follow-up is still being done. At present, the detainee who wants to exceed ten minutes must apply for permission which may be granted or refused.
The NPMD received complaints that detainees could not communicate openly with their treating doctors on account of the presence of prison officers and/or police officers. This practice falls foul of the principle of medical confidentiality. The Division recommended that medical doctors should be allowed to examine detainees outside the presence of police and/or prison guards to respect confidentiality and privacy. However, in a few cases involving meetings between detainees with their medical doctors, confidentiality was ensured. Reference is especially made to a consultation between a detainee and his psychiatrist which was held in favourable conditions.

Specific Recommendation

The Division intervened with regards to the confidentiality of conversation between detainees and their Counsel. Concern was shown with regards to the possible lack of privacy and confidentiality during the meetings between counsel and detainees at the lawyers’ meeting room in some prisons. The conference must be held within sight for security reasons but beyond hearing distance.

Amendment of laws

General Recommendation

Amendment of Section 46(2) of the Reform Institutions Act. The Division has proposed that the law be amended to give greater discretion to the Commissioner of Prisons in granting the permission to a detainee to leave the institution in ordinary clothes and under escort for the purpose of viewing the body before burial or cremation in cases involving the demise of persons other than only “a spouse, parent, grandparent, child, brother or sister of” a detainee. In some cases, it has been noted that though a deceased relative had very close ties with the prisoner (for instance, an uncle or an aunt who had brought up the detainee could be much closer to him or her than a parent, child, brother or sister), the detainee was not allowed to attend the burial or cremation.
(2.6) **Visit to Rodrigues**

(2.6.1) **General Recommendation**

The NPMD visited Rodrigues in 2015. In the absence of a Human Rights Antenna, it was recommended that same should be set up. The necessary is being done. An office has been earmarked at Port Mathurin and staff is being recruited.

(2.6.2) **Specific Recommendation**

There is an urgent need to set up juvenile detention centres. A fast track procedure for prosecution of juvenile offenders was advised. Better use of dedicated police cells was equally recommended. The re-opening of Port Mathurin and La Ferme police cells after renovation was proposed.

(2.7) **Medical issues related to detainees**

(2.7.1) **General Recommendation**

The NPMD visited the special ward of Jawaharlall Nehru Hospital, Rose Belle, the Beau Bassin Prisons Hospital, Dr. Jeetoo Hospital and Poudre D’or Hospital where some detainees have been sent for treatment. The Division recommended that detainees should not be manacled to their beds especially in cases of terminal illness. The use of handcuffs might be justified only in cases where there is a risk of absconding.

At Beau-Bassin Prisons, it was noted that detainees had to climb stairs to have access to the hospital building. This may cause inconvenience to detainees who are ill and old. The Division recommended an alternative solution such as a ramp with a gentle slope.

It was further recommended to avoid placing psychiatric patients at the Beau-Bassin prison hospital as long as a psychiatrist is not posted there either on full time or part time basis. The recommendation of the Division was taken into account. A visiting psychiatrist now comes once a week. The Division however considers this measure as insufficient and follow up will be done.
With regards to the isolation room of the Brown Sequard Mental Hospital, it was noted that that there was need for renovation. The ‘dark algae green’ colour of the walls may have a negative and depressive effect upon a patient. Further the walls of the room are not fitted with proper wall pads. Non-padded concrete walls could be dangerous for mental patients. Many handicapped and/or mentally ill patients may bang their heads against walls. This may lead to head injuries. Accordingly, the Division recommended that the wall pads would need to be fitted promptly. A follow-up correspondence was sent. The reply of the Ministry of Health was that the design of the padded wall had been entrusted to the relevant Ministry since May 2015. The design as well as the bidding documents are expected to be ready by the end of February 2016.

(2.7.2) Specific Recommendation

In the year 2015, there were 34 complaints relating to medical services in Prison.

A detainee complained about having no access to the Methadone induction programme. After the intervention of the NPMD, action was taken and he was seen by the Principal Medical Officer for a counselling session on Methadone Substitution Therapy.

(2.8) Shelters for Children

(2.8.1) General Recommendation

The NPMD visited several shelters including La Colombe, Marguerite Shelter of Belle Rose, SOS Village and others. The Division summoned the directors and representatives of those shelters. Reports were submitted before the Vellien Committee on Shelters.

The Head of the Child Development Unit (C.D.U) was summoned where it was noted that the C.D.U sometimes fails to ensure visits by the parents of children who are placed within shelters. The cause is often due to a lack of transport facilities. As a result, it was recommended that C.D.U make available more transport facilities.

It was further noted that there is a lack of psychologists to provide
counselling to the children in shelters. It was recommended that more psychologists should be employed.

As for rehabilitation of children who could be beyond control, the NPMD was made aware that there are few officers available for same. It was therefore recommended that more officers would need training in this field. For instance, the help of “Salaisiens de France” who have much experience in rehabilitation could be enlisted.

The C.D.U needs an increase in resources in terms of appropriate and trained staff. Some children had been victimized by their parents. It was recommended that a thorough enquiry should be carried out in such cases.

Recourse to pedopsychiatrists in cases of children suffering from “troubles du comportement” was also recommended. Pedopsychiatrists are specialised in the treatment of children having behavioural problems and know the type and amount of medicine which can be administered. A specialised medical approach is required.

(2.9) Financial Problems

(2.9.1) Specific Recommendation

There was a complaint that foreign detainees were not allowed to receive local money orders which were either returned or seized. The NPMD therefore interceded with the Commissioner of Prisons on this issue so that foreign prisoners would not be prevented from receiving local money orders in order that they might buy articles from the prison canteen. It is noted that a few foreign prisoners benefitted from local money orders in exceptional cases.

(2.10) Food Supply in detention places

(2.10.1) Specific Recommendation

Complaints relating to food were quite frequent. Detainees often complained that they were not satisfied with the quality and quantity of food provided to them. Ten such cases were reported to the NPMD from the Eastern High Security Prison, the Central
Inmates who had been prescribed a special diet due to their medical condition complained of not being provided the kind of food that they were entitled to. The Division intervened. Appropriate remedies were found. Others complained that the kitchen staff would use threatening and vulgar language when they tried to protest against insufficiency and indigestibility of food. One such case was reported from the Women’s Prison where a detainee was verbally abused by prison officers when she told them that upon the recommendation of the Prison Medical Officer her underfed baby (born in Prison) needed more food. On enquiry, the concerned Prison officers answered that no such deprecatory language was used by them. Following such complaints, the NPMD wrote to the Commissioner of Prisons for immediate remedial action.

(2.11) Association Yards of the Central Prisons

The NPMD effected a surprise visit in an association yard of the Central Prisons. The features noted were that a few toilets were out of order and full of dirty water and stools. In another place within the same yard, and close to the showers, there was stagnant water with froth floating upon it. The water used to clean the dishes was spreading in many places. The Division took photographs, made a report of its findings and sent same to the Commissioner of Prisons along with recommendations to set matters straight. Several months later, in 2015, the NPMD was invited to the launching of the renovated association yard. The lavatories were clean and in working condition. The water used to wash dishes was channelled in specific appropriate drains. The whole yard looked healthier and was more pleasant.

(2.12) Transfers

(2.12.1) Specific Recommendation

The Division received several letters from detainees who wished to be transferred from one prison to another.

This aspect was recurrent among male detainees and the reasons differ on a case to case basis. Many wish to be detained closer to
the place of residence of their families in order that they might benefit from more visits. The Division intervened successfully by communicating with the Commissioner of Prisons. Three detainees who were scheduled for transfer from the female wing to the female open prisons complained that they did not want to go to the recently opened wing because it was a non-smoking area. The NPMD therefore intervened and the prison authorities acceded to their request.

(2.13) Assualts and Administrative complaints in detention centres and prisons.

(2.13.1) Specific Recommendation

> A few detainees complained about police brutality whilst being detained in police cell. These cases have been referred to the Police Complaints Division.

> The NPMD intervened in a case where a detainee complained that he was not being allowed to work in the prison kitchen.

> The NPMD wrote to the Commissioner of Police when detainees complained that the police delayed recording their statements. We noted that the statements of these detainees were recorded after our intervention.

> Administration issues also included cases where the prison authorities either refused or delayed in issuing paper to detainees for the purpose of writing to the relevant authorities with regards to their case. Regular correspondence is sent to the Commissioner of Prisons on this issue.

(2.14) Complaints related to visits

(2.14.1) Specific Recommendation

The complaints with regard to visits included unsuccessful attempts by a spouse to visit detainee, requests to visit a terminally ill mother, a request to meet a child who was placed in the shelter of Child Development Unit and a request to be transferred to another prison so that detainee may receive more regular visits from his family. All these complaints have been considered and action taken...
by the NPMD. Some were acceded to. Thus the meeting between the child placed in a shelter by the CDU and his biological parents took place in a CDU Office in the presence of a team of our Division.

Section 3: Legal Aspects

(3.1) Status of case

(3.1.1) Specific Recommendation

Around 45 detainees wished to know about the status of their case. The NPMD successfully enquired about same from the Commissioner of Police and action was taken. The detainees were informed whether the case was still under consideration at the Office of the Director of Public Prosecutions or was to be lodged soon. The NPMD also wrote to other relevant authorities to seek information or to the Master and Registrar to request for copies of judgments in appeal cases. In cases where the Police had completed the enquiry, the NPMD recommended that the file be sent to the DPP. Otherwise the police was requested to complete the enquiry as soon as possible.

(3.2) Remission

(3.2.1) General Recommendation

Remission is not available for persons convicted of offences under the Dangerous Drugs Act other than under section 34 and of sexual offences on a child or a handicapped person. This overall denial is too harsh. The NPMD thus recommended that the law should be amended to reinstate remission. In general, remission is an efficient tool for rehabilitation of detainees. Convicts with extremely heavy sentences ranging from twenty five to forty years without remission feel distraught and some have violent reactions. The earning of remission days is necessary to motivate detainees to work and to be productive. There has been no change of the law on remission in 2015.
(3.3) Legal Aid

(3.3.1) Specific Recommendation

One detainee wrote to the NPMD to indicate that he was on remand and that he did not have the means to retain the services of a legal counsel. He has been advised to apply for legal aid. Occasionally, the Division receives complaints from some detainees alleging that their application for legal aid at the Bail and Remand Court was being delayed. The Division wrote to the Presiding Magistrate of the Court as well as the Ministry of Social Security which carries out its enquiry. In one case, the means test enquiry dragged unduly. After intervention of the NPMD, matters were speeded up and legal aid was granted.

(3.4) Social Aid

(3.4.1) Specific Recommendation

(I) Action was taken in cases where detainees requested social aid for their families. The NPMD wrote to the families of the concerned detainees to inform them of their eligibility to social aid. In that connection, the NPMD wrote to the Permanent Secretary of the Ministry of Social Security, National Solidarity and Reform Institutions. Some families were advised to apply to the Ministry for social aid.

(II) A detainee having trouble with his eyesight wrote to the Division requesting spectacles. NPMD informed him that there is no provision for the free issue of spectacles to inmates in the Social Aid Act. He was advised to arrange with his relatives for the purchase of same.

(3.5) Referral to the Commission on the Prerogative of Mercy

(3.5.1) Specific Recommendation

Requests to the NPMD for reduction of sentences were made by detainees serving long sentences and enduring severe health conditions. The detainees were advised to write to the Commission
for the Prerogative of Mercy. The NPMD approached the Chairman of the Commission on the Prerogative of Mercy and the Commissioner of Prisons. It was agreed that the NPMD would express its views and recommendations for consideration on various applications for mercy. However the discretion of deciding in favour or against the application remains entirely upon the Commission for the Prerogative of Mercy (COPM) in accordance with section 45 of the Constitution of the Republic of Mauritius. The NPMD noted that many applications to the Commission (COPM) were sent to the NPMD Office. Thereupon, the Division enquired and sent its views and recommendations. Regarding applicants having medical issues, the Division wrote to the Commissioner of Prisons and the Regional Health Director to ask for the medical report of those detainees. These reports were included in the correspondence sent to the COPM.

The Division recommended that respite be granted in one deserving case. One prisoner was allowed a few weeks respite to look after his wife who was suffering from cancer. Some detainees had their sentences shortened by the President of the Republic acting on the advice of the Commission for the Prerogative of Mercy on the intervention of the NPMD.

(3.6) Repatriation

(3.6.1) Specific Recommendation

The NPMD successfully recommended the repatriation of some foreign detainees to their country of origin. Other applications are still under consideration by the relevant authorities. There are often delays in the detainee’s country though the needful has been done by the Mauritian authorities. The NPMD corresponds regularly with the Prime Minister’s Office and the relevant embassies to help the eager detainees and their families.

In many cases, the NPMD has recommended that the Police should lodge the case against a foreign detainee on remand without further delay. Many foreigners wish to have their cases judged promptly. The NPMD intervenes to ensure diligence in the handling of these cases. It is only after judgment is delivered and the lapse of a period of time that the transfer procedure can be initiated.
(3.7) Refusal of bail

(3.7.1) Specific Recommendation

There were many cases where detainees on remand were refused bail. The NPMD enquired about the reasons and detainees were informed about same.

(3.8) Unjustified Detention

(3.8.1) Specific Recommendation

The Division enquired into three complaints against unjustified detention. One Indonesian detainee was released from GRNW Prisons and was repatriated. After investigation, it was concluded that there was no prima facie case against him. Our Office informed the competent authorities. In the other cases, two remand detainees are awaiting trial. In one case, the NPMD sent its views about the absence of a prima facie case to the competent authorities. However the final decision to prosecute rests with the office of the Director of Public Prosecutions.

(3.9) Miscellaneous

(3.9.1) Specific Recommendation

A detainee had not declared the birth of her nine year old son. The NPMD communicated with the Ministry of Gender Equality, Child Development & Family Welfare. Action was taken at their level for the tardy declaration of birth.

5.4 PART II RECOMMENDATIONS FOR THE FUTURE

(4.1) In view of an abuse of the provisional charge, the NPMD recommends that use of the provisional charge should be reviewed.

(4.2) Considering the vulnerability and psychological state of the mental patients of Brown Sequard Hospital, it is important that the Hospital be fitted with CCTV cameras.
(4.3) The UN Committee against Torture in its General Comment No 2 on article 2 of the Convention against Torture recommends the use of new methods of prevention, for example, videotaping and CCTV. Closed circuit television (CCTV) should be encouraged as a monitoring system in places of detention. The United Nations norms must be applied.

(4.4) The removal of dependent children from prison, without a proper assessment of the best interests of the children concerned and of alternative care arrangements outside prison, can have grave consequences both for the mother and the child, causing immense suffering and worry to the mother and probable long-term emotional, developmental and possibly physical harm to the child. In Mauritius children are removed from their mother detained in prison, at the age of five The UN Bangkok Rules introduced international standards with respect to the decision-making process on removing children from prison, in addition to rules, which relate to the treatment of such children in prison. They require that decisions should be made to remove children from prison on a case-to-case basis, based on individual assessments, always taking into account the best interests of the children concerned and ensuring that satisfactory care arrangements have been made outside prison.

(4.5) Human Rights require that pre-trial detention should be the exception rather than the rule. The NPMD recommends that accused parties should be released on bail unless there are very strong reasons for refusing bail.

(4.6) Within RYC and CYC, part of the personnel consists of individuals ‘acting’ as educators, sometimes with little training in supervising minors. Such qualifications and training are necessary in the application of Convention on the Rights of the Child and Article 22.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The NPMD recommends that educators should be given proper training.

(4.7) In J.N Kamasho v The State of Mauritius 2016 SCJ 21 the Full Bench of the Supreme Court ordered that ninety per cent of the period spent on remand by the appellant prior to his trial
be counted as served sentence and be deducted from the sentence imposed by the first instance judge. The regime on remand is severe. Detention in police cells entails being locked up for long hours in poor conditions. Furthermore, in prison there is little difference between the regime imposed on a detainee on remand and a convicted detainee. Although the former can wear his own clothes and is allowed more visits, he cannot receive food from outside and is sometime detained with convicted detainees. He is still being deprived of his liberty whether it is on remand pending trial or on remand pending the outcome of his appeal. We recommend that the law be amended to provide for the obligation to deduct the entire remand period or periods from the sentence that is imposed.

5.4

PART III STATISTICS

TABLE I

<table>
<thead>
<tr>
<th>STATISTICS 2015</th>
<th>NATIONAL PREVENTIVE MECHANISM DIVISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.  No. of Visits</td>
<td>Prisons</td>
</tr>
<tr>
<td>2.  No. of Visits</td>
<td>Police Cells</td>
</tr>
<tr>
<td>3.  No. of Visits</td>
<td>RYC/CYC</td>
</tr>
<tr>
<td>4.  No. of Visits</td>
<td>Shelters</td>
</tr>
<tr>
<td>5.  No. of Visits</td>
<td>Hospitals</td>
</tr>
<tr>
<td>6.  Prisoners visited</td>
<td>(199 Males &amp; 111 Females (From July to December 2015)</td>
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<tr>
<td>7.  No. of letters</td>
<td>From January to December 2015</td>
</tr>
<tr>
<td>received or complaints</td>
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</tr>
<tr>
<td></td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>14</td>
</tr>
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</tr>
<tr>
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### TABLE II

<table>
<thead>
<tr>
<th>Name of Prison</th>
<th>Number of Prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Prisons Beau-Bassin (Male)</td>
<td>667</td>
</tr>
<tr>
<td>New Wing</td>
<td>278</td>
</tr>
<tr>
<td>Grand River North West</td>
<td>173</td>
</tr>
<tr>
<td>Richelieu</td>
<td>92</td>
</tr>
<tr>
<td>Petit-Verger</td>
<td>169</td>
</tr>
<tr>
<td>EHSP</td>
<td>607</td>
</tr>
<tr>
<td>Women</td>
<td>107+5 babies</td>
</tr>
<tr>
<td>Female Open Prison</td>
<td>8</td>
</tr>
<tr>
<td>CYC</td>
<td>27</td>
</tr>
<tr>
<td>RYC (boys)</td>
<td>19</td>
</tr>
<tr>
<td>RYC (girls)</td>
<td>27+1 baby</td>
</tr>
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</table>

### TABLE III

<p>| STATISTICS OF SUICIDE IN PRISONS |
|----------|----------|
| 2010     | 2011     |
| 2012     | 2013     |
| 2014     | 2015     |
| 2010     | Nil      |
| 2011     | 1 CYC    |
| 2012     | 01 GRNWRP|
| 2013     | Nil      |
| 2014     | 02 BBP   |
| 2015     | 02 BBP   |
| 2010     | 01 NWP   |</p>
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<thead>
<tr>
<th>Institution</th>
<th>Association Yards</th>
<th>No. of Toilets in each Association Yard</th>
<th>No. of Bed-rooms in each Association Yard</th>
<th>No. of Beds at Hospital Ward</th>
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</thead>
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<tr>
<td>Central Prisons Beau Bassin</td>
<td>Yard No. 1</td>
<td>15 + 2 Urinals</td>
<td>10</td>
<td>17</td>
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<td></td>
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<td></td>
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<td>05</td>
<td></td>
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<td></td>
<td>Unit 4</td>
<td>15</td>
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<td>Unit 7</td>
<td>07</td>
<td>05</td>
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<tr>
<td></td>
<td>Geriatric Ward</td>
<td>5</td>
<td>04</td>
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<tr>
<td></td>
<td>Segregation and Protection Unit</td>
<td>60 cells each equipped with 01 toilets (60 toilets)</td>
<td>No Hospital Ward</td>
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<tr>
<td>New Wing Prison</td>
<td>Yard No. 1</td>
<td>04</td>
<td>06</td>
<td>No Hospital Ward</td>
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<tr>
<td></td>
<td>Yard No. 2</td>
<td>04</td>
<td>06</td>
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<td>Yard No. 3</td>
<td>04</td>
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<td>Yard No. 4</td>
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<td></td>
<td>Segregation and Protection Unit</td>
<td>02</td>
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<tr>
<td>GRNW Remand Prison</td>
<td>Yard A</td>
<td>08</td>
<td>10</td>
<td>No Hospital Ward</td>
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<td>Yard B</td>
<td>08</td>
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<td>Yard C</td>
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<td>Yard D</td>
<td>06</td>
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<tr>
<td>Petit Verger Prison</td>
<td>Yard A</td>
<td>10</td>
<td>06</td>
<td>No Hospital Ward</td>
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<td>Yard B</td>
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<td>Yard C</td>
<td>07</td>
<td>06</td>
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<tr>
<td>Richelieu Open Prison</td>
<td>Yard No. 1</td>
<td>08</td>
<td>13</td>
<td>No Hospital Ward</td>
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<tr>
<td>Women Prison</td>
<td>Yard for Convicts</td>
<td>04</td>
<td>04</td>
<td>02</td>
</tr>
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<td></td>
<td>Yard for Remand</td>
<td>04</td>
<td>04</td>
<td></td>
</tr>
<tr>
<td>Open for Prison for Women</td>
<td>Association Yard</td>
<td>03</td>
<td>03</td>
<td>No Hospital Ward</td>
</tr>
<tr>
<td>CYC Boys</td>
<td>Recreational hall</td>
<td>02</td>
<td>01</td>
<td>No Hospital Ward</td>
</tr>
<tr>
<td>CYC Girls</td>
<td>2nd Floor</td>
<td>02</td>
<td>03</td>
<td>No Hospital Ward</td>
</tr>
<tr>
<td></td>
<td>3rd Floor</td>
<td>03</td>
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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Mauritius*

I. Introduction

1. The Committee considered the initial report of Mauritius (CRPD/C/MUS/1) at its 214th and 215th meetings (CRPD/C/SR.214 and 215), held on 24 and 25 August 2015, respectively, and adopted the following concluding observations at its 225th meeting, held on 1 September 2015.

2. The Committee welcomes the initial report of Mauritius, which was prepared in accordance with the Committee’s reporting guidelines, and thanks the State party for the written replies (CRPD/C/MUS/Q/1/Add.1) to the list of issues prepared by the Committee.

3. The Committee appreciates the fruitful dialogue held with the State party’s delegation, at which many issues were raised, as well as its proactive and open attitude.

II. Positive aspects

4. The Committee commends the State party for:

   (a) The Employment Rights Act of 2008, which specifically prohibits harassment on the basis of disability at work;

   (b) The launch of a database on disability in 2012;

   (c) The substantial increase of the social budget in support of persons with disabilities;

   (d) The establishment of a national monitoring and implementation committee on persons with disabilities under the Ministry of Social Security.

* Adopted by the Committee at its fourteenth session (17 August-4 September 2015).
III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1-4)

5. The Committee is concerned that the definitions contained in the Equal Opportunities Act and the Training and Employment of Disabled Persons Act still reflect the medical approach to disability and are therefore incompatible with the concept of disability in the Convention. The Committee is also concerned about the use of derogatory language against persons with disabilities throughout laws, policies and discourse. The Committee is further concerned that achievements obtained through the implementation of the 2007 Action Plan on Disability are unclear and that persons with disabilities have not been consulted in the development of the draft disability bill and the Strategy Paper and Action Plan on Disability 2015-2020.

6. The Committee recommends that the State party amend the Equal Opportunities Act and the Training and Employment of Disabled Persons Act to reflect the human rights model of disability and that it eliminate the use of derogatory language throughout its laws, policies and discourse. The Committee urges the State party to fully associate and regularly, transparently and meaningfully consult with organizations of persons with disabilities in the design, implementation and monitoring of laws, policies and action plans that have an impact on them, especially the draft disability bill and the Disability Strategy and Action Plan on Disability 2015-2020, to ensure that the Strategy and Action Plan contain clear goals, benchmarks and indicators and to ensure that necessary resources are provided for its effective implementation.

7. The Committee notes the commitment by the State party to withdraw its reservations to articles 9 (para. 2), 11 and 24 (para. 2) to the Convention (see A/HRC/25/8, paras. 129.10, 129.11 and 129.12) but is concerned that this process has yet to be engaged. The Committee also regrets that the State party conditions the ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities to the withdrawal of these reservations.

8. The Committee recommends that the State party withdraw all its reservations to the Convention and ratify the Optional Protocol without further delay.

B. Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

9. The Committee is concerned that the legislation of the State party, in particular the Equal Opportunities Act, still reflect the medical approach to disability. It is also concerned that the concept of reasonable accommodation has yet to be defined and included in the legislation of the State party.

10. The Committee recommends that the State party ensure that all its legislation is aligned with the Convention, that it define the concept of reasonable accommodation in line with article 2 of the Convention, and that it recognize the denial of reasonable accommodation as a form of disability-based discrimination, as well as intersectional discrimination and discrimination by association.

Women with disabilities (art. 6)

11. The Committee is concerned that the relations between the “Forum of Women with Disabilities” and the State party remain unclear. The Committee also regrets that the
particular situation of women and girls with disabilities is not adequately taken into account in the legislation and policies of the State party, as highlighted notably by the absence of any provisions concerning them in the Protection from Domestic Violence Act.

12. The Committee recommends that the State party, in full cooperation with organizations of women and girls with disabilities, include their rights into all laws, policies and programmes and take all necessary measures to protect them from multiple and intersectional discrimination and violence to enable them to fully enjoy all their rights under the Convention. It also recommends that it ensure that laws against gender-based discrimination and violence provide for proportionate enforceable sanctions and effective remedies.

Children with disabilities (art. 7)

13. The Committee shares the concern expressed by the Committee on the Rights of the Child (see CRC/C/MUS/CO/3-5, para. 49) that the State party gives precedence to an integrative approach instead of eliminating the physical, socioeconomic and cultural barriers that prevent their full inclusion in schools and in society. The Committee is also concerned about the overreliance of the State party on non-governmental organizations to provide specialized services to children with disabilities without the necessary support, monitoring and regulatory guidance for these organizations; the insufficient measures to prevent the placement of children with disabilities in “centres de sauvegarde” (“abris des enfants en détresse”) and the rejection and stigmatization faced by these children.

14. The Committee recommends that the State party take effective measures to ensure the provision of quality inclusive services for boys and girls with disabilities both in the public and private sectors, in compliance with the Convention, and allocate the necessary resources to these services. Furthermore, the Committee recommends that the State party ensure that non-governmental organization-run programmes be regulated and closely supervised and that staff of such organizations undergo specific monitoring. The Committee also recommends that the State party amend the national children’s policy and the national child protection strategy with a view to incorporating targeted measures for children with disabilities to enjoy their rights on an equal basis with other children.

Awareness-raising (art. 8)

15. The Committee is concerned that awareness-raising campaigns for the public, including persons with disabilities, on the Convention and the Optional Protocol, remain limited.

16. The Committee recommends that the State party design, develop and conduct, together with persons with disabilities, and their representative organizations:

(a) Campaigns targeting specific discrimination issues in the aim of cultural transformation, for the general public and with the support of the mass media;

(b) Training for persons with disabilities, their families and their representative organizations as well as all relevant civil servants and key areas of the private sector in order for them to apply a human rights-based approach to disability.

Accessibility (art. 9)

17. The Committee is concerned that persons with disabilities encounter various obstacles to accessing the physical environment, information communication services, transportation and services open to the public, and therefore cannot exercise their rights on
an equal basis with others owing to the lack of effective measures taken by the State party to eliminate existing barriers to accessibility.

18. The Committee recommends that the State party proceed to the announced revision of the Building Act, the Roads Act, the Morcellement Act and the Town and Country Planning Act, and that it adopt a legally binding accessibility action plan, with benchmarks, indicators and timelines, to cover all aspects of the built environment, public service provision, information and communications, including sign language interpretation as well as assistive listening systems and air and sea transportation, as referred to in the Committee’s general comment No. 2 (2014) on accessibility. A regular monitoring and evaluation of the plan with the participation of organizations of persons with disabilities should be conducted within specified periods of time and sanctions provided in case of non-compliance.

Situations of risk and humanitarian emergencies (art. 11)

19. The Committee regrets the lack of clarity as to the legal framework, which the State party will include in the National Risk Reduction and Disaster Management Bill to meet its obligations under article 11 of the Convention.

20. The Committee recommends that the State party closely consult and actively involve persons with disabilities, through their representative organizations, in the drafting process of the National Risk Reduction Disaster Management Bill, in order to ensure accessible and disability inclusive disaster risk management.

Equal recognition before the law (art. 12)

21. The Committee is concerned that the institution of substituted decision-making and guardianship for persons with disabilities, meeting the derogatory criteria listed in the Mauritius Civil Code, and that the deprivation of the rights of institutionalized persons with disabilities to enter into contracts, vote, marry, take decisions about health and access courts of law, violate article 12 of the Convention.

22. The Committee recommends that the State party abolish guardianship measures in law and in practice, that it ensure recognition of the legal capacity of persons with disabilities on an equal basis with others, and that it introduce supported decision-making mechanisms, in line with the Committee’s general comment No. 1 (2014) on equal recognition before the law.

Access to justice (art. 13)

23. The Committee regrets the lack of clear information on the results of conciliation measures and the redress provided to the victims. The Committee is also concerned that no information was provided on the actions taken to ensure accountability for violations of the rights of persons with disabilities.

24. The Committee recommends that the State party provide for disability-related and age-appropriate accommodations in all legal proceedings. The State party should ensure that accessibility measures, such as braille, the provision of sign language interpretation, alternative modes of communication, easy-to-read format and enforcement measures, are available and free of charge in all courts and that personnel in the justice and prison system are properly trained on the application of human rights standards specifically for persons with disabilities.
Liberty and security of the person (art. 14)

25. The Committee is concerned that the legislation of the State party provides for the involuntary hospitalization and institutionalization of persons with disabilities, including children, on the basis of their impairments or because they are deemed to represent a danger to themselves and to society, and that no data is available in this respect.

26. The Committee recommends that the State party amend legislation to prohibit involuntary placement and promote alternative measures in line with the Convention.

Freedom from exploitation, violence and abuse (art. 16)

27. The Committee is concerned that limited measures have been taken to prevent and combat violence and abuse against persons with disabilities, especially sexual abuse of children with disabilities, including within the family. The Committee is also concerned about reports indicating the abuse and neglect of boys and girls placed in some non-governmental organization-run institutions. The Committee is further concerned that persons with disabilities who are subjected of violence, especially boys and girls, receive hardly any help to escape abusive situations and that the abuse does not lead to prosecution.

28. The Committee urges the State party to take urgent measures to prevent violence against women, men, girls and boys with disabilities, to protect those who are subjected to violence and to ensure that perpetrators are brought to justice. The State party should, in particular:

(a) Provide fully funded, accessible helplines and shelters for persons with disabilities who experience violence, whether inside or outside the home;

(b) Provide specific training for all respective personnel to detect and report violence against persons with disabilities;

(c) Ensure that persons with disabilities who are subjected to violence have access to effective remedies and receive all the necessary support for their mental and physical recovery.

Protecting the integrity of the person (art. 17)

29. The Committee is concerned about the absence of safeguards to prevent forced treatment of persons with disabilities in hospitals and institutions, especially the forced sterilization of women and girls with disabilities.

30. The Committee recommends that the State party unambiguously prohibit forced treatment of persons with disabilities and the forced sterilization of women and girls with disabilities, in the absence of the individual’s free and informed consent.

Living independently and being included in the community (art. 19)

31. The Committee is concerned that families, who are often the sole base of support for persons and children with disabilities, especially those with psychosocial and intellectual disabilities, receive limited assistance from the State. The Committee is also concerned that children are removed from family settings and placed in residential institutions, where they lack care and psychological support and are sometimes subjected to cruel, inhuman and degrading treatment. The Committee is further concerned that private day-care centres where children with disabilities are placed are neither regulated nor monitored by the State and that children with disabilities continue to be placed in “centres de sauvegarde” (“abris des enfants en détresse”).

32. The Committee recommends that the State party urgently remove children with disabilities from the “centres de sauvegarde” (“abris des enfants en détresse”) and
develop family and community-based alternatives for those deprived of a family environment. The State party should initiate without delay a transition from private unregulated day-care centres to inclusive early childhood education and education settings and in the interim, regulate and closely monitor these centres. The State party should adopt urgent measures aimed at the deinstitutionalization of persons with disabilities and should develop mechanisms at the community level to promote choices, autonomy and inclusion for persons with disabilities. The Committee also recommends that the State party develop effective quality support services for parents caring for children with disabilities and for persons with disabilities to live independently in the community, as well as effective protection systems.

Education (art. 24)

33. The Committee is concerned about the slow implementation of the 2006 official policy on inclusive education, resulting in the education system remaining mostly segregated and many children with disabilities being completely deprived of any form of education. The Committee is also concerned about clause 11 of the draft disability bill, which provides for a general exception to inclusive education and for the planned creation of 14 “integrated” units in mainstream schools, which would prolong the segregation of pupils and delay the creation of a fully inclusive school. The Committee is further concerned about children with disabilities aged 2 or 3 years being enrolled in non-governmental organization-run specialized schools, especially pupils with sensory disabilities, thus preventing from the very beginning their inclusion in mainstream schools. The Committee is concerned about pupils with disabilities who do not have access to public transport in rural areas without reimbursement for other means of transport being covered.

34. The Committee recommends that the State party reconsider clause 11 of the draft disability bill and renounce to the creation of integrated units in schools, and instead promptly engage in the creation of a fully funded and inclusive quality education system while ensuring that those who have been deprived of education can access lifelong education and vocational training. The State party should provide tailored education plans to all students with disabilities, mandatory pre-service and in-service specific training to all teachers on inclusive education, including assistive devices, individual support in classrooms, accessible educational materials and curricula, and accessible transport, equipment and school environments, with the corresponding budget allocations. The State party should also promote the enrolment of all children with disabilities in quality inclusive education.

Health, habilitation and rehabilitation (arts. 25 and 26)

35. The Committee regrets the lack of information on the availability of health and early intervention services, including the provision of sexual and reproductive health services and age appropriate habilitation and rehabilitation services for persons with disabilities. The Committee is concerned about the lack of social support to cover disability-related expenses for children with disabilities.

36. The Committee recommends that the State party adopt clear procedures for early intervention services for persons with disabilities, and for the provision of appropriate and accessible habilitation and rehabilitation services, including services for parents with disabilities, with special regard to parents of all children with disabilities. The Committee also recommends that the State party ensure that health, rehabilitation and other disability-related expenses for children with disabilities be covered.
Work and employment (art. 27)

37. The Committee is concerned that a large percentage of persons with disabilities is considered not suitable for the open labour market and remains highly discriminated against as regards access to work. The Committee is also concerned that the quota of 3 per cent of the work force composed of persons with disabilities only applies to the private sector and remains inadequately enforced. The Committee is further concerned about the prevalence of sheltered workshops and the lack of formal transition programmes to allow young persons with disabilities to find employment in the open labour market.

38. **The Committee recommends that the State party develop effective legislative and policy measures to promote the transition from sheltered employment to the employment of persons with disabilities in the open labour market, and that it ensure protection from discrimination in employment, including explicit recognition of the obligation to provide reasonable accommodation. The State party should extend affirmative actions to the public sector and monitor compliance, establish programmes to facilitate the inclusion of young persons with disabilities in the open labour market, in close consultation with organizations of persons with disabilities, and ensure that penalties are applied to employers who fail to comply with the quota.**

Participation in political and public life (art. 29)

39. The Committee is concerned that articles 34 (1) and 43 of the Constitution as well as some electoral rules and regulations limit the rights of persons with disabilities to vote and be elected.

40. **The Committee recommends that the State party repeal the discriminatory provision contained in articles 34 (1) and 43 of the Constitution as well as related regulations and ensure that all persons with disabilities enjoy their rights to vote and to be elected.**

Participation in cultural life, recreation, leisure and sport (art. 30)

41. The Committee regrets that the State party has not yet acceded to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. It is also concerned with the lack of policies regarding accessibility in the tourism and travel sectors.

42. **The Committee recommends that the State party**

   (a) Accede to the Marrakesh Treaty as soon as possible;

   (b) Ensure that libraries, audiovisual materials and broadcast services are accessible to persons with disabilities;

   (c) Ensure that tourism policies and practices are accessible to and inclusive of persons with disabilities, and disseminate the World Tourism Organization Recommendations on Accessible Tourism to all travel agencies and tourism agencies.

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

43. The Committee is concerned that the State party’s disability figures are well below the World Health Organization estimates, which might indicate some challenges in the collection of data, especially as regards the ambiguous terminology currently used in the State party on communication-related disabilities. The Committee also regrets that data on all areas covered by the Convention are not available.
44. The Committee recommends that the State party strengthen the 2012 data collection on persons with disabilities in order to collect data disaggregated by gender, age, rural/urban population and impairment type on all areas covered by the Convention, and to develop coherent policies and monitor the enjoyment of human rights by persons with disabilities.

National implementation and monitoring (art. 33)

45. The Committee is concerned that, while a coordination of the implementation of the Convention is addressed, no adequate monitoring mechanism involving persons with disabilities and their representative organizations has been established so far.

46. The Committee recommends that the State party designate an independent monitoring mechanism in conformity with the Paris Principles, ensuring that persons with disabilities and their representative organizations fully participate in the designation of the mechanism and monitoring the implementation of the Convention as required by article 33 (3).

Follow-up and dissemination

47. The Committee requests that the State party, within 12 months and in accordance with article 35, paragraph 2, of the Convention, provide information on the measures taken to implement the Committee’s recommendation as set out above in paragraph 8 and 42, which concerns the withdrawal of the State party’s reservations, the ratification of the Optional Protocol to the Convention and the Marrakesh Treaty.

48. The Committee requests the State party to implement the recommendations contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and parliament, officials in relevant ministries, local authorities and members of relevant professional groups, such as education, medical and legal professionals, as well as to the media, using modern social communication strategies.

49. The Committee strongly encourages the State party to involve civil society organizations, in particular organizations of persons with disabilities, in the preparation of its periodic report.

50. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, and to make them available on the government website on human rights.

Next report

51. The Committee requests the State party to submit its combined second and third periodic reports no later than 8 February 2020, and to include therein information on the implementation of the present concluding observations. The Committee invites the State party to consider submitting the above-mentioned reports under the Committee’s simplified reporting procedure, according to which the Committee prepares a list of issues at least one year prior to the due date set for the combined reports of a State party. The replies of a State party to such a list of issues constitute its next report.
Committee on the Rights of the Child

Concluding observations on the combined third to fifth periodic reports of Mauritius*

1. The Committee considered the consolidated third to fifth periodic reports of Mauritius (CRC/C/MUS/3–5) at its 1940th and 1942nd meetings (see CRC/C/SR.1940 and 1942), held on 14 and 15 January 2015, and adopted the following concluding observations, at its 1983rd meeting, held on 30 January 2015.

I. Introduction

2. The Committee welcomes the submission of the consolidated third to fifth periodic reports of the State party (CRC/C/MUS/3–5) and the written replies to its list of issues (CRC/C/MUS/Q/3–5/Add.1), which allowed for a better understanding of the situation of children’s rights in the State party. The Committee expresses its appreciation for the constructive dialogue held with the delegation of the State party.

II. Follow-up measures undertaken and progress achieved by the State party

3. The Committee notes with appreciation the ratification of the:

   (a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in June 2011;
   (b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in February 2009;
   (c) Convention on the Rights of Persons with Disabilities, in January 2010;

4. The Committee welcomes the adoption of the following legislative measures:

   (a) Equal Opportunities (Amendment) Act, which established the Equal Opportunity Commission to prevent all forms of discrimination, on 1 January 2012;

* Adopted by the Committee at its sixty-eighth session (12–30 January 2015).
(b) Institute for Judicial and Legal Studies Act, on 1 October 2011;
(c) Combating of Trafficking in Persons Act 2009;
(d) Amendment to the Child Protection Act which set up a child mentoring scheme, in December 2008.

5. The Committee also welcomes the adoption or the establishment of, inter alia:
   (a) Political manifesto of the new Government, which strengthens the protection of children against illicit substances, sexual exploitation and exploitation on the Internet, in December 2014;
   (b) National Child Protection Strategy and its Action Plan which aims at preventing violence against children, in October 2014;
   (c) Human Rights Monitoring Committee in order to ensure the implementation of the recommendations of the National Human Rights Action Plan, in December 2013;
   (d) National Human Rights Action Plan 2012–2020, in October 2012;
   (e) Fast-track procedure by the Office of the Director of Public Prosecutions to investigate sexual offences involving child victims effectively, in June 2012;
   (f) Community Child Protection Programme, in August 2007;
   (g) National Parental Empowerment Programme, in May 2007.

III. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44, para. 6)

The Committee’s previous recommendations

6. The Committee urges the State party to take all necessary measures to address those recommendations included in the concluding observations on the second periodic report under the Convention (CRC/C/MUS/CO/2) that have not or not sufficiently been implemented, particularly those relating to the absence of a children’s act (para. 11), children with disabilities (para. 51), sexual exploitation (para. 65), and juvenile justice (para. 67).

Legal status of the Convention

7. The Committee notes that under the State party’s Constitution, the Convention is not directly applicable and cannot be invoked as an enforceable source of rights unless it is enacted through Mauritian legislation and that the Convention is rarely invoked before and referred to by the domestic courts. The Committee also notes with concern that State officials and regional and municipal authorities are not sufficiently aware of their obligation to promote the implementation of the Convention.

8. The Committee recommends that the State party take measures to ensure the incorporation of all the provisions of the Convention into the domestic legal order so that they can be fully implemented. The Committee also recommends that the State party take measures to establish training programmes to facilitate the active application and implementation of the Convention by judges, State officials, and regional and municipal authorities, in all parts of the State party.
Legislation

9. The Committee, while welcoming the adoption of a number of laws to strengthen the legislative framework for children’s rights, remains concerned that the legislation does not cover the full scope of the Convention, and that a comprehensive children’s act has still not been adopted.

10. The Committee reiterates its previous recommendation (CRC/C/MUS/CO/2, para. 11) that the State party expedite revision of its legislation with the aim of ensuring full compliance with the principles and provisions of the Convention and uniform application of the legislation on children’s rights in all parts of the State party. Furthermore, the Committee encourages the State party to urgently adopt a comprehensive children’s act in order to consolidate the legislation covering all aspects of children’s rights, and to ensure the active involvement of children and organizations working on child rights in the drafting process for the act.

Comprehensive policy and strategy

11. While welcoming the National Child Protection Strategy and its Action Plan and noting the National Human Rights Action Plan 2012–2020, the Committee is concerned that the Strategy does not integrate all the provisions of the Convention, and that the Action Plan has not been properly implemented.

12. The Committee recommends that the State party take measures for the National Child Protection Strategy and its Action Plan to cover all areas under the Convention, including measures concerning children deprived of their family and child victims of trafficking and prostitution, and that it implement the National Human Rights Action Plan 2012–2020 effectively, and ensure monitoring of its implementation.

Coordination

13. While noting the role of the Ministry of Gender Equality, Child Development and Family Welfare and the National Human Rights Monitoring Committee, the Committee is concerned that communication and coordination between all departments and institutions, and the definition of their respective responsibilities, including in the context of the implementation of the “Working Together” framework, are still inadequate.

14. The Committee urges the State party to establish or designate an effective coordination body, such as through a children’s act, at a high interministerial level, with a clear mandate and sufficient authority to coordinate all activities relating to the implementation of the Convention at the cross-sectoral, national, regional and local levels. The State party should ensure that the said coordinating body is provided with the necessary human, technical and financial resources to function effectively.

Allocation of resources

15. While noting that resources have increasingly been allocated to address disparities between urban and rural areas and among the different islands, the Committee remains concerned at the inadequate allocation of resources for education, health and child protection issues, in particular measures to combat child abuse, and at the absence of a child-rights perspective in preparing budgets and monitoring the spending of resources for children.
16. With emphasis on articles 2, 3, 4 and 6 of the Convention, the Committee recommends that the State party:

   (a) Increase budgetary allocations in the areas of education, health and child protection issues, in particular measures to enhance the protection of child victims of exploitation, to adequate levels, and continue reducing geographic disparities;

   (b) Establish a budgeting process which includes a child-rights perspective and specifies allocations for children in the relevant sectors and agencies, including specific indicators and a tracking system;

   (c) Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention, and support the existing mechanisms, including the Child Development Unit, with adequate human and financial resources.

Data collection

17. Noting the data provided by the State party, the Committee is concerned that the availability of and access to up-to-date and disaggregated statistics, reports and studies on children are very limited and that statistics on certain categories of children, including children with disabilities and children in street situations, are not readily available.

18. In the light of its general comment No. 5 (2003) on general measures of implementation, the Committee urges the State party to expeditiously improve the collection of updated data by the Statistics Office which should make those statistics regularly available. The data should cover all areas of the Convention and should be disaggregated by age, sex, geographic location, ethnic origin and socioeconomic background in order to facilitate analysis of the situation of all children against specific indicators, with emphasis on children who are particularly vulnerable, including children with disabilities, children in street situations and children subject to prostitution and trafficking. Furthermore, the Committee recommends that the data and indicators be shared among the ministries concerned and used for the formulation, monitoring and evaluation of laws, policies, programmes and projects for the effective implementation of the Convention.

Independent monitoring

19. While welcoming the information provided by the State party during the dialogue about the new Government’s commitment to further strengthen the Ombudsperson for Children’s Office, and noting the work of the Ombudsperson in the area of investigations, training and awareness-raising, the Committee is nevertheless concerned at the limited number of investigators and scarce financial resources of the Office, and its limited visibility and effectiveness in dealing with complaints of children’s rights violations.

20. The Committee recommends that the State party recruit additional qualified investigators for the Ombudsperson for Children’s Office, to receive, investigate and address complaints by children effectively and in a child-sensitive manner, ensure the privacy and protection of victims, and undertake monitoring, follow-up and verification activities. The Committee recommends that the State party encourage the Office to carry out awareness-raising programmes in all parts of the country, including campaigns for the dissemination of information on children’s rights to the general population, including adults working with children. In addition, the Committee recommends that the State party continue raising awareness about the existence of the Office and its functions, and provide adequate resources to the Office to enable it to carry out its mandate effectively.
Training and awareness-raising

21. While noting efforts by the Ombudsperson for Children’s Office to raise awareness of children’s rights in schools, the Committee is concerned that efforts to raise awareness among the general population about children’s rights remain inadequate. The Committee is also concerned that training for all professionals working for and with children remains insufficient. Furthermore, the Committee is concerned at the lack of awareness-raising concerning child protection issues and the measures taken in that regard by the National Children’s Council, and at the lack of assessment of their impact.

22. The Committee recommends that the State party provide adequate and systematic training on children’s rights to all professionals working for and/or with children, in particular law enforcement officials, judges, prosecutors, teachers, the media, health workers, social workers, personnel working in all forms of alternative care and migration authorities. The State party should also undertake island-wide awareness-raising programmes, including campaigns for the dissemination of information on children’s rights among the general population, and incorporate child rights in school curricula at all levels and in teacher-training curricula.

Cooperation with civil society

23. While noting with appreciation the important role played by non-governmental organizations (NGOs) in delivering various services for children, the Committee is concerned that the State party appears to over-rely on these organizations, which it often appoints as contractors without monitoring and evaluating the adequacy of the services delivered, and without providing NGOs with adequate resources for children. The Committee is also concerned that civil society organizations have not been adequately involved in the implementation of the “Working Together” framework.

24. Recalling that the State party has the primary responsibility to ensure the enjoyment by all children of their rights, the Committee recommends that the State party undertake measures to monitor effectively the quality and coverage of services provided for children by NGOs, and that it provide NGOs with adequate financial and other resources to enable them to discharge governmental responsibilities with regard to the implementation of the Convention. The Committee also recommends that the State party systematically involve communities and civil society actors in planning, implementing, monitoring and evaluating all State-supported policies, plans and programmes relating to children’s rights, including the “Working Together” framework.

B. Definition of the child (art. 1)

25. The Committee is concerned that, while the age of marriage is set at 18 years (art. 144 of the Civil Code), exceptions to the minimum age of marriage are possible and extensively granted, as is shown by the high number of underage marriages in the State party. The Committee is also concerned that the Child Protection Act defines a child as any unmarried person under the age of 18.

26. The Committee urges the State party to ensure that the minimum age of marriage, set at 18 years, is strictly enforced, in line with the State party’s obligations under the African Charter on the Rights and Welfare of the Child. The Committee recommends that the State party carry out comprehensive awareness-raising programmes on the negative consequences of child marriage, targeting in particular parents, teachers and community leaders.
C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

27. While noting the establishment of the Equal Opportunities (Amendment) Act, the Committee is concerned that discrimination persists, notably in the form of obstacles to accessing and enjoying various services and facilities, particularly for children from disadvantaged and marginalized families, including street children, children who are affected and/or infected by HIV/AIDS, children using drugs, children deprived of their family environment, children with disabilities and minor offenders.

28. The Committee recommends that the State party take all necessary measures to eliminate all forms of discrimination, including by incorporating a general prohibition on direct and indirect discrimination in a children’s act and putting in place and implementing effectively relevant policies and mechanisms to eliminate discrimination, such as training for public officers. Furthermore, the Committee recommends that the State party integrate the principle of non-discrimination into educational curricula, and increase the visibility and effectiveness of the complaints mechanisms of the Equal Opportunity Commission.

Best interests of the child

29. While noting that various national laws, including the Ombudsperson for Children Act 2003, incorporate the right of the child to have his or her best interests taken as a primary consideration in administrative and judicial proceedings, and in policies and programmes relating to children, the Committee is concerned at the lack of information on how this right is enforced in practice in all areas affecting children.

30. In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the State party is encouraged to elaborate the right of the best interests of the child in a comprehensive manner in a children’s act, and to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration. Such procedures and criteria should be disseminated to courts of law, administrative authorities and legislative bodies, public and private social welfare institutions, as well as traditional and religious leaders and the public at large, and should be effectively monitored and evaluated.

Respect for the views of the child

31. While welcoming initiatives that uphold the rights of expression of the child in respect of all matters affecting him or her through awareness-raising, such as the 16 Days — 16 Rights Campaign, the Committee is concerned that the views of the child are not systematically taken into account, for example in court and administrative proceedings, with the exception of separation, divorce, adoption and custody proceedings, where the views of children above the age of 5 are generally taken into account.

32. In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:

(a) Take measures to ensure the effective implementation of legislation recognizing the right of the child to be heard in relevant court and administrative
proceedings, in particular on the custody of children, including by establishing systems and/or procedures for social workers and courts to comply with the principle;

(b) Conduct programmes and awareness-raising activities to promote the meaningful and empowered participation of all children in the family, community, media and schools, including in student council bodies, with particular attention to girls and children in vulnerable situations;

(c) Conduct research to identify the issues that are most important to children, to hear their views on those issues, and to find out how well their voices are heard in family decisions affecting their lives, and the channels through which they currently and potentially have the most influence on national and local decision-making;

(d) Develop toolkits for public consultation on national policy development, including consultation with children on issues that affect them.

D. Civil rights and freedoms (arts. 7, 8 and 13–17)

Birth registration

33. The Committee notes the existence of a fast-track system to deal with the declaration of births and unregistered children. The Committee is concerned, however, about reported cases of persons whose birth has not been declared owing to lack of communication and lengthy procedures regarding late registration, especially in the case of declaration after 45 days from birth.

34. The Committee recommends that the State party take further measures to improve communication between the authorities concerned and families, and accelerate the procedures for and facilitate late birth registration.

Right to privacy

35. While noting the constitutional protection of the right to privacy, the Committee is concerned at instances where the privacy of children who have been victims of abuse or have been in conflict with the law is not respected by the media.

36. The Committee recommends that the State party take further legislative and policy measures to protect effectively the right of the child to privacy, including by encouraging the media to expeditiously adopt a code of ethics and conduct training on the Convention for those working in and with the media.

E. Violence against children (arts. 19, 24, para. 3, 28, para. 2, 34, 37 (a) and 39)

Corporal punishment

37. The Committee is concerned that corporal punishment is applied in general as part of the school culture, even though it is prohibited by the Education Regulations of 1957, and that corporal punishment is not explicitly prohibited by law in all settings, including the home and alternative care settings, as well as the penal system.

38. The Committee urges the State party to ensure that its legislation, including a children’s act, explicitly prohibits corporal punishment in all settings. The Committee also urges the State party to promote positive, non-violent and participatory forms of
child-rearing and discipline. The State party is further encouraged to establish a clear reporting system for incidents of corporal punishment, notably in schools.

Child abuse, violence and neglect

39. The Committee notes the State party’s efforts in terms of child protection, emergency protective services, alternative care and the prevention of sexual exploitation of children. However, it is concerned about the high prevalence of violence against children in the State party, evidenced by the more than 6,000 cases involving child victims of violence, ill-treatment and sexual abuse which have been reported to the Child Development Unit of the Ministry of Gender Equality, Child Development and Family Welfare. The Committee is also concerned about the inadequate staffing of the Child Development Unit to deal effectively with cases of abuse, violence and neglect of children.

40. The Committee recommends that the State party formulate a comprehensive strategy for preventing and combating child abuse, violence and neglect, and in particular that it:

(a) Take further measures to prevent the high incidence of child abuse, violence and neglect, in particular by strengthening awareness-raising, community-based and educational programmes through the involvement of children, former victims, volunteers and members of the community;

(b) Ensure the effective investigation of complaints and bring those responsible to justice;

(c) Establish a national database on all cases of domestic violence against children, and undertake a comprehensive assessment of the extent, causes and nature of such violence;

(d) Ensure the allocation of adequate human, technical and financial resources to the Child Development Unit and adequately train its personnel to enable it to implement long-term programmes addressing the root causes of violence and abuse, and to provide protection to child victims.

Sexual exploitation and abuse

41. The Committee is concerned at the increase in the sexual exploitation of children, especially child sex tourism, which is on the rise in some areas or neighbourhoods. The Committee is also concerned at the lack of systematic and compulsory reporting and investigation of sexual offences against children, the reported discontinuation of support to victims of sexual exploitation who have to return to their living environment, which might expose them to risks of further exploitation, and the inadequate rehabilitative services for victims. The Committee is further concerned that training on the investigation of sexual offences against children is not organized by adequately trained personnel, and that training for officers of the Child Development Unit is inadequate.

42. The Committee recommends that the State party:

(a) Ensure the regular collection of reliable data on child sexual exploitation and abuse, disaggregated by sex, age and type of violation, and undertake qualitative and quantitative evaluations regarding both the prevalence and the understanding of those phenomena;

(b) Establish mechanisms, procedures and guidelines to ensure mandatory reporting of all cases of child sexual exploitation and abuse, including a fast-track procedure for the effective investigation by the police and the Director of Public Prosecutions of cases of the sexual exploitation of children;
(c) Ensure that those who sexually abuse and exploit children are brought to justice and are punished with sanctions commensurate with the gravity of their crimes, without the possibility of persons suspected of sexual exploitation of children being released on bail;

(d) Ensure the development of programmes and policies for the prevention of sexual exploitation and abuse of children, and programmes that address the proliferation of sex tourism in the State party, and ensure the treatment, recovery and social reintegration of child victims;

(e) Conduct awareness-raising activities to address the stigmatization of victims of sexual exploitation and abuse, including incest, and provide accessible, confidential, child-friendly and effective reporting channels for such violations;

(f) Provide appropriate facilities, including adequate training of law enforcement officers, and establish appropriate standards of care to ensure adequate rehabilitative services.

F. Family environment and alternative care (arts. 5, 9–11, 18, paras. 1–2, 20, 21, 25 and 27, para. 4)

Children deprived of a family environment

43. While noting the efforts of the State party to improve the alternative care system, the Committee is concerned that institutionalization, in particular of children under the age of 3 years, is used more often than family-based care, and that foster care is inadequately professionalized. The Committee is also concerned about:

(a) The lack of a national strategy and programmes to support parents and families to fulfil their child-rearing obligations, and the lack of family counselling and parenting programmes, which increase the risk of neglect, maltreatment and abuse of children within the family;

(b) The lack of disaggregated data on children in need, on those provided with services and those in different forms of alternative care;

(c) The lack of information on the assessment, selection, training, remuneration and supervision of foster parents and kinship caregivers; review procedures for children in care; accreditation, minimum requirements for, and supervision of, children’s homes; and a complaint mechanism for children in public care, including in State and private, NGO or church-run facilities.

44. Recalling the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex), the Committee emphasizes that financial and material poverty or conditions directly attributable to it should not be the sole justification for removing a child from parental care. The Committee recommends that the State party:

(a) Establish adequate support services for parents, as well as adopting and implementing awareness-raising and training programmes on parenting skills, including on alternatives to corporal punishment;

(b) Support and facilitate family-based care for children wherever possible, including for children in single-parent families, and establish a system of professionalized foster care for children who cannot stay with their families, with a view to avoiding the placement of children under the age of 3 in institutions, and reducing the institutionalization of children in general;
(c) Ensure adequate safeguards and clear criteria, based on the needs and the best interests of the child, for determining whether a child should be placed in alternative care;

(d) Ensure independent and periodic review of the placement of children in foster care and institutions, and monitor the quality of care in residential care institutions, including by providing accessible channels for reporting, monitoring and remedying maltreatment and abuse of children;

(e) Collect disaggregated data on children in need, on those provided with services and those in various forms of alternative care, on support services for parents and kinship caregivers, on the abandonment, neglect and abuse of children, and on measures adopted, other than legislation;

(f) Ensure that adequate human, technical and financial resources are allocated in priority to the development of foster and community-based alternatives to institutionalization, as well as to the development of relevant child protection services in order to improve the quality of rehabilitation and social reintegration of children resident in institutional care to the greatest extent possible, including through the provision of adequate psychological, psychiatric and social support.

Adoption

45. The Committee is concerned about the continued lack of a specific requirement to have a psychologist’s or social worker’s assessment to assist judges in determining the suitability of prospective adoptive parents in order to ensure that adoption, either domestic or international, is in the best interests of the child. The Committee is also concerned about the absence of an established list of Mauritian parents applying for adoption, the absence of judicial verification of whether there are Mauritian families interested in adopting Mauritian children, and the absence of an independent body to facilitate and monitor the adoption process, including through the screening of prospective adoptive parents. The Committee is further concerned about the slow progress in adopting the new Adoption Act.

46. The Committee recommends that the State party urgently adopt the new Adoption Act to ensure that in cases of adoption the decision of the judge is supported by a psychologist’s or social worker’s assessment regarding both the child and the adopting parents, in order to ensure that adoption is in the best interests of the child. In that regard, the State party is encouraged to set up an independent body to facilitate adoption processes, including by drawing up a list of prospective Mauritian parents, to establish judicial verification of whether there are Mauritian families interested in adoption, and to prepare families and prospective parents properly, in accordance with the 1993 Hague Convention No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Children of incarcerated parents

47. The Committee notes that children under the age of 6 can live with their imprisoned mothers. However, it is concerned that the best interests of the child are not always taken into account, including when sentencing parents, that incarcerated parents are not guaranteed systematic contact with their children and the Child Development Unit, and that there is insufficient psychological treatment or social support to children of incarcerated parents who do not reside in institutional care.

48. The Committee recommends that the best interests of the child be taken into account as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents which lead to their being separated from their children. It also recommends that the State party give due consideration to the child’s best
interests when deciding whether the child should live with his or her incarcerated parent. In doing so, due consideration to the overall conditions of the prison context and the particular need for parent-child contact during early childhood should be taken into full account, with the option of judicial review. The Committee further recommends that the State party ensure that incarcerated parents are guaranteed systematic contact with their children and the Child Development Unit, including in cases of adoption, and that children of incarcerated parents who do not reside in institutional care are provided with sufficient psychological treatment and social support.

G. Disability, basic health and welfare (arts. 6, 18, para. 3, 23, 24, 26, 27, paras. 1–3, and 33)

Children with disabilities

49. The Committee welcomes the codification of Mauritian sign language, including a dictionary of that language, and the development of a database on disability. The Committee is concerned, however, that the State party continues to apply the medical model of disability which consists in integrating children with disabilities instead of eliminating the physical, socioeconomic and cultural barriers that prevent the full inclusion of children with disabilities in schools and in society, and their full enjoyment of their rights. The Committee is particularly concerned that:

(a) The State party has not taken adequate measures to build an inclusive system of education and continues to over-rely on NGOs to provide specialized services to children with disabilities; and has not taken adequate measures to prevent the placement of children with disabilities in centres de sauvegarde;

(b) Children with disabilities attending schools face rejection and stigmatization;

(c) The vast majority of children with disabilities do not benefit from adequate support, such as the presence of a multidisciplinary specialized team, social workers and an individual follow-up process to ensure their effective inclusion in ordinary classes, and the social stigma, fear and misconceptions surrounding children with disabilities remain strong in society, leading to their marginalization and alienation;

(d) Children with disabilities do not often acquire a Certificate of Primary Education, and there are no alternatives to this certificate for children with mental disabilities;

(e) Children with disabilities who are placed in shelters because they are abandoned, orphaned and homeless do not often receive special care or psychological support;

(f) Statistics on children suffering from specific disabilities are not regularly accessible.

50. In the light of article 23 of the Convention and of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to adopt a human rights-based approach to disability and specifically recommends that it:

(a) Set up comprehensive measures to develop inclusive education and ensure that inclusive education is given priority over the placement of children in specialized institutions and classes. To this effect, the Committee urges the State party to urgently remove children with disabilities from centres de sauvegarde;
(b) Train and assign specialized teachers and professionals to integrated classes providing individual support and all due attention to children with learning difficulties;

(c) Undertake awareness-raising campaigns aimed at the public and families to combat stigmatization and prejudice against children with disabilities and promote a positive image of children and adults with disabilities;

(d) Facilitate acquisition of a Certificate of Primary Education for children with disabilities to have access to secondary or tertiary education, provide for alternatives to this certificate for children with mental disabilities, and develop vocational training for children with disabilities;

(e) Ensure that children with disabilities who are placed in shelters because they are abandoned, orphaned and homeless receive special care or psychological support from adequately trained personnel.

Health and health services

51. The Committee notes with appreciation the budget allocations and increase of human resources to the health sector. The Committee is concerned, however, about the prevailing maternal malnutrition and inadequate prenatal care, which are considered to be primary causes of low birth weight. The Committee is also concerned about the very limited measures to treat hepatitis C cases.

52. The Committee draws the State party’s attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party take further measures to address maternal malnutrition, unhealthy lifestyles and inadequate parental care in order to prevent low birth weight. The State party is also encouraged to take measures to improve the nutritional status of infants, children and mothers. The Committee further recommends that the State party ensure the effective treatment of hepatitis C cases, including through immunization.

Adolescent health

53. While noting the implementation of the national reproductive health strategy and the strengthening of the school curriculum on reproductive health, including on HIV/AIDS and the prevention of early pregnancies, the Committee is concerned about the limited impact of sexual and reproductive health education and the absence of drug awareness sessions from the curriculum.

54. Referring to its general comment No. 4 (2003) on adolescent health and development, the Committee recommends that the State party:

   (a) Ensure that, in the context of the national reproductive health strategy, comprehensive sexual and reproductive health education is made part of the mandatory school curriculum and is targeted at adolescent girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted infections;

   (b) Take further measures to raise awareness of and foster responsible parenthood and sexual behaviour, with particular attention to boys and men;

   (c) Address substance abuse by children and adolescents by, inter alia, providing children and adolescents with accurate and objective information, as well as life-skills education on preventing substance abuse, including tobacco and alcohol abuse, and by integrating drug awareness sessions into the school curriculum; develop accessible and youth-friendly drug dependence treatment and harm reduction
services; and, in particular, make methadone substitution therapy accessible to persons under the age of 18;

(d) The Committee recommends that the State party develop specialized and youth-friendly drug dependence treatment and harm reduction services for children and young people.

HIV/AIDS

55. The Committee notes with appreciation the adoption of the HIV and AIDS Act 2006, which allows a child to give consent for HIV testing without the need for the consent of the legal administrator or guardian. However, it is concerned about the limited effectiveness of the measures to reduce mother-to-child transmission, and the continued inadequate awareness about HIV/AIDS that leads to stigma and discriminatory attitudes against those infected and affected. The Committee is also concerned about reports that children need to be accompanied by an adult to have access to health services, which is discriminatory against children living with HIV.

56. In the light of its general comment No. 3 (2003) on HIV/AIDS and the rights of the child, the Committee recommends that the State party:

(a) Sustain the measures in place to prevent mother-to-child transmission of HIV/AIDS, and develop a road map to ensure the implementation of effective preventive measures;

(b) Improve follow-up treatment for HIV/AIDS-infected mothers and their infants to ensure early initiation of treatment, and improve access to and the coverage of antiretroviral therapy and prophylaxis for HIV-infected pregnant women;

(c) Improve access to high-quality, age-appropriate HIV/AIDS, sexual and reproductive health services, including by providing for a minor to undergo HIV treatment on a voluntary basis without the consent of a legal administrator or guardian; make information on sexual and reproductive health, in particular HIV/AIDS, available for schoolchildren and organize awareness-raising to prevent fear and discriminatory attitudes against those infected and affected by HIV/AIDS.

Impact of climate change on the rights of the child

57. While noting the activities of the Ministry of Environment, Sustainable Development, Disaster and Beach Management and the operation of the National Disaster Committee in disaster prevention and planning, the Committee notes with concern that policies and programmes addressing climate change and disaster risk management, such as in the case of cyclones, do not address the special vulnerabilities and needs of children, and that data available to formulate policies do not identify the types of risk faced by children.

58. The Committee recommends that the State party:

(a) Ensure that the special vulnerabilities and needs of children, as well as their views, are taken into account in developing policies or programmes to address issues of climate change and disaster risk management;

(b) Collect disaggregated data identifying the types of risk faced by children due to the occurrence of a variety of disasters in order to formulate international, regional and national policies, frameworks and agreements accordingly, with a view to avoiding preventable death and injuries of children;

(c) Increase children’s awareness and preparedness for climate change and natural disasters by incorporating them into the school curriculum and teachers’ training programmes;
(d) Seek bilateral, multilateral, regional and international cooperation in implementing the above recommendations.

Standard of living

59. While noting the continued efforts by the State party towards poverty alleviation, including the provision of certain childcare services, such as meals and the payment of transport and school fees for children, the Committee reiterates its concern about the living conditions of children from disadvantaged and marginalized families, particularly with regard to access to adequate housing, education and health-care services.

60. The Committee recommends that the State party consider conducting targeted consultations with families, children and children’s rights civil society organizations and NGOs on the issue of child poverty to strengthen or determine strategies and measures for fulfilling children’s rights in the National Child Protection Strategy and other poverty reduction strategies. This should enable children living in disadvantaged and marginalized families and those living in remote areas, including the islands of Rodrigues and Agalega, to enjoy their rights to adequate housing, education and health. In particular, the State party should strengthen the network of social housing, support child day-care centres to enable mothers to join the workforce, improve access to education from the age of 3 years and strengthen community health centres.

H. Education, leisure and cultural activities (arts. 28–31)

Education, including vocational training and guidance

61. The Committee is concerned that children who lack birth registration might be prevented from accessing education. The Committee is also concerned that schools are not adequately provided with educational materials in Creole, which remains an optional language, thereby limiting access to education for Creole-speaking children and resulting in high dropout rates for them, which amount to 20 per cent in primary education. Furthermore, the Committee is concerned at the limited access to vocational training, in particular in rural areas, by children who drop out of school, the lack of adequate financial resources for early childhood education and the lack of human rights education in the school curriculum.

62. Taking into account its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party:

(a) Ensure that children without birth registration are not denied access to education;

(b) Take measures to improve the accessibility and quality of education, including by limiting the impact of the language of instruction on access to education and on school completion and dropout rates, in particular for Creole-speaking children, children in street situations and those that are deprived of their family environment, through the use of Creole at the early childhood development stage and at the primary and secondary school levels; and provide high-quality training for teachers, with particular emphasis on rural areas;

(c) Further develop and promote high-quality vocational training, in particular in rural areas, to enhance the skills of children and young people, especially those who drop out of school;

(d) Allocate sufficient financial resources for the development and expansion of early childhood education, based on a comprehensive and holistic policy;
(e) Introduce age-appropriate human rights education based on the principles and provisions of the Convention on the Rights of the Child into the school curriculum, including for lower secondary schools.

I. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40)

Economic exploitation, including child labour

63. The Committee is concerned that some children below the age of 18 work in dangerous conditions, including in agriculture, street vending and domestic service.

64. The Committee recommends that the State party adopt a strategy to combat child labour, including its worst forms, and in particular that it:

   (a) Strengthen its Labour Inspectorate, in order to prevent, detect, investigate and adequately sanction child labour;

   (b) Improve protection and reintegration programmes that focus on family empowerment and the elimination of various forms of child labour, including positive parenting programmes for marginalized communities;

   (c) Compile information on child labour, including statistics;

   (d) Ratify International Labour Organization (ILO) Convention No. 189 (2011) concerning decent work for domestic workers;

   (e) Seek technical assistance from the ILO International Programme on the Elimination of Child Labour in that regard.

Trafficking of children

65. The Committee is concerned that the State party remains a source, destination and transit country for trafficking in persons, including children. The Committee is also concerned at the absence of sex-disaggregated data with regard to trafficking, and at the lack of a national plan of action to address trafficking in the State party.

66. The Committee recommends that the State party adopt a comprehensive national action plan and develop a coordination mechanism to address trafficking and analyse the root causes of trafficking. The State party should, in particular:

   (a) Collect sex-disaggregated data on the number of trafficked persons and on the number of complaints, investigations, prosecutions and sentences in relation to trafficking;

   (b) Ensure the effective implementation of the Combating of Trafficking in Persons Act, introduce effective prevention measures and ensure the timely prosecution and punishment of traffickers;

   (c) Continue raising awareness about human trafficking, including through the dissemination of information and the training of the judiciary and law enforcement officials on the new law, in order to ensure strict application of the relevant criminal provisions;

   (d) Analyse and address the root causes of trafficking, increase its efforts to address poverty and eliminate the vulnerability of girls and boys to exploitation and traffickers.
Children in street situations

67. The Committee is concerned at reports according to which thousands of children, most of them aged 11 to 16 years, are in street situations, the gravity or even the existence of which is not adequately recognized, thereby limiting the protection afforded to these children.

68. The Committee recommends that the State party:

(a) Develop a comprehensive strategy for the protection of children in street situations, including identifying the underlying causes, such as poverty, family violence, migration and the lack of access to education, with the aim of preventing and systematically eliminating this phenomenon. In this regard, the Committee calls upon the State party to pay special attention to the specific vulnerability of girls in street situations to sexual abuse, exploitation and early pregnancy;

(b) Develop initiatives that offer effective alternatives to institutionalization and facilitate the reunification of children in street situations with their families, whenever feasible and appropriate, taking into account the best interests of the child. In this context, the Committee recommends that the State party develop programmes that support their long-term educational and developmental needs, including through the provision of psychological support where possible;

(c) Ensure that members of the public and law enforcement officials who abuse and harass children in street situations or illegally detain them be held accountable.

Administration of juvenile justice

69. The Committee is concerned at the absence of a clear legal provision concerning the minimum age of criminal responsibility, and at the absence of juvenile justice tribunals with specialized judges. The Committee is also concerned about:

(a) The lack of systematic provision of information to children on their rights when deprived of their liberty and the lack of legal aid for juvenile offenders, as well as the frequent trials of children in conflict with the law in the absence of their legal representatives or guardians;

(b) Inadequate alternatives to imprisonment; the preventive detention of children who cannot pay bail and the detention of children together with adults by the police;

(c) Children considered as being “beyond control” being placed in closed institutions at the request of their parents, in accordance with section 18 of the Juvenile Offenders Act;

(d) The lack of progress in restructuring institutions for the rehabilitation of minors in conflict with the law, and in properly training rehabilitation personnel.

70. In the light of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee recommends that the State party:

(a) Establish by law a minimum age of criminal responsibility in accordance with an internationally acceptable standard and refrain from sentencing minor offenders as adults;

(b) Expediately establish juvenile justice tribunals and procedures with adequate human, technical and financial resources, designate specialized judges for
children and ensure that such specialized judges receive appropriate education and training;

(c) Ensure the provision of information to children on their rights when deprived of their liberty, and independent legal aid at an early stage of the procedure and throughout the legal proceedings, and ensure that no child is sentenced in the absence of their legal representative or guardian;

(d) Promote alternative measures to detention, such as diversion, probation, bail, mediation, counselling or community service, and ensure that detention is used as a last resort and for the shortest possible time and that it is reviewed on a regular basis with a view to withdrawing it;

(e) Refrain from preventive detention of children without release on bail, and remove all children in conflict with the law from adult detention facilities;

(f) Repeal section 18 of the Juvenile Offenders Act and provide families with difficulties in the upbringing of children with necessary support and counselling services, including through the involvement of NGOs;

(g) Restructure the reform institutions for the rehabilitation of minors in conflict with the law, in particular through the enhancement of education and training for children in rehabilitation centres, and the provision of adequate psychiatric, psychological and social counselling, and provide rehabilitation personnel with adequate training.

J. Ratification of the Optional Protocol on a communications procedure

71. The Committee encourages the State party, in order to further strengthen the fulfilment of children’s rights, to complete, without further delay, the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

K. Ratification of international human rights instruments

72. The Committee recommends that the State party, in order to further strengthen the fulfilment of children’s rights, ratify the core human rights instruments to which it is not yet a party, namely the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention for the Protection of All Persons from Enforced Disappearance and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

73. The Committee also recommends that the State party ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

74. The Committee urges the State party to fulfil its reporting obligations under the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography, the reports on which have been overdue since 14 March 2009 and 14 July 2013, respectively.
L. Cooperation with regional bodies

75. The Committee recommends that the State party cooperate with the African Committee of Experts on the Rights and Welfare of the Child of the African Union on the implementation of children’s rights, both in the State party and in other African Union member States. The Committee recommends that the State party ratify the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa and the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

IV. Implementation and reporting

A. Follow-up and dissemination

76. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court and local authorities for appropriate consideration and further action.

77. The Committee also recommends that the third to fifth periodic reports and the written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, the media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and the Optional Protocols thereto and of their implementation and monitoring.

B. Next report

78. The Committee invites the State party to submit its combined sixth and seventh periodic reports by 1 March 2021 and to include in them information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines, adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr.1), and reminds the State party that future reports should be in compliance with the guidelines. In addition, in paragraph 16 of its resolution 68/268, adopted on 9 April 2014, the General Assembly decided to establish a word limit of 21,200 words for periodic reports submitted by State parties. In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. The Committee reminds the State party that if it is not in a position to review and resubmit the report, translation of the report for the purposes of examination by the treaty body cannot be guaranteed.

79. The Committee also invites the State party to submit an updated core document in accordance with the requirements for the common core document in the harmonized guidelines on reporting under the international human rights treaties, approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/GEN/2/Rev.6, chap. I). The word limit for core documents, as established by the General Assembly in paragraph 16 of its resolution 68/268, is 42,400 words.
Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte

Conclusions and recommendations

A. Conclusions

89. In the light of the intensity of ageing in many societies, there is a need to ensure that older persons are enabled to lead autonomous lives. This also calls for a paradigm shift that focuses on the inclusion of older persons in society at all levels, encompassing age-friendly communities and environments, as well as people-centred models of care, and that promotes the autonomy and dignity of older persons.

90. The design, implementation, monitoring and evaluation of any social and health-care legislation, policies, programmes, strategies and settings must take into account the respect for and the strengthening of older persons’ autonomy. To promote this autonomy, effective care for older persons needs to integrate economic, physical, mental, social, spiritual and environmental factors.

91. The increasing prevalence of chronic and degenerative diseases in older age poses challenges to the development and implementation of appropriate models of care for older persons. The disease-focused approach in care at different levels needs to be replaced by more effective and rights-based models in order to address the specific needs of the most heterogeneous of all age groups.

B. Recommendations

92. With a view to assisting States in developing and implementing appropriate and effective measures to ensure the autonomy of older persons, including in social and health-care settings, the Independent Expert makes the recommendations set out below.

Legal, institutional and policy framework

93. States must fully comply with their international obligations relating to autonomy and care. The Independent Expert strongly encourages States to ratify all the core human rights treaties, including the Convention on the Rights of Persons with Disabilities, as well as all relevant regional instruments—notably the recently adopted Inter-American Convention on the Human Rights of Older Persons, which makes explicit reference to autonomy and care.
94. States should design and implement effectively national policies and action plans on ageing that include specific provisions on autonomy and care, in a comprehensive and intersectoral manner.

95. States should establish national councils on ageing, with older persons among its members, to design and develop policies, including care, that correspond to their needs and respect their autonomy. Such councils should guarantee pluralism, represent the diversity of older persons and receive sufficient funding so that they can function properly and effectively.

Study and statistics

96. States should ensure, nationwide, systemic and regular collection of disaggregated statistical data, and carry out studies to assess the situation and needs of older persons and develop targeted policies for older persons. Data must be used sensibly to avoid stigmatization and potential misuse. Particular care should be exercised when collecting and analysing data in order to respect and enforce data protection and privacy. Older persons, including the very old and those in institutionalized care settings, should systematically be included in surveys and official statistics, in order to ensure a better differentiation for age and to better reflect the broad heterogeneity of older persons.

97. States should constantly conduct researches and studies and collect age- and gender-disaggregated data on abuse and violence against older persons in and outside care settings in order to assess the current situation and take appropriate measures to tackle elder abuse.

Discrimination, abuse and violence

98. There is a need for national anti-discrimination strategies addressing discrimination in a coherent and multifaceted way. States should, through legislation, prohibit direct or indirect discrimination against older persons, including in the financial and insurance services sectors, as well as in care settings.

Legal capacity and equal recognition before the law

99. The Independent Expert emphasizes that supported decision-making for persons with intellectual or psychosocial disabilities, including older persons, is essential for the respect of the autonomy of older persons and their individual rights, in their own capacity to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work and to choose their place of residence. Judges should be guided by the objective of ensuring that older persons can lead a self-determined and autonomous life for as long as possible.

100. Older persons must be provided with guarantees to ensure that their preferences, their will and their best interests are taken into
consideration in all matters relevant to their life, including
treatment, residence or assets. Conflict of interest and undue
influence should be regulated, especially in reference to family
members and caregivers.

101. Safeguards to free and informed consent should be adopted
through legislation, policies and administrative procedures in
conformity with international and regional standards. Particular
attention should be given to illiterate older persons or persons with
less formal education.

Adequate standard of living and social protection

102. States must recognize the human right to social security in
domestic law. Non-contributory and contributory pension schemes
must be guided by international human rights standards for the
right to social security.

103. States should put in place social-protection and poverty-
reduction programmes, particularly designed for older persons,
including those with disabilities. Human rights principles and
standards should be integrated throughout the design,
implementation and evaluation of social pensions, thereby ensuring
that older persons fully enjoy their human rights.

104. The Independent Expert recalls that the right to social security
includes both contributory and non-contributory benefits and
benefits both in cash and in kind, and that benefits should be
adequate in amount and duration and accessible to all without
discrimination. Non-contributory old-age benefits or other assistance
should be provided for those without resources on reaching old age,
with special attention to be given to older persons working in the
informal sectors, older women, older widows, and those living in
rural and remote areas.

105. In the light of the significant contribution of social transfers
and pension schemes, austerity measures and fiscal consolidation
programmes should be revised in order to ensure the provision of
basic income to older persons, together with adequate social and
health-care services and support.

106. A thorough evidence-based analysis of the current and future
needs of various forms of care or affordable, accessible and barrier-
free housing is essential for meeting the immediate needs and for
planning and preparing for the future and for developing
appropriate measures to ensure an inclusive society for all ages.

Right to work

107. States should introduce incentives for employers and employees
to extend people’s working lives beyond the mandatory retirement
age. Workplace environments and working conditions should be
adapted to older workers by introducing flexible working
arrangements, including phased retirement. The Independent Expert also points out the importance of continued education and access to new technologies, as well as vocational rehabilitation. States should ensure that social security and pension systems do not penalize older workers who choose to work beyond normal retirement age.

108. The contribution of older persons should be recognized and encouraged, including, but not limited to, their role in the care of family members, in household maintenance and in voluntary and associative activities.

Right to adequate housing and accessibility

109. States should adopt housing policies that take into account the special needs of older persons to enable these persons to live autonomously. Ageing at home requires innovations in the housing sector, including alternative forms of housing for older persons, such as mixed and designated communities and age-adapted homes, or flat-sharing concepts that promote intergenerational interaction. Alternative forms of housing and the possibility to adapt their homes should ensure that older persons can remain in their homes and lead autonomous lives.

110. States should establish tax incentives and subsidies to encourage developers to build accessible and appropriate housing for older persons. Credit facilities should also be encouraged in public and private banks to allow older persons to adapt their homes or to become homeowners. In view of the difficulties often faced by older persons in accessing financial and insurance services and resources, the Independent Expert wishes to remind businesses of their obligations to adhere to international standards preventing, inter alia, all forms of discrimination and to the Guiding Principles on Business and Human Rights, which provide guidance on responsible contracting and State-investor contract negotiations.

111. Given that the physical ability, individual characteristics and the transport environment crucially influence the mobility of older persons, States are encouraged to adopt comprehensive national accessibility policies. There is also a need to include mandatory provisions demanding the implementation of barrier-free access. States should also ensure the elimination of existing barriers in public spaces and buildings, including in care settings. The Independent Expert recommends that architects and engineers apply a human rights-based approach in designing public and private buildings.

112. States should ensure older persons’ mobility, including affordable and accessible public transport, both in urban, rural and remote areas. This could encompass free or discounted transport, low-floor buses and trains, and facilities to help older persons purchase tickets online or in person.
Education, training and lifelong learning

113. The promotion of lifelong learning is essential for older persons to be able to deal with constantly changing circumstances, requirements and challenges, for their active participation in society and for an autonomous life continuing into old age. The specific needs of older persons should be taken into account in the planning and design of educational offers.

114. Distance learning and digital training should be offered to older persons in order to bridge the gap among generations and avoid dependency on others as a result of the lack of knowledge of information and communications technology.

Care

115. States should improve coordination among sectors throughout the continuum of care, from prevention, promotion, rehabilitation, through to long-term and palliative care, including social care and other community services, and prevent unnecessary institutionalization. Universal coverage and uniform national legislation should be introduced in order to avoid fragmentation of social and health services.

116. Older persons should be included in the design, planning, implementation and evaluation of care, be these social or health-related services and facilities. Gender, disability and cultural-sensitivity programmes should be integrated in every care setting in order to take into account the diversity of older persons and meet their requirements and needs.

117. States should provide assistance to families and to other informal caregivers. This should include human rights, medical and human resources training, counselling, and financial, social and psychological support. States should strengthen mechanisms to officially recognize the work undertaken by informal caregivers, including, as appropriate, work permits that allow flexible schedules in order to combine paid work with informal care of older persons, as well as their inclusion in the social security system. Particular attention should be given to older women in their role as caregivers.

118. States should develop national home-care programmes and community-based care services, in rural and remote areas alike. Such programmes and services should be designed and implemented in consultation with the older persons themselves and their families.

119. States should provide long-term care through a comprehensive and intersectoral approach, and promote the transfer of older persons from an institutional to a community-care residence and home, if the older person so wishes.

120. States should develop training programmes to improve the self-care of older persons. Older patient education may include health
education and awareness of pathologies, thereby increasing self-esteem and confidence.

121. As forced institutionalization violates the rights of older persons, States should revise their legislation and regulations, in particular with regard to mental health-care settings. A clear set of standards should be established on free informed consent in care settings, in particular in mental health-care settings.

122. Residential councils that include older persons should be established in institutional care settings to promote the active participation of these persons in the organization of their own daily activities.

123. States should establish quality monitoring and effective and transparent accountability mechanisms for public and private care settings, which take into account older persons’ assessments and evaluations. This requires establishing clearly defined benchmarks, such as codes of practice and conduct, and where conformity can be assessed and verified by sufficient and well-trained staff both in home and institutionalized care settings.

124. Quality care is also correlated with the working conditions and well-being of care workers. In order to ensure that care workers provide care that meets the emotional and physical needs of older persons with compassion and dignity, and in order to attract people into the care sector and retain them there, better training opportunities, including academic qualifications, should be provided. This, in turn, will also help portray care work as a profession with good career prospects.

125. Given the multidimensionality of abuse and violence against older persons, there is a need to adopt a comprehensive, integrated and inclusive approach involving different disciplines, organizations and actors, as well as older persons themselves, in identifying appropriate responses to abuse and violence.

126. States should adopt legislation and policies to prevent, detect, investigate, prosecute and criminalize elder abuse. Procedures must be in place for reporting abuse and violence, including in public and private care settings. The Independent Expert calls on States to pay particular attention to protecting victims from retaliation, especially in cases where the abuse or violence is committed by a family member, relative or is the result of an intimate relationship.

127. Collective prejudice against older people and general public awareness influence the way in which abuse and violence is perceived, recognized and reported. States should devise an awareness-raising strategy regarding the issue of abuse of and violence against older persons. Awareness-raising campaigns should not only target older persons themselves, but also their social environment, such as family, friends and caregivers. They should
also target employees in homes and institutions, doctors, nurses and caregivers and the broader communities.

128. Information about remedies, referral pathways and available services should be made widely available to older persons and the broader public domain, and particularly the social environment of older persons. Dissemination of information to older persons about their rights could help to further improve disclosure about abusive experiences and make more effective the implementation of laws related to elder abuse when such laws exist. Caregivers and law enforcement personnel should receive training to recognize and handle cases of abuse and violence against older persons.

129. States should develop ombudsman-like positions inside institutionalized care settings that could improve older persons’ care and quality of life and denounce cases of abuse and violence, including health-care fraud.

130. Older persons have different patterns of disease presentation from younger adults, they respond to treatments and therapies in different ways and they frequently have complex social needs that are related to their chronic medical conditions. States should therefore ensure the availability of geriatric and gerontological specialists in different types of care services and facilities. There is a need to further promote geriatric medicine to ensure that a sufficient number of qualified geriatricians are available to meet the needs of an ageing society.

131. The right to palliative care should be enshrined in the legal framework so that older persons can enjoy the last years of their lives in dignity and without unnecessary suffering. States should ensure the availability and accessibility of palliative care for all older persons in need, particularly those who suffer from a life-threatening or life-limiting illness. Training, and adequate and affordable medication and therapeutic measures, should be provided in public and private care settings.

132. Innovative care for older persons with chronic and degenerative diseases, such as dementia, should be encouraged through public and private partnerships, including scientific and academic sectors, in order to improve the quality of life and well-being of those affected.
Sustainable Development Goals

**Goal 1.** End poverty in all its forms everywhere
**Goal 2.** End hunger, achieve food security and improved nutrition and promote sustainable agriculture
**Goal 3.** Ensure healthy lives and promote well being for all at all ages
**Goal 4.** Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
**Goal 5.** Achieve gender equality and empower all women and girls
**Goal 6.** Ensure availability and sustainable management of water and sanitation for all
**Goal 7.** Ensure access to affordable, reliable, sustainable and modern energy for all
**Goal 8.** Promote sustained, inclusive and sustainable economic growth, full and productive Employment and decent work for all
**Goal 9.** Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
**Goal 10.** Reduce inequality within and among countries
**Goal 11.** Make cities and human settlements inclusive, safe, resilient and sustainable
**Goal 12.** Ensure sustainable consumption and production patterns
**Goal 13.** Take urgent action to combat climate change and its impact
**Goal 14.** Conserve and sustainably use the oceans, seas and marine resources for sustainable development
**Goal 15.** Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
**Goal 16.** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
**Goal 17.** Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development
ANNEX V

FIGURE 2: EXAMPLES OF SOME OF THE IMPACTS OF CLIMATE CHANGE ON THE ENJOYMENT OF HUMAN RIGHTS

<table>
<thead>
<tr>
<th>CLIMATE IMPACT</th>
<th>HUMAN IMPACT</th>
<th>RIGHTS IMPLIcacD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEA LEVEL RISE</td>
<td>• Loss of land&lt;br&gt; • Drowning, injury&lt;br&gt; • Lack of clean water&lt;br&gt; • Disease&lt;br&gt; • Damage to coastal infrastructure&lt;br&gt; • Sea erosion&lt;br&gt; • Loss of agricultural lands&lt;br&gt; • Threat to tourism, lost beaches</td>
<td>• Self-determination (ICCPR, EESCR, 1)&lt;br&gt; • Life (ICCPR, 6)&lt;br&gt; • Health (EESCR, 12)&lt;br&gt; • Water (CEDAW, 14; ICRC 24)&lt;br&gt; • Means of subsistence (EESCR, 11)&lt;br&gt; • Standard of living (EESCR, 12)&lt;br&gt; • Culture (ICCPR, 27)&lt;br&gt; • Property (UDHR, 17)</td>
</tr>
<tr>
<td>TEMPERATURE INCREASE</td>
<td>• Changes in disease vectors&lt;br&gt; • Coral bleaching&lt;br&gt; • Impact on Fisheries</td>
<td>• Life (ICCPR, 6)&lt;br&gt; • Health (EESCR, 12)&lt;br&gt; • Means of subsistence (EESCR, 11)&lt;br&gt; • Adequate standard of living (EESCR, 12)</td>
</tr>
<tr>
<td>EXTREME WEATHER EVENTS</td>
<td>• Dislocation of populations&lt;br&gt; • Contamination of water supply&lt;br&gt; • Damage to infrastructure: delays in medical treatment, food crisis&lt;br&gt; • Psychological distress&lt;br&gt; • Increased transmission of disease&lt;br&gt; • Damage to agricultural lands&lt;br&gt; • Disruption of educational services&lt;br&gt; • Damage to tourism sector&lt;br&gt; • Massive property damage</td>
<td>• Life (ICCPR, 6)&lt;br&gt; • Health (EESCR, 12)&lt;br&gt; • Water (CEDAW, 14; ICRC 24)&lt;br&gt; • Means of subsistence (EESCR, 11)&lt;br&gt; • Adequate standard of living (EESCR, 12)&lt;br&gt; • Adequate and secure housing (EESCR, 12)&lt;br&gt; • Education (EESCR, 13)&lt;br&gt; • Property (UDHR, 17)</td>
</tr>
<tr>
<td>CHANGES IN PRECIPITATION</td>
<td>• Changes in disease vectors&lt;br&gt; • Erosion</td>
<td>• Life (ICCPR, 6)&lt;br&gt; • Health (EESCR, 12)&lt;br&gt; • Means of subsistence (EESCR, 11)</td>
</tr>
</tbody>
</table>

Declaration

We, Members of the Commonwealth Forum of National Human Rights Institutions attending the ‘Biennial Meeting on 23 - 25 November 2015 at St. Julian’s, Malta:

Affirm the key role of NHRIs in the promotion and protection of human rights in the Commonwealth.

Affirm the values and principles as contained in the Commonwealth Charter, in particular principles X and XIV; The Lake Victoria Commonwealth Climate Change Action Plan and the Perth Declaration on Food Security Principles.

Acknowledge that climate change is a global threat to human rights that significantly impacts on people’s security, the right to food and water, adequate housing, mental and physical health and the rights of current and future generations, amongst others, so it requires global cooperation to solve, in accordance with the principle of international cooperation firmly entrenched in the UN Charter; the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, the Rio+20 Declaration, United Nations Human Rights Council Resolutions 7/23 (2008), 10/4 (2009), 18/22 (2011) and 26/27 (2014) on Human Rights and Climate...
Change; Decision 1/CP16 of the Cancun Agreement; The work of the UN Independent Expert on Human Rights and the Environment and the Special Procedures Mandate Holders, including their 2014 joint letter to States to ensure full coherence between human rights and their efforts to address climate change; the Aarhus Convention on Access to Information, public participation in the decision-making process and access to environmental justice; and a host of human rights treaties and declarations and other core human rights instruments.

Recall that the relationship between climate change and human rights has been recognised by both the Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and by the Human Rights Council (HRC), and can be further strengthened.

Take note of the contribution of human rights in the formulation, implementation and monitoring of policy and development projects, including the right to an effective remedy (in line with the Doha agreement (2012).

Recognise the necessity for a greater interdependency between development, climate change and human rights, embodied in the notion of sustainable development.

Pay attention to the importance of active and free participation of the populations concerned, including the most marginalised in climate change decision-making processes from the design of projects to their evaluation.

Emphasise the necessity to ensure explicit references to human rights law and principles in the new global climate agreement in order to guarantee the practical conditions for implementation in governmental initiatives to combat climate change.

Cognisant of the Mary Robinson Foundation – Climate Justice principles, which are rooted in the frameworks of international and regional human rights law and do not require the breaking of any new ground on the part of those who ought, in the name of climate justice, to be willing to take them on.

Acknowledge the importance of active engagement with international and regional human rights mechanisms as well as the UNFCCC and the Sustainable Development Goals. Therefore, we declare as follows:
As a group of Commonwealth NHRIs, we commit

1. To take steps to increase our understanding of how human rights obligations inform better climate action by pursuing meaningful collaboration between national representatives in the above two processes;

2. To request input from the UN Human Rights Council/Office of the UN High Commissioner on Human Rights on how to operationalise human rights protections in climate action;

3. To encourage national and international climate change frameworks to integrate human rights into their policies and actions, including at the new climate agreement (COP 21) and the Sustainable Development Goals;

4. To develop rights-based guidance, which provides both a legal and moral basis to climate change action, rooted in dignity and equality, through the realisation of human rights;

5. To develop a work programme on climate justice in order to monitor and evaluate efforts already made and still to be made to protect human rights within the context of climate action;

6. To take steps to develop tools to ensure the protection of human rights within climate change policies and actions such as impact assessments and participatory indicators that are anchored in human rights at the national and international levels;

7. To encourage Commonwealth nations, when appropriate, to exchange information and transfer green technologies, mainly for industrialised countries, and to support low carbon climate resilient strategies for the poorest;

8. To promote the gender dimension of climate change, and in turn climate justice across the Commonwealth nations as the impacts of climate changes are different for women and men, with women likely to bear the greater burden in situations of poverty;
9. To promote the principle of equality and non-discrimination in climate action, including the rights of children, older people, the people with disabilities and the indigenous peoples.

10. To proactively seek dialogue with private actors to ensure they also contribute to the realisation of climate justice, including encouraging Commonwealth nations to hold accountable private actors for human rights violations;

11. To encourage the Commonwealth nations to adhere to the Geneva Pledge to promote and respect human rights in climate action.

As NHRIS, we commit

12. To take steps to ensure that human rights are integrated into all aspects of climate actions, including formulation, implementation and monitoring, with the active and free participation of the populations concerned;

13. To promote internal coordination between human rights and climate change actors, including through human rights national action plans and other related action plans;

14. To encourage climate justice education, producing new insights not only at the scientific but also at the sociological and political level; and to strengthen it where already in place;

15. To take appropriate steps to promote greater participation in national and international decision-making processes which are fair, accountable, open and corruption-free; these are essential to the growth of a culture of climate justice;

16. To strengthen monitoring and reporting on human rights and climate change, particularly under the UNFCCC and at the Human Rights Council including the Universal Periodic Review, and other UN and regional mechanisms to promote the sharing of information and the exchange of good practices on the integration of human rights into climate action;
17. To strengthen collaboration with civil society to ensure legitimacy and effectiveness in climate action.

Adopted at St. Julian’s, Malta
25 November 2015
<table>
<thead>
<tr>
<th>Sustainable Development Goals</th>
<th>Related human rights</th>
</tr>
</thead>
</table>
| **End poverty in all its forms everywhere** | - Right to an adequate standard of living [UDHR art. 25; ICESCR art. 11; CRC art. 27]  
- Right to social security [UDHR art. 22; ICESCR art. 9; CRPD art. 28; CRC art. 26]  
- Equal rights of women in economic life [CEDAW arts. 11, 13, 14(2)(g), 15(2), 16(1)] |
| **End hunger, achieve food security and improved nutrition, and promote sustainable agriculture** | - Right to adequate food [UDHR art. 25; ICESCR art. 11; CRC art. 24(2)(c)]  
- International cooperation, including ensuring equitable distribution of world food supplies [UDHR art. 28; ICESCR arts. 2(2), 11(2)] |
| **Ensure healthy lives and promote well-being for all at all ages** | - Right to life [UDHR art. 3; ICCPR art. 6], particularly of women [CEDAW art. 12] and children [CRC art. 6]  
- Right to health [UDHR art. 25; ICESCR art. 12], particularly of women [CEDAW art. 12], and children [CRC art. 24]  
- Special protection for mothers and children [ICESCR art. 10]  
- Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15(1)(b)]  
- International cooperation [UDHR art. 28, DRtD arts. 3-4] particularly in relation to the right to health and children's rights [ICESCR art. 2(1); CRC art. 4] |
### Ensure inclusive and equitable quality education and promote life-long learning opportunities for all

**Targets include:**
- Universal access to free, quality pre-primary, primary and secondary education.
- Improving vocational skills.
- Equal access to education.
- Expanding education facilities, scholarships, and training of teachers.

- **Right to education** (UDHR art. 26; ICESCR art. 13; CRC arts. 28, 29; CRPD art. 24).
- **Right to work,** including technical and vocational training (ICESCR art. 6).
- **International cooperation** (UDHR art. 28; CRC arts. 23(4), 28(3); CRPD art. 12).

### Achieve gender equality and empower all women and girls

**Targets include:**
- Eliminating discrimination and violence against women and girls.
- Valuing unpaid care and domestic work.
- Ensuring full participation of women.
- Access to reproductive health care.
- Equal access of women to economic resources.

- **Elimination of all forms of discrimination against women** (CEDAW arts. 1-5; CRC arts. 2).
- **Right to decide the number and spacing of children** (CEDAW arts. 6, 12; CRC art. 24(3)).
- **Special protection for mothers and children** (CEDAW arts. 14(2)(h)).
- **Elimination of violence against women and girls** (CEDAW arts. 25-35; CRC art. 24(3), 35).
- **Right to just and favourable conditions of work** (ICESCR art. 7; CEDAW art. 11).

### Ensure availability and sustainable management of water and sanitation for all

**Targets include:**
- Universal access to safe, affordable drinking water, sanitation, and hygiene.
- Reducing pollution.
- Increasing water-use efficiency.
- Promoting participatory management of water and sanitation services.

- **Right to safe drinking water and sanitation** (ICESCR art. 11).
- **Right to health** (UDHR art. 25; ICESCR art. 12).
- **Equal access to water and sanitation for rural women** (CEDAW art. 14(2)(h)).
### Ensure access to affordable, reliable, sustainable and modern energy for all

**Targets** include ensuring universal access to affordable, reliable and modern energy services.

- Right to an adequate standard of living
  ([UDHR art. 25; ICESCR art. 11](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Right to enjoy the benefits of scientific progress and its application
  ([UDHR art. 27; ICESCR art. 15(1)(b)](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))

### Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

**Targets** include promoting sustained economic growth; improving resource efficiency in production and consumption; full and productive employment and decent work for all; eradicating forced and child labour and trafficking; protecting labour rights including those of migrant workers; and increasing access to financial services.

- Right to work and to just and favourable conditions of work
  ([UDHR art. 23; ICESCR arts. 6, 7, 10; CRPD art. 27; ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at Work](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Prohibition of slavery, forced labour, and trafficking of persons
  ([UDHR art. 4; ICCPR art. 8; CEDAW art. 6; CRC arts. 34-36](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Equal rights of women in relation to employment
  ([CEDAW art. 11; ILO Conventions No. 100 and No. 111](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Prohibition of child labour
  ([CRC arts. 32; ILO Convention No. 182](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Equal labour rights of migrant workers
  ([CMW art. 25](https://www.ohchr.org/EN/HRBibliography/Pages/CMW.aspx))

### Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation

**Targets** include affordable and equitable access to quality infrastructure; employment generating industrialisation; access to financial services and markets; innovation and technology transfer, and increasing access to ICT.

- Right to enjoy the benefits of scientific progress and its application
  ([UDHR art. 27; ICESCR art. 15(1)(b)](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Right to access to information
  ([UDHR art. 19; ICCPR art. 19(2)](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Right to adequate housing, including land and resources
  ([UDHR art. 25; ICESCR art. 11](https://www.ohchr.org/EN/HRBibliography/Pages/UDHR.aspx))
- Equal rights of women to financial credit and rural infrastructure
  ([CEDAW art. 13(b), art. 14(2)](https://www.ohchr.org/EN/HRBibliography/Pages/CEDAW.aspx))
<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Targets</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Reduce inequality within and among countries</td>
<td>Promoting higher growth rates for the bottom 40 per cent; promoting social, economic and political inclusion; reducing inequalities in opportunities and outcomes; ensuring social protection for all; securing participation in economic decision making; facilitating migration; and reducing transaction costs for migrant remittances.</td>
<td>[UDHR art. 2; ICESCR art 2(2); ICCPR arts. 2(1), 26; CERD art. 2(2); CEDAW art. 2; CRC art. 2; CRPD art. 5; CMW art. 7; DRD art. 8(1)]&lt;br&gt; [Right to equality and non-discrimination][1]&lt;br&gt; [Right to participate in public affairs][2]&lt;br&gt; [Right to social security][3]&lt;br&gt; [Promotion of conditions for international migration][4]&lt;br&gt; [Right of migrants to transfer their earnings and savings][5]</td>
</tr>
<tr>
<td>11</td>
<td>Make cities and human settlements inclusive, safe, resilient and sustainable</td>
<td>Ensuring access to housing, basic services and public transport for all, participatory planning of human settlements; safeguarding cultural and natural heritage; and strengthening resilience to disasters.</td>
<td>[UDHR art. 25; ICESCR art. 11]&lt;br&gt; [Right to adequate housing, including land and resources][6]&lt;br&gt; [Right to participate in cultural life][7]&lt;br&gt; [Protection from natural disasters][8]</td>
</tr>
<tr>
<td>12</td>
<td>Ensure sustainable consumption and production patterns</td>
<td>Achieving sustainable management and efficient use of natural resources; improving waste management; promoting sustainable public procurement; ensuring access to information; and building capacity for sustainable development.</td>
<td>[UDHR art. 25(1); ICESCR art. 12]&lt;br&gt; [Right to health including the right to safe, clean, healthy and sustainable environment][9]&lt;br&gt; [Right to adequate food and the right to safe drinking water][10]&lt;br&gt; [Right of all peoples to freely dispose of their natural resources][11]</td>
</tr>
<tr>
<td><strong>13 Climate Action</strong></td>
<td><strong>Take urgent action to combat climate change and its impacts</strong></td>
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<tr>
<td></td>
<td>Targets include strengthening resilience and adaptation to</td>
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<td></td>
<td>climate change and natural disasters, including in</td>
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<td></td>
<td>marginalised communities; implementation of the Green Climate</td>
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<td>fund.</td>
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<td></td>
<td>• Right to health including the right to safe, clean, healthy</td>
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<tr>
<td></td>
<td>and sustainable environment [UDHR art. 25(1); ICESCR art.</td>
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<td>12; CRC art. 24; CEDAW art. 12; CMW art. 28]</td>
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<td></td>
<td>• Right to adequate food &amp; right to safe drinking water</td>
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<td></td>
<td>[UDHR art. 25(2); ICESCR art. 11]</td>
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<td></td>
<td>• Right of all peoples to freely dispose of their natural</td>
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<tr>
<td></td>
<td>wealth and resources [ICCPR, ICESCR art. 1(2)]</td>
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</table>

<table>
<thead>
<tr>
<th><strong>14 Life Below Water</strong></th>
<th><strong>Conserve and sustainably use the oceans, seas and marine resources for sustainable development</strong></th>
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<tr>
<td></td>
<td>Targets include reducing marine pollution; conserving coastal ecosystems, coastal marine areas</td>
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<tr>
<td></td>
<td>and fish stock; securing market access for small scale fishers; protection of marine biodive-</td>
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<td>rity.</td>
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<tr>
<td></td>
<td>• Right to health including the right to safe, clean, healthy and sustainable environment</td>
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<td></td>
<td>[UDHR art. 25(1); ICESCR art. 12; CRC art. 24; CEDAW art. 12; CMW art. 28]</td>
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<td></td>
<td>• Right to adequate food &amp; right to safe drinking water [UDHR art. 25(2); ICESCR art. 11]</td>
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<tr>
<td></td>
<td>• Right of all peoples to freely dispose of their natural wealth and resources [ICCPR, ICESCR</td>
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<td></td>
<td>art. 1(2)]</td>
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<table>
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<tr>
<th><strong>15 Life on Land</strong></th>
<th><strong>Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss</strong></th>
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<tr>
<td></td>
<td>Targets include the sustainable management of freshwater, mountain ecosystems and forests; combatting desertification;</td>
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<tr>
<td></td>
<td>halting biodiversity loss; combatting poaching and trafficking of protected species.</td>
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<td></td>
<td>• Right to health including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art.</td>
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<td>12; CRC art. 24; CEDAW art. 12; CMW art. 28]</td>
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<td></td>
<td>• Right to adequate food &amp; right to safe drinking water [UDHR art. 25(2); ICESCR art. 11]</td>
</tr>
<tr>
<td></td>
<td>• Right of all peoples to freely dispose of their natural wealth and resources [ICCPR, ICESCR art. 1(2)]</td>
</tr>
</tbody>
</table>
**Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels**

Targets include reducing all forms of violence; ending violence against and trafficking of children; promoting rule of law and justice for all; reducing illicit financial and arms flows, corruption and bribery; developing effective institutions; participation in decision making at all levels; legal identity for all.

- Right to life, liberty and security of the person
  - [UDHR art. 3; ICCPR arts. 6(1), 9(1); ICERD art. 1] including freedom from torture
  - [UDHR art. 5; ICCPR art. 7; CAT art. 2; CRC art. 37(a)]
- Protection of children from all forms of violence, abuse or exploitation
  - [CRC arts. 19, 37(a)], including trafficking [CRC arts. 34-36; CRC-COP(3)]
- Right to access to justice and due process
  - [UDHR arts. 8, 10; ICCPR arts. 2(3), 14-15; CEDAW art. 2(c)]
- Right to legal personality
  - [UDHR art. 6; ICCPR art. 16; CRPD art. 12]
- Right to participate in public affairs
  - [UDHR art. 21; ICCPR art. 28]
- Right to access to information
  - [UDHR art. 19; ICCPR art. 19(1)]

**Strengthen the means of implementation and revitalize the global partnership for sustainable development**

Targets include strengthening domestic and international resources; debt sustainability; technology transfer and capacity building; promoting trade; enhancing policy and institutional coherence; respecting countries' policy space; promoting multi-stakeholder partnerships; measurements for progress, disaggregated data.

- Right of all peoples to self-determination
  - [ICCPR, ICESCR art. 1(1); DRID art. 1(1)]
- Right of all peoples to development, B: international cooperation
  - [UDHR art. 28; ICESCR art. 2(1); CRC art. 4; CRPD art. 12(1); DRID arts. 3-5]
- Right of everyone to enjoy the benefits of scientific progress and its application, including international cooperation in the scientific field
  - [UDHR art. 27(1); ICESCR art. 15(1)]
- Right to privacy
  - [UDHR art. 12; ICCPR art. 17], including respect for human rights and ethical principles in the collection and use of statistics [CRPD art. 31(1)]

(*) This table is intended for illustrative purposes only. The listing of relevant rights is not exhaustive. Under international human rights law, and under the 2030 Agenda for Sustainable Development, data for all targets needs to be collected and disaggregated by the prohibited grounds of discrimination under international human rights law, including the respect, protection and promotion of human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status. Obligations regarding international assistance and cooperation also apply to all Goals.
List of international human rights instruments:

1948 – Universal Declaration on Human Rights (UDHR)
1966 – International Covenant on Civil and Political Rights (ICCPR)
1966 – International Covenant on Economic, Social and Cultural Rights (ICESCR)
1984 – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
1986 – Declaration on the Right to Development (UNDRTD)
1989 – Convention on the Rights of the Child (CRC)
1990 – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)
1993 – Declaration on the Elimination of Violence against Women (DEVAW)
2006 – Convention on the Rights of Persons with Disabilities (CRPD)
2006 – International Convention for the Protection of All Persons from Enforced Disappearances (ICPEP)
2007 – Declaration on the Rights of Indigenous Peoples (UNDRIP)
## ANNEX VIII

### SUPREME COURT

#### CONVICTIONS AND APPEALS 2012

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<td>penal servitude for a term of 25 years together with a fine of Rs 100,000</td>
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<td>possession of drugs for the purpose of distribution</td>
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<td>possession of dangerous drugs for the purpose of distribution + administering drugs</td>
<td>3 years penal servitude for the first offence and 2 months imprisonment for the second offence</td>
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<tr>
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<td>State v/s Josetta</td>
<td>importation of heroin</td>
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<td>possession of dangerous drugs</td>
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<td>Dinally v/s State</td>
<td>possession of dangerous drugs for the purpose of distribution</td>
<td>12 months imprisonment together with a fine of Rs 100,000</td>
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<td>3 years penal servitude and Rs 500 as costs</td>
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<tr>
<td>373</td>
<td>Jhootoo V State</td>
<td>possession of drugs for the purpose of distribution</td>
<td>imprisonment of 2 years and a fine of Rs 75,000</td>
</tr>
<tr>
<td>Serial Number</td>
<td>Case</td>
<td>Nature of Offence</td>
<td>Sentence</td>
</tr>
<tr>
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<tr>
<td>380</td>
<td>Gokool V State</td>
<td>importation of dangerous drugs</td>
<td>25 years penal servitude</td>
</tr>
<tr>
<td>386a</td>
<td>DPP V Jimmy Marthe</td>
<td>importation of dangerous drugs</td>
<td>2 years imprisonment</td>
</tr>
<tr>
<td>392</td>
<td>Mohammed Ali V State</td>
<td>possession of drugs for the purpose of distribution</td>
<td>35 years penal servitude</td>
</tr>
<tr>
<td>405</td>
<td>Narayanasawny V State</td>
<td>possession of drugs for the purpose of distribution</td>
<td>28 years penal servitude together with a fine of Rs 500,000</td>
</tr>
<tr>
<td>448</td>
<td>State V Rakotoarimanana</td>
<td>importation of dangerous drugs</td>
<td>20 years penal servitude together with a fine of Rs 75,000</td>
</tr>
<tr>
<td>475</td>
<td>Chamoo V State</td>
<td>offence of cultivating cannabis plants + offence of smoking cannabis</td>
<td>18 months’ imprisonment together with a fine of Rs 5000</td>
</tr>
<tr>
<td>483</td>
<td>Sham P V State</td>
<td>importation of dangerous drugs</td>
<td>22 years penal servitude</td>
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</tbody>
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## SUPREME COURT
### CONVICTIONS AND APPEALS 2014

<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Case</th>
<th>Nature of Offence</th>
<th>Sentence</th>
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<tbody>
<tr>
<td>365</td>
<td>Gowrishwaran Ariyakrishnan v. The State of Mauritius</td>
<td>Procurement of imported heroin into Mauritius, qua trafficker</td>
<td>Imprisonment of 18 years together with a fine of Rs 100,000. The fine of Rs 100,000 to be converted into a term of imprisonment of 500 days.</td>
</tr>
<tr>
<td>207</td>
<td>Vikramsing Boolaky v. The State</td>
<td>Distribution and unlawful use of Cannabis – 5 packets</td>
<td>Appeal was allowed and the conviction was quashed following serious disturbing features and deficiencies in the judgment.</td>
</tr>
<tr>
<td>69</td>
<td>Indradev Choramun v. State of Mauritius</td>
<td>Possession of Cannabis – 97.6 grams + 0.59 grams)</td>
<td>Appeal was allowed and the conviction was quashed following flaws in the sentencing proceedings.</td>
</tr>
<tr>
<td>285</td>
<td>The Director of Public Prosecutions v. RamsamyJaganah</td>
<td>Possession of Cannabis for the purpose of selling – 20 packets of cannabis</td>
<td>Appeal was dismissed since the evidence of the prosecution fell short of proving the respondent’s guilt beyond reasonable doubt.</td>
</tr>
<tr>
<td>60</td>
<td>Dhondee S Y v. State</td>
<td>Offering a cannabis plant for sale</td>
<td>The 2 weeks imprisonment imposed by the District Court was suspended and the appellant (minor at the time of his conviction) was sentenced to undertake 60 hours of community service as agreed by him in 60 schools.</td>
</tr>
<tr>
<td>15</td>
<td>DPP v. Pardessy D</td>
<td>Possession of heroin for the purpose of distribution - 550 grams of heroin</td>
<td>The appeal was allowed and the decision of the Magistrate dismissing the information against the respondent was quashed. Fresh trial by a different Magistrate of the Intermediate Court ordered.</td>
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<tr>
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<td>Case</td>
<td>Nature of Offence</td>
<td>Sentence</td>
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<tr>
<td></td>
<td>Appeal from Supreme Court</td>
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<tr>
<td>52</td>
<td>Fangamar L.D.L v. State</td>
<td>Transportation of cannabis, qua trafficker – 3617 grams</td>
<td>Leave refused and the application set aside.</td>
</tr>
<tr>
<td></td>
<td>Appeal to the Judicial</td>
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<td>Committee of the Privy</td>
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<td>24</td>
<td>Gopy A v. State</td>
<td>Offering cannabis for personal consumption</td>
<td>Appeal dismissed.</td>
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<td>Appeal from Intermediate</td>
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<td>2 years imprisonment</td>
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<td>374</td>
<td>Komul M.J v. State</td>
<td>Possession of dangerous drugs for the purpose of distribution, qua trafficker – 8729 tablets of subutex of 8mg each</td>
<td>Appeal dismissed.</td>
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<td>Appeal from Supreme Court</td>
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<tr>
<td>361</td>
<td>Manikon S v. State</td>
<td>Possession of dangerous drug for the purpose of selling – 98.9 grams of heroin</td>
<td>Appeal dismissed.</td>
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<td>Appeal from District Court</td>
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<td>Fine of Rs 3,000.</td>
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<td>192</td>
<td>Marjolin C.S v. State</td>
<td>Possession of cannabis for the purpose of distribution (10.34 grams + 2.64 grams)</td>
<td>The appeal was allowed. 2 years imprisonment substituted the sentence of 3 years.</td>
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<td>Appeal from Intermediate</td>
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<td>386</td>
<td>Maulaboksh M.S.U v. State</td>
<td>Drug Dealing and facilitating the commission of drug offences</td>
<td>Appeal dismissed.</td>
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<td>Appeal from Intermediate</td>
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<td>3 years penal servitude and a fine of Rs 10,000.</td>
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<td>State</td>
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<td>35 years penal servitude.</td>
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<td>Appeal to the Judicial</td>
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<td>Committee of Privy Council</td>
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<tr>
<td>7</td>
<td>State v. Ah-Laye F.R</td>
<td>Attempt to possess dangerous drugs, for the purpose of distribution – 9596 tablets of subutex</td>
<td>11 years penal servitude and a fine of Rs 50,000 plus Rs 1,000 as costs</td>
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<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Case</th>
<th>Nature of Offence</th>
<th>Sentence</th>
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<tbody>
<tr>
<td>376</td>
<td>State v. Boholah B</td>
<td>Possession of dangerous drugs for the purpose of distribution, qua drug trafficker - 6146.2 grams of cannabis</td>
<td>18 years penal servitude and a fine of Rs 75,000 plus Rs 1,000 as costs</td>
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<td>253</td>
<td>State v. Chowrimoothoo C &amp; Anor</td>
<td>Possession of dangerous drugs for the purpose of distribution, qua drug trafficker (61.7 grams + 52.37 grams of brown powder)</td>
<td>25 years penal servitude and a fine of Rs 100,000.</td>
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<tr>
<td>311</td>
<td>State v. Fabre J.K</td>
<td>Possession of heroin for the purpose of delivery, qua trafficker (285.8 grams)</td>
<td>15 years penal servitude, plus Rs 1000 as costs.</td>
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<tr>
<td>415, 415a</td>
<td>State v. Gros Croissy Aurore Melanie &amp; Anor</td>
<td>Importation of dangerous drugs, with an averment of drug trafficking (1673 tablets of subutex of 8mg)</td>
<td>Accused No. 1 – 20 years penal servitude and a fine of Rs 50,000 and Rs 1,000 as costs. Accused No. 2 – 20 years penal servitude and a fine of Rs 100,000 plus Rs 1,000 as costs.</td>
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<tr>
<td>272</td>
<td>State v. Gustave J.G</td>
<td>Possession of dangerous drugs for the purpose of distribution, qua trafficker – 1162.8 grams of heroin</td>
<td>25 years penal servitude and a fine of Rs 100,000 plus Rs 1,000 as costs.</td>
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<tr>
<td>164</td>
<td>State v. Jafer B.S &amp; Anor</td>
<td>Amount of heroin involved – 228.9 grams Accused No. 1 - Possession of dangerous drugs, for the purpose of delivery Accused No. 2 - Trafficker</td>
<td>Accused No. 1 - 10 years penal servitude and a fine of Rs 50,000 plus Rs 1,000 as costs Accused No. 2 - 20 years penal servitude and a fine of Rs 75,000 plus Rs 1,000 as costs.</td>
</tr>
<tr>
<td>Serial Number</td>
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<td>Nature of Offence</td>
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| 116           | State v. Lacharmante M.C.C & Anor | Amount of heroin involved – 478.5 grams  
Accused No. 1 - Possession of dangerous drugs, for the purpose of delivery  
Accused No. 2 – Importation of dangerous drugs into Mauritius | Accused No.1 – 10 years penal servitude and a fine of Rs 50,000 plus Rs 1,000 as costs  
Accused No. 2 – 8 years imprisonment plus Rs 1,000 as costs |
<p>| 59            | State v. Nestor J C | Importation of dangerous drugs into Mauritius – 6780.8 grams of cannabis + 1575 grams of heroin + 971.3 grams of heroin | 30 years penal servitude and a fine of Rs 100,000 under each of Counts I and II and 20 years penal servitude under Count III plus Rs 1,000 as costs. |
| 395, 395a     | State v Rafanomezantzoa R F | Importation of dangerous drugs into Mauritius – 1197.7 grams of heroin | 25 years penal servitude and Rs 200,000 as fine plus Rs 1,000 as costs. |</p>
<table>
<thead>
<tr>
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<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>State v Sivathree</td>
<td>Count I – Possession of 44.1 grams of cannabis for the purpose of selling</td>
<td>Count I - 7 years of penal servitude and a fine of Rs 50,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Count II – Possession of 2.1 grams of cannabis and cannabis seeds</td>
<td>Count II - 3 months imprisonment and a fine of Rs 25,000</td>
</tr>
<tr>
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<td></td>
<td>Count III – Possession of 613.8 grams of cannabis and 2.1 grams of cannabis in a jar for the purpose of selling</td>
<td>Count III - 7 years penal servitude and a fine of Rs 50,000</td>
</tr>
<tr>
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<td></td>
<td>Count IV – Possession of 127.8 grams of cannabis seeds for the purpose of cultivation</td>
<td>Count IV - 15 years penal servitude</td>
</tr>
<tr>
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<td></td>
<td>Count V – Possession of 35.4 grams of cannabis stems</td>
<td>Count V - 3 months imprisonment and a fine of Rs 25,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Accused to pay a cost of Rs 3,000</td>
</tr>
<tr>
<td>348</td>
<td>Vigoureux J.W v State Appeal to the Court of Criminal Appeal</td>
<td>Attempt of possess cannabis for the purpose of distribution , qua trafficker – 3896 grams</td>
<td>Appeal dismissed, but 24 years penal servitude substituted the sentence of 33 years.</td>
</tr>
<tr>
<td>SERIAL NUMBER</td>
<td>CASE</td>
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<td>SENTENCE OF OFFENCE</td>
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<tr>
<td>426</td>
<td>State v. Agathina Y F J</td>
<td>Importation of dangerous drugs – 655 tablets of subutex</td>
<td>8 years penal servitude and a fine of Rs 50,000 plus Rs 1,000 as costs.</td>
</tr>
<tr>
<td>288</td>
<td>State v. Appanah L R</td>
<td>Possession of dangerous drugs for the purpose of delivery – 1369 tablets of subutex</td>
<td>10 years penal servitude and a fine of Rs 50,000, plus Rs 1,000 as costs.</td>
</tr>
<tr>
<td>267</td>
<td>Botha J.J v. The State Appeal from Supreme Court</td>
<td>Attempt to possess dangerous drugs for the purpose of delivery, qua trafficker – 471.7 grams of heroin</td>
<td>Appeal was allowed and conviction was quashed since the evidence on record was not sufficient to establish the offence.</td>
</tr>
<tr>
<td>9</td>
<td>Edoo M B T v. The State Appeal from Intermediate Court</td>
<td>Count I – Possession of heroin for the purpose of distribution (9.97g and 4.42g of heroin) Count II – Possession of heroin</td>
<td>Count I - 4 years penal servitude and a fine of Rs 50,000. Count II - Fine of Rs 15,000.</td>
</tr>
<tr>
<td>80</td>
<td>Fabienne F D v. The State Appeal from Intermediate Court</td>
<td>Possession of heroin for the purpose of distribution – 0.62g of heroin</td>
<td>Appeal was allowed. 18 months penal servitude substituted the sentence of 3 years.</td>
</tr>
<tr>
<td>27</td>
<td>State v. Gros Coissy A M &amp; Anor</td>
<td>Amount of subutex involved : 1673 tablets of 8mg Accused No. 1 - Importation of dangerous drugs, qua trafficker Accused No. 2 - Attempt to possess dangerous drugs, qua trafficker</td>
<td>Accused No. 1 – 20 years penal servitude and a fine of Rs 50,000 plus Rs 1,000 as costs. Accused No. 2 – 20 years penal servitude and a fine of Rs 100,000 plus Rs 1,000 as costs.</td>
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<tr>
<td>420</td>
<td>Gros Coissy A M v. The State Appeal from Supreme Court</td>
<td>Importation of dangerous drugs into Mauritius, qua trafficker – 1673 tablets of subutex</td>
<td>Appeal was allowed and conviction was quashed since the evidence fell short with regards to proving the guilt of the accused beyond reasonable doubt.</td>
</tr>
<tr>
<td>SERIAL NUMBER</td>
<td>CASE</td>
<td>NATURE OF OFFENCE</td>
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</tbody>
</table>
| 425 | State v. Hosenbocus M.F. & Anor | Amount of heroin involved – 319.2 grams
Accused Nos 2, 5 and 7 – Accomplice in the offence of attempting to take delivery/possession of heroin
Accused No. 4 – Attempt to possess heroin for the purpose of distribution, qua trafficker
Accused Nos 3 and 6 – Attempt to possess heroin for the purpose of distribution/delivery, qua traffickers | Accused Nos 2, 5 and 7 – 10 years penal servitude and a fine of Rs 100,000 plus Rs 1,000 as costs.
Accused No. 4 – 22 years penal servitude and a fine of Rs 150,000 plus Rs 1,000 as costs
Accused No.3 and 6 – 32 years penal servitude and a fine of Rs 300,000 plus Rs 1,000 as costs. |
| 236 | Jawaheer V v. The State | Drug dealing – possession of cannabis for the purpose of selling (Street value of drugs Rs 4,500) | Appeal was dismissed. 3 years penal servitude and a fine of Rs 25,000. |
| 175 | State v. Lehilahitsara W. | Importation of heroin into Mauritius – 149.17 grams of heroin | 10 years penal servitude and a fine of Rs 50,000 plus Rs 1,000 as costs. |
| 254 | Luchun D. v. The State of Mauritius & Anor | Possession of heroin for the purpose of sale | Appeal dismissed - period spent on remand to be deducted from the sentence. 3 years penal servitude and a fine of Rs 50,000. |
| 181 | State v. Mohidinkhan M.A.K & Anor | Amount of heroin involved - 996.3 grams
Count I – Offer for sale of heroin, qua drug trafficker
Count II - Possession of heroin for the purpose of distribution, qua drug trafficker | Bail refused. |
<p>| 344 | Moulan M.S. v. The State | Possession of 38.65 grams of cannabis for the purpose of distribution | The appeal was allowed – 8 months imprisonment substituted the sentence of 12 months imprisonment |</p>
<table>
<thead>
<tr>
<th>SERIAL NUMBER</th>
<th>CASE</th>
<th>NATURE OF OFFENCE</th>
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<tbody>
<tr>
<td>127</td>
<td>Nelson M A C v The State Appeal from Intermediate Court</td>
<td>Possession of heroin for the purpose of distribution - 0.580 gram of brown powder</td>
<td>Appeal was dismissed. 3 years imprisonment and a fine of Rs 15,000.</td>
</tr>
<tr>
<td>72</td>
<td>Palmyre J L v. State Appeal case from Supreme Court</td>
<td>Possession of 1688.2 grams of cannabis for the purpose of distribution, qua drug trafficker</td>
<td>Appeal dismissed given the seriousness of the offence. 30 years penal servitude and a fine of Rs 100,000.</td>
</tr>
<tr>
<td>26</td>
<td>Pardessy K. v. The State Appeal from Intermediate Court</td>
<td>Unlawful possession of heroin (19.16 grams in brown powder) for the purpose of selling</td>
<td>Appeal dismissed. 5 years penal servitude and a fine of Rs 200,000.</td>
</tr>
<tr>
<td>247</td>
<td>Rajcoomar C. v. The State Appeal from Intermediate Court</td>
<td>Possession of heroin for the purpose of selling – 8.21 grams of heroin; street value Rs 123,150</td>
<td>Appeal dismissed. 3 years penal servitude and a fine of Rs 20,000 plus Rs 500 as costs.</td>
</tr>
<tr>
<td>419</td>
<td>State v. Rayapen J.M</td>
<td>Attempt to possess dangerous drugs for the purpose of delivery – 350.4 grams of heroin</td>
<td>13 years penal servitude and a fine of Rs 50,000 plus Rs 5,000 as costs.</td>
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<tr>
<td>454</td>
<td>Rossan M A R v. The State Appeal from Supreme Court</td>
<td>Possession of 228.9 grams of heroin for the purpose of distribution, qua drug trafficker</td>
<td>Appeal dismissed. 20 years penal servitude and a fine of Rs 75,000</td>
</tr>
<tr>
<td>145</td>
<td>Rughoodoss v. The State Appeal from Intermediate Court</td>
<td>Aiding in the importation of dangerous drugs – 24.8 grams of heroin</td>
<td>Appeal allowed. The conviction and sentence of 5 years penal servitude and a fine of Rs 100,000 were quashed due to irregularities during trial.</td>
</tr>
<tr>
<td>81</td>
<td>Sithanen N. v. The State Appeal from Intermediate Court</td>
<td>Unlawful possession of Cannabis resin for the purpose of distribution – 1,714 grams</td>
<td>Appeal dismissed against conviction. 2 years penal servitude and a fine of Rs 10,000 plus Rs 800 as costs substituted the 3 years penal servitude.</td>
</tr>
<tr>
<td>224</td>
<td>State v. J.S St Pierre &amp; Anor Motion before the Supreme Court</td>
<td>Attempt to transport dangerous drug as a drug trafficker</td>
<td>Motion set aside</td>
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<td>44</td>
<td>Suddason B v. State of Mauritius &amp; Anor Appeal from Supreme Court</td>
<td>Drug dealing</td>
<td>The 5 years penal servitude to be reduced by 228 days.</td>
</tr>
<tr>
<td>34</td>
<td>State v. Viator P M &amp;Ors</td>
<td>Amount of subutex involved: 2744 tablets of 8mg each Accused No. 1 - Importation of subutex, qua drug trafficker Accused No. 2 – Attempt to possess subutex for the purpose of distribution, qua trafficker Accused No. 3 - Aided and abetted Accused no. 2 to possess dangerous drugs for the purpose of distribution, qua trafficker.</td>
<td>Accused No. 1 – 18 years penal servitude and a fine of Rs 100,000 plus Rs 1,000 as costs. Accused No. 2 – 16 years penal servitude and a fine of Rs 75,000 plus Rs 1,000 as costs Accused No. 3 – 14 years penal servitude and a fine of Rs 75,000 plus Rs 1,000 as costs.</td>
</tr>
<tr>
<td>58</td>
<td>State v. Zafera N J</td>
<td>Importation of dangerous drugs (1162 grams of heroin) into Mauritius, qua drug trafficker</td>
<td>20 years penal servitude and a fine of Rs 75,000 plus Rs 1,000 as costs.</td>
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### HUMAN RIGHTS DIVISION

**STATISTICS 2015**

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### REVIEW OF CRIMINAL CASES

**STATISTICS**

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### POLICE COMPLAINTS DIVISION

**STATISTICS 2015**

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<td>Verbal Abuse</td>
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### NATIONAL PREVENTIVE MECHANISM DIVISION

**STATISTICS 2015**

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</tr>
<tr>
<td>3 No. of Visits</td>
<td>Police Cells (both in mauritius &amp; Rodrigues)</td>
<td>14</td>
</tr>
<tr>
<td>4 No. of Visits</td>
<td>RYC/CYC</td>
<td>8</td>
</tr>
<tr>
<td>5 No. of Visits</td>
<td>Shelters</td>
<td>5</td>
</tr>
<tr>
<td>6 No. of Visits</td>
<td>Hospitals</td>
<td>12</td>
</tr>
<tr>
<td>7 Prisoners visited</td>
<td>199 males &amp; 111 Females (From July to December 2015)</td>
<td>310</td>
</tr>
<tr>
<td>8 Summons Issued</td>
<td></td>
<td>39</td>
</tr>
</tbody>
</table>
## List of Human Rights Convention to which Mauritius is a party and reporting status

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Date of signature</th>
<th>Date of ratification/accession</th>
<th>Reporting status</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Covenant on Civil Political Rights (CCPR)</td>
<td>12 December 1973</td>
<td>Overdue on 01 April 2010</td>
<td></td>
</tr>
<tr>
<td>Optional Protocol to the International Covenant on Civil and Political Rights (CCPRO-1)</td>
<td>12 December 1973</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Convention on the Elimination of all Forms of Racial Discrimination (CERD)</td>
<td>30 May 1972</td>
<td>Overdue on 29 June 2015</td>
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</tr>
<tr>
<td>International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)</td>
<td>9 July 1984</td>
<td>Due on 01 October 2015</td>
<td></td>
</tr>
<tr>
<td>Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>9 December 1992</td>
<td>Reply to LOIPR due on 06/03/15</td>
<td></td>
</tr>
<tr>
<td>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-OP)</td>
<td>21 June 2005</td>
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<tr>
<td>Convention on the Rights of the Child (CRC)</td>
<td>26 July 1990</td>
<td>COBs submitted in Feb 2015</td>
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<tr>
<td>Convention on the Rights of Persons with Disabilities (CDP)</td>
<td>25 September 2007</td>
<td>8 January 2010</td>
<td>COB’S submitted on August 2015</td>
</tr>
<tr>
<td>International Convention on the Protection of the Rights of All Migrants and Members of their families (CMW)</td>
<td>-</td>
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<td></td>
</tr>
<tr>
<td>Convention for the Protection of All Persons from Enforced Disappearance (CED)</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Second Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP2-DP)</td>
<td>-</td>
<td>-</td>
<td></td>
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</tbody>
</table>