

# THE REPUBLIC OF MAURITIUS

2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup>  
COMBINED REPORT

UNDER THE  
AFRICAN CHARTER ON HUMAN  
AND  
PEOPLES' RIGHTS

2008

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## **INTRODUCTION**

Mauritius is an island of 720 square miles found in the south-west of the Indian Ocean and which has a population of about 1.2 million. The island obtained its independence from the British in 1968. Her Majesty the Queen of Great Britain was the head of State until 1992 when Mauritius adopted a republican status. There exists a parliamentary democracy led by a Prime Minister, assisted by a Cabinet of Ministers consisting of 22 Ministers. The head of State is the President who is elected by a majority of all members of the Assembly on a motion made by the Prime Minister.

The State of Mauritius holds fair and free national and local elections at regular intervals. These elections are supervised by an independent Electoral Supervisory Commission. The National Assembly consists of 70 members of whom 62 are elected and the remaining 8 are selected from among the best losers at general elections on a communal and party basis.

The economy is based on export-oriented manufacturing (mainly textiles), sugar, tourism and services.

On the recommendation of the National Remuneration Board, the Government establishes minimum wages which vary accordingly to the sector of employment and reviews minimum wages each year based on inflation. The actual income for most workers is higher than the recommended minimum wages, due to the present shortage of labour. The standard legal number of working hours is embodied in the concept of the 45-hour week and the 40-hour week in the sugar industry. The Government sets health and safety standards; the factory inspectors of the Ministry of Labour, Industrial Relations and Employment ensure that employers comply with health and safety requirements. Sanctions of a penal nature are provided for by law in cases of non-compliance with the said requirements. Mauritius is committed to safeguarding workers' rights and has ratified the eight core ILO Conventions pertaining to fundamental principles and rights at work.

In the context of the policy of Government to maintain the welfare state, free health services are available to the population. Private clinics also exist to cater for the needs of those who choose to pay for their treatment. Education is free up to the tertiary level whilst primary and secondary education is compulsory by law for all children up to the age of 16 including children with disabilities. Government has come up with a Policy Paper to promote the concept of inclusive education by integrating, as far as possible, children with disabilities in mainstream schools.

There is no State religion and the Government does not interfere with or restrict worship by any religious denomination. Freedom of religion as propounded in the Constitution is of special importance in view of the social fabric of Mauritian society which comprises elements of all races, cultures and religions.

The Constitution of Mauritius, a written document bequeathed to us by an Order-in-Council of the British Government at the time of independence in 1968, rests on two fundamental tenets: the rule of law and the doctrine of the separation of powers. It is provided under section 1 of the Constitution that the Republic of Mauritius shall be a

"sovereign democratic State", this being clearly in consonance with the fundamental rights and freedoms guaranteed under chapter II of the Constitution which is largely inspired from the European Convention on Human Rights.

The Constitution being the "supreme law of Mauritius", it is the duty of the Courts not only to interpret but also to ensure obedience to its provisions. It is up to the Supreme Court to determine the validity of any statute which is alleged to be unconstitutional because no law which contravenes the provisions of the Constitution can be allowed to stand.

The Court's primary concern in any case where a contravention of the Constitution is proved, is to ensure that such contravention is redressed as conveniently and expeditiously as possible.

The Constitution itself makes provision under section 17 for redress to be afforded to any individual whose rights under chapter II have been, are being or are likely to be contravened.

Even where the law makes provision for disciplinary offences to be dealt with by certain tribunals or Service Commissions (by bestowing upon them special jurisdiction to that effect), decisions taken by such bodies are ultimately reviewable by the Supreme Court.

In addition to the normal channels of complaint through the police authorities, citizens of the Republic of Mauritius may have recourse to the office of the Ombudsman and/or the office of the Director of Public Prosecutions or by way of minor petitions to the Attorney-General.

The National Human Rights Commission set up by the Protection of Human Rights Act 1998 may enquire into any written complaints from any person alleging that any of his human rights has been, is being or is likely to be violated by the act or omission of any other person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public body.

Section 4(1) of the Protection of Human Rights Act sets out the functions of the Commission:

***Functions of the Commission***

*(1) Subject to subsection (2), the Commission may, without prejudice to the jurisdiction of the Courts or the powers conferred on the Director of Public Prosecutions or the appropriate Service Commission –*

*(a) enquire into any written complaint from any person alleging that any of his human rights has been, is being or is likely to be violated by the act or omission of any other person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public body;*

*(b) enquire into any other written complaint from any person against an act or omission of a member of the police force in relation to him, other than an act or omission which is the subject of an investigation by the Ombudsman;*

- (c) where it has reason to believe that an act or omission such as is referred to in paragraph (a) or (b) has occurred, is occurring or is likely to occur, of its own motion enquire into the matter;*
- (d) visit any police station, prison or other place of detention under the control of the State to study the living conditions of the inmates and the treatment afforded to them;*
- (e) review the safeguard provided by or under any enactment for the protection of human rights;*
- (f) review the factors or difficulties that inhibit the enjoyment of human rights;*
- (g) exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.*

Members of the public may equally write directly to the Director of Public Prosecutions where they are not satisfied that a case is being dealt with diligently by the police. Powers are bestowed upon the Director of Public Prosecutions under section 64 of the District and Intermediate Courts (Criminal Jurisdiction) Act to request a magistrate to hold an inquiry into the cause of death and circumstances connected therewith when a person has died in prison or whilst in police custody. These inquiries are normally held in open court and all interested parties may be assisted by their legal advisers. The findings of the magistrate are then referred to the Director of Public Prosecutions who then decides on the course of action to be taken. It is to be noted that the Director of Public Prosecutions is appointed by the Judicial and Legal Service Commission as per section 72 of the Constitution.

### **The Judicial system**

The judicial system in Mauritius is largely inspired by British traditions which advocate the adversarial system of litigation. It consists of the Supreme Court, the Intermediate Court and the District Courts which all have jurisdiction in civil and criminal matters as well as the Industrial Court which hears industrial disputes. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings.

The Supreme Court is the principal court of original criminal jurisdiction and holds sessions for the dispatch of criminal business. Those criminal trials before the Supreme Court are held before a Presiding Judge and a jury consisting of nine persons, and relate to very serious offences such as murder and manslaughter. Provision is also made for the prosecution of certain offences, including offences under the Dangerous Drugs Act, before the Supreme Court without a jury. Death penalty has been abolished and instead, the Court may inflict penal servitude for life or for a specified time.

In addition, under section 82 of the Constitution, the Supreme Court has jurisdiction to supervise any civil or criminal proceedings before any subordinate court and make such orders as it considers necessary. The Supreme Court also has an appellate jurisdiction whereby it can review the decision of one of its own judges or those of subordinate courts.

The decisions of the appellate division are in turn subject to appeal to the Judicial Committee of the Privy Council on matters of great general public importance. The Chief Justice presides over the Supreme Court with the assistance of a Senior Puisne Judge and nine Puisne Judges. The Judicial Committee of the Privy Council has for the first time sat in Mauritius in September this year, such a measure being in line with ongoing reforms of the judicial system aiming at providing better access to justice to citizens of Mauritius.

The Intermediate Court and District Courts are presided over by Magistrates. They hear criminal matters in relation to which they have limited powers of sentencing while the jurisdiction of these courts in respect of civil matters is subject to monetary threshold.

Defendants have the right to retain private counsel of their choice. However, in certain circumstances where there are genuine financial constraints or a likelihood of its constitutional rights being infringed, a party may be granted legal aid upon making an application to the court.

Mauritius has a strong and healthy legal profession consisting of barristers assisted by attorneys and notaries. Barristers are either trained in Britain and are called to the Bar at one of the Inns of Court in London or are qualified in Mauritius after passing the vocational examinations of the Council of Legal Education.

Mauritius has hosted a series of conferences/meetings on human rights issues and in particular the Meeting of Legal Experts from 4 to 6 June 2003 followed by the First meeting of the Ministers of Justice of the African Union from 7 to 8 June 2003 which enabled the finalization of the drafting of the Protocol of the African Court of Justice. The Protocol was thereafter adopted by the Second Ordinary Session of the Assembly of the AU held in Maputo on 11 July 2003.

### **Promotion of Good Governance**

Mauritius acceded to the African Peer Review Mechanism in July 2003 and is among one of the first African countries to have volunteered to start the review process which covers four substantive thematic areas, namely Democracy and Political Governance, Economic Governance and Management, Corporate Governance and Socio-Economic Development. The National Economic and Social Council, an independent body has been designated as the national focal point to oversee the process in Mauritius. Mauritius is currently finalizing its self-assessment report and is expected to be peer reviewed in the course of 2009.

### **Promotion of African Unity**

With a view to demonstrating its commitment to the preservation of African cultural values and African unity, the Government organizes a series of activities to mark Africa Day on 25 May every year. This provides an opportunity to reiterate the adherence of the Government to the principles and values of the African Union.

AU Major Human Rights instruments which Mauritius has signed and/ or ratified:

- (a) OAU Convention Governing Specific Aspects of Refugee Problems in Africa (1969) (Signed)
- (b) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (Signed)
- (c) AU Convention on Preventing and Combating Corruption (2003) (Signed)
- (d) African Charter on Human and Peoples' Rights (1981) (Ratified)
- (e) African Charter on the Rights and Welfare of the Child (1990) (Ratified)
- (f) African Nuclear Weapon – Free Zone Treaty (The Treaty of Pelindaba) (1996) (Ratified)
- (g) Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (1998) (Ratified)
- (h) OAU Convention on the Prevention and Combating of Terrorism (1999) (Ratified)
- (i) Protocol relating to the establishment of the Peace and Security Council of the African Union (2002) (Ratified)
- (j) Protocol of the Court of Justice of the African Union (2003) (Ratified)

## PART I: CIVIL AND POLITICAL RIGHTS

### **ARTICLE 1**

Section 17 of the Constitution provides that a citizen who alleges that any of his constitutional rights is being or is likely to be contravened may apply to the Supreme Court for redress. It is worth noting that Section 17 is entitled "Enforcement of Protective Provisions". In December 2002, in the interlocutory judgment in **Bishop of Roman Catholic Diocese of Port Louis and Ors v. Suttjadeo Tengur**, the Supreme Court made the following observations:

*"A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The right to move the Supreme Court for redress where a fundamental right has been infringed is itself a fundamental right...Section 17 is the soul and heart of the Constitution..."*

Section 17 (2) of the Constitution, in addition, confers on the Supreme Court very wide powers to make such orders, issue such writs and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of the protected right.

Section 17 of the Constitution ensures that any person whose rights or freedoms are violated shall have an effective remedy. A recent example is the case of **S. Tengur v. The Minister of Education 2002 SCJ 279**. In this case, the applicant alleged that the practice of having 50% of the seats in schools managed by the Roman Catholic Authority and funded out of public funds reserved for children of Catholic faith was discriminatory. The Supreme Court declared the policy of the Roman Catholic Authority to be an act of unlawful discrimination in breach of Section 16 of the Constitution, since Catholics had, all other things being equal, an advantage over non-Catholics in getting admitted to the secondary schools run by the Roman Catholic Authority. The Court, in arriving at its decision, considered the provisions of the UNESCO Convention against Discrimination in Education, and the International Covenant on Economic, Social and Cultural Rights, to which Mauritius is a signatory *“as it is a well-recognized canon of construction that domestic legislation, including the Constitution, should if possible be construed so as to conform to such international instruments.”* The co-defendant lodged an appeal against this declaratory judgment to the Judicial Committee of the Privy Council and the Judicial Committee confirmed that the said practice was discriminatory (**Bishop of Roman Catholic Diocese of Port Louis and others v Suttyhudeo Tengur and others Privy Council Appeal No 21 of 2003**).

Please refer also to comments in article 26.

## **ARTICLE 2**

Section 16 of the Constitution provides that no law shall make any provision that is discriminatory either of itself or in its effect. The term “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description. Section 17 of the Constitution provides that a citizen who alleges that his right under section 16 of the Constitution is being or is likely to be contravened may apply to the Supreme Court for redress.

## **ARTICLE 3**

Please refer to comments under article 28.

The Sex Discrimination Act 2002 came into force on 8 March 2003 and its object is “to provide for the elimination of all forms of gender discrimination and sexual harassment in certain areas of public activity”. The Act prohibits discrimination in employment: no employer is allowed, in relation to recruitment, selection or employment to discriminate

on the grounds of sex, marital status, pregnancy or family responsibility. Discrimination in education, in accommodation, in the disposal of property, in companies and partnerships, in clubs is strictly prohibited under the provisions of the Sex Discrimination Act.

In addition, the Sex Discrimination Act 2002 in its Part IV also penalizes acts of sexual harassment (defined as unwelcome sexual advances, unwelcome requests for sexual favours, unwelcome conduct of a sexual nature). No employer may sexually harass an employee or a job seeker, no employee may harass a fellow employee, no staff of an educational institution may sexually harass a colleague or a student, these being a few examples of the prohibition of sexual harassment.

The Sex Discrimination Division, which is part of the National Human Rights Commission set up under the Protection of Human Rights Act is empowered to receive and enquire into any written complaint relating to alleged infringements of the Sex Discrimination Act. The Division's functions also include promoting the understanding and acceptance of the Sex Discrimination Act, undertaking research and educational programs for the purpose of promoting the objects of the Sex Discrimination Act and equally preparing and publishing in such manner as it considers appropriate, guidelines for the avoidance of gender discrimination and sexual harassment.

The Equal Opportunities Bill which is presently tabled before Parliament, incorporates all the different grounds of discrimination covered under sections 3 and 16 of the Constitution as well as age, pregnancy, mental and physical disability *and sexual orientation* in areas dealing with employment, education, the provision of accommodation, goods, services and other facilities, sports, the disposal of immovable property, admission to private clubs and premises open to members of the public. The Bill will also provide for the establishment of an Equal Opportunities Commission and an Equal Opportunities Tribunal.

#### **ARTICLE 4**

The right to life is entrenched in Section 4 of the Constitution. However, death resulting from the use of reasonably justifiable force is not considered as being in breach of this right if such force is used-

*“(a) for the defence of any person from violence or for the defence of property;  
(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;  
(c) for the purpose of suppressing a riot, insurrection or mutiny, or  
(d) in order to prevent the commission by that person of a criminal offence, or if he dies as a result of a lawful act of war”.*

In all alleged cases of police brutality, the National Human Rights Commission carries out an enquiry and concludes as to the existence or non-existence of foul play after

hearing witnesses. Should the Commission find that there has been foul play, the matter is referred to the Director of Public Prosecutions for any action deemed necessary.

In all matters where death is suspicious or violent, the Director of Public Prosecutions is empowered by virtue of Section 111 of the District and Intermediate Courts (Criminal Jurisdiction) Act to require a Magistrate to hold an enquiry into the cause of death.

The National Assembly enacted the Abolition of Death Penalty Act in 1995, thereby abolishing death penalty. However, the Constitution has not been amended to prohibit the imposition of death sentences.

In June 1998, Mauritius signed the Rome Statute of the International Criminal Court and subsequently ratified same on 5 March 2002. Drafting work pertaining to the implementation of the provisions of the Rome Statute has been undertaken by the Attorney-General's Office with the assistance of the Office of the Regional Delegation of the International Committee of the Red Cross for Southern Africa and the Indian Ocean. The International Criminal Court Bill is in the process of being finalized.

The Prevention of Terrorism Act 2002 provides for numerous measures to combat terrorism, thereby protecting the right to life. Acts of terrorism include, inter alia, "attacks upon a person's life which may cause death" (Section 3 (2)). It is an offence under the Act to commit an act of terrorism, hold terrorist meetings, or to support an act of terrorism, or to harbour a terrorist.

Regulation 6 of the Medical Council (Code of Practice) Regulations 2000 provides as follows-

- b. *"Patients have a right to life: accordingly, it is the registered medical practitioner's duty to:*
  - (a) *respect life from the time of conception;*
  - (b) *respect it at all times irrespective of whatever pressures from outside that may be exerted to the contrary;*
  - (c) *respect the quality of life including the capacity to procreate except for serious therapeutic reasons;*
  - (d) *accept death as a natural phenomenon when it comes and avoid postponing it indefinitely by artificial means which are unlikely to improve the quality of life for the patient;*
  - (e) *ensure, when death is unavoidable, that a patient dies with dignity and with as little suffering as possible".*

## **ARTICLE 5**

Section 7(1) of the Constitution states that no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

The Criminal Code was amended in the year 2003 to include the offence of “Torture by public official”.

In the case of **Philibert & Ors v The State**, judgment delivered by the Supreme Court as at 19 October 2007, it has been held that section 222(1) of the Criminal Code and section 41(3) of the Dangerous Drugs Act 2000 contravened section 7(1) of the Constitution in as much as the indiscriminate mandatory imposition of a term of 45 years penal servitude in all cases contravened the principle of proportionality and amounted to “inhuman or degrading punishment or other such treatment” contrary to section 7(1) of the Constitution. However, the Court went on to add that the impugned section 222(1) of the Criminal Code and section 41(3) of the Dangerous Drugs Act were unconstitutional only in so far as they provided for a substantial mandatory prison sentence of 45 years and that the relevant sections should be read down in such a way that upon conviction an offender would be liable to a prison sentence in the discretion of the Court but which would carry a maximum of 45 years. However, it is to be noted that the Judicial Provisions Bill has been voted by Parliament as at 18 November 2008 and one of the objects of the Bill is to abolish fixed sentences and other mandatory sentences and to restore to the Courts their sentencing discretion in respect of all offences.

Prior to the case of *Philibert*, the Supreme Court held in the case of **Pandoo v The State SCJ 225 of 2006** that the principle of proportionality had been violated by the penalty imposed under the Value Added Tax Act of 1998 and was in breach of sections 3,5 and 7 of the Constitution.

The 1st of February has now been proclaimed a public holiday to commemorate the, abolition of slavery which took place on February 1 1835. On that day, several activities are organized, including a wreath laying ceremony and cultural activities. Moreover, Le Morne has been inscribed on the World Heritage List in remembrance of slaves.

On the international plane, Mauritius has been chosen, by a drawing of lots, as the first country to be reviewed under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Mauritius has had the privilege of receiving the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 10-18 October 2007. A National Preventive Mechanism as provided for under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been set up administratively pending amendments to be brought to existing legislation setting up the legal framework under which the National Preventive Mechanism is to operate.

Section 6 of the Constitution provides for protection from slavery and forced labour. However, the expression “forced labour” does not include-

- (a) any labour required in consequence of the sentence or order of a court;
- (b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service

- as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

## **ARTICLE 6**

Section 5 of the Constitution states that no person shall be deprived of his personal liberty save as may be authorized by a law in a number of circumstances including the need to ensure his appearance in Court in answer to a Court order, a reasonable suspicion that a person has committed or is about to commit an offence or that he is likely to commit breaches of the peace. A person who is arrested or detained should be brought before a Court without undue delay and if such a person is not tried within a reasonable time he should be released, with or without conditions, without prejudice to the appropriate authority's power to bring fresh proceedings subsequently, including his right to be released on bail. The Bail Act sets out the grounds on which bail may be refused by the Court as well as the conditions that may be imposed by the Court for the release of the defendant or detainee.

In the case of **Maloupe v. The District Magistrate of Grand Port 2000 SCJ 223**, the Supreme Court made the following observations:

*“The rationale of the law of bail at pre-trial stage is that a person should normally be released on bail if the imposition of the conditions reduces the risks - risk of absconding, risk to the administration of justice, risk to society - to such an extent that they become negligible having regard to the weight which the presumption of innocence should carry in the balance”.*

In the case of **D. Hurnam v The State Privy Council Appeal No.53 of 2004**, the Judicial Committee of the Privy Council observed that the reasoning of the Supreme Court in the cases of **Noordally v Attorney-General 1986 MR 204**, **Maloupe** (cited above), **Labonne v The Director of Public Prosecutions 2005 SCJ 38** and **Deelchand v Director of Public Prosecutions 2005 SCJ 215**, is consistent with the jurisprudence on the European Convention, which recognizes that the right to personal liberty, although not absolute, is nonetheless a right that is at the heart of all political systems that purport to abide by the rule of law and protects the individual against arbitrary detention.

With respect to Article 9 (4) of the Covenant, the procedure of Habeas Corpus is also available in Mauritian law. A writ of habeas corpus is in effect a procedure to secure, as a matter of urgency, the release of a person who is illegally detained. Section 188 of the Criminal Procedure Act provides as follows:

*“Where a Judge receives a complaint by or on behalf of a person to the effect that he is illegally committed or restrained of his liberty, he may order all persons whom it may concern to:*

- *return to him any depositions or commitments;*
- *take and return any other matter any other evidence or matter necessary for the purpose of ascertaining the cause of such detention and imprisonment;*
- *issue a writ of habeas corpus directed generally to every gaoler, officer or any other person in whose custody the person committed or restrained may be”.*

In July 2000, the Judicial Committee of the Privy Council delivered the ground breaking judgment of **Sooriamurthy Darmalingum v. The State (Privy Council Appeal No. 42 of 1999)** with respect to the right to be tried within a reasonable time. In that case, there had been a delay of 13 ½ years between the appellant’s arrest and judgment on appeal. The Law Lords concluded that there had been a flagrant breach of the reasonable time guarantee, and that the appellant had had the shadow of the proceedings hanging over him for almost 15 years and the appellant’s conviction was therefore quashed. Following the decision in **Darmalingum**, a stay of proceedings is sought in Mauritian Courts, often successfully, on behalf of accused persons whose trial suffers inordinate delay.

## **ARTICLE 7**

Section 10 of the Constitution mirrors the rights in Article 14 of the Charter. The right to be tried without undue delay has become more alive since the decision in **Darmalingum** (cited above). It was held in the case of **Darmalingum** that it was not necessary to rule on the pre-trial delay in as much as the protection afforded by section 10 of the Constitution applied to appellate proceedings and the Supreme Court had no excuse for not disposing of the appeal promptly.

In the recent case of **P. Boolell v The State [2005] PRV 39** it was held that section 10(2) of the Constitution contains a guarantee that where a person is charged with a criminal offence, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. The core right, the Court goes on to say, guaranteed by the section is to a fair trial, and the section creates rights which, though related, are separate and distinct. The right is one to trial without undue delay; it is not a right to be tried after undue delay. An appropriate remedy should be afforded for such a breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless the hearing was unfair or it was unfair to try the defendant at all. It was further held that the threshold for determining a breach of the reasonable time requirement is not easily crossed and the issues which need to be considered are the complexity of the case, the conduct of the defendant, and the manner in which the prosecuting authorities administered the case.

The Legal Aid Act still applies. In relation to legal aid, in the case of **Degrace v. The State [2001] SCJ 45**, the Appellate Court observed that the appellant had intimated his wish not to retain counsel in the lower court. Whilst agreeing that the Constitution did not impose a duty on Magistrates to enquire whether an accused party lacked the means to

retain counsel, the Court, on a review of the relevant provisions of the European Convention on Human Rights and the position in the UK and the USA, made the following observations:

*“An accused party must be familiar with the rules of criminal procedure and ‘voire dire’ to be able to conduct his case on his own. We would strongly recommend that the learned Magistrates of our Courts should take the initiative to ensure that impoverished persons are afforded legal aid in trials.”*

As at 1<sup>st</sup> August 2008, Cabinet has taken note of the proposals made in the Green paper on legal aid in Mauritius prepared by a working committee in the context of the review of the legal aid system in Mauritius. The Green paper addresses amongst other issues the new concept of legal aid, the application of legal aid, the eligibility test, the expansion and extension of legal aid services, the establishment of a Legal Aid Board and corporate social responsibility.

#### **ARTICLE 8**

With a view to allowing Mauritians of all cultural denominations the opportunity to better participate in religious and cultural activities of their choice and to foster harmony and mutual respect, there are laws which have been passed providing for the establishment of different cultural centres. Please refer to comments on article 17.

In the case of **Raj Dayal v. Gilbert Ahnee [2002] SCJ 303**, the plaintiff was the Commissioner of Police when in 1995 the defendants wrote and caused to be published an article which, in the plaintiff’s view, conveyed to the readers that there is a grotesque conflict between his role as Commissioner of Police and the performance of public rituals pertaining to his faith. According to the plaintiff, he was sincerely involved in the practice of his religious faith and this did not in any way conflict with his obligations and duties as Commissioner of Police. The plaintiff also argued that there was nothing which prevented him from going about with his spiritual practice in public or in private in the company of other people.

The defendant, however, deposed in Court to the effect that he was “shocked and scandalized” to see the plaintiff on television actively participating in religious rituals on the occasion of Hindu festivals. According to the defendant, the plaintiff’s position as Commissioner of Police imposed on him “a devoir de reserve” and that as a high ranking officer of the State, the plaintiff should have refrained from actively and publicly participating in religious rites.

The Court held that the article in issue went much beyond the mere expression of the author’s views on secularism. The Court noted that the sincerity of purpose of a person who is involved in the practice of his religious faith was being questioned, and that the plaintiff’s conduct was being referred to as “une indigne exploitation populiste des sentiments religieux”.

The article was held to be highly defamatory, and damages were awarded to the plaintiff.

## **ARTICLE 9**

Section 12 of the Constitution provides for the protection of freedom of expression and such right includes the freedom to hold opinions and to receive and impart ideas and information without interference and freedom from interference with one's correspondence.

The Independent Broadcasting Authority Act 2001 establishes the Independent Broadcasting Authority which inter alia, promotes the provision of a diverse range of radio and television broadcasting services throughout Mauritius. It also deals with the licensing of new radio and TV channels and the devising of parameters and criteria for the authorization of new channels, including guidelines for programmes, safeguards against indecency and sanctioning non-conformity with established standards.

The Second Schedule to the Act establishes a Code of Conduct for Broadcasting Services, with its preamble to the following effect:

*“The fundamental principle to be upheld is that the freedom of all broadcasting licensees is indivisible from, and subject to, the same restraints as those relevant to the individual person, and is founded on the individual's right to be informed and to freely receive and disseminate opinions”.*

The general restrictions, as per the new Code, are that broadcasting licensees shall:

*“(a) not broadcast any material which is indecent, obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or the public order or relations between sections of the population;  
(b) not, without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocities, drug abuse and obscenity; and  
(c) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.”*

In its judgment in the **Dayal** case cited above, the Supreme Court observed that:

*“There is no doubt that freedom of expression is an entrenched constitutional right of the highest importance in a democratic society like ours.”*

Freedom of the press is an essential component of the right to freedom of expression as enjoyed under section 12 of the Constitution. The local media enjoy a long tradition of freedom and pluralism with a number of dailies, weeklies, fortnightlies and monthlies whilst the audiovisual landscape consists of the national radio and television, the Mauritius Broadcasting Corporation and equally private radio stations. Government intends to review the media landscape and to bring about reform in media law. In this context, Geoffrey Robertson, Q.C, a well-known authority on media law in Commonwealth States, was invited by Government in May 2008 to advise Government on the appropriate media framework for the benefit of both the public and Government.

It was held in '**State v Sir Bhinod Bacha & Ors**' [1996] SCJ 105 that although there is no doubt that the press has the right and indeed the duty to bring facts to the attention of the public, it has however a corresponding duty to be fair. It is certainly no role of the

independent and responsible press to fabricate and still less to accuse persons of crimes. Contempt of Court may be committed even though proceedings are neither in existence nor imminent.

The accused was charged, along with others with the murder of his wife and son, who had died in a fire which had destroyed their residence.

Following the fire, the press published extensive articles which were misleading and prejudicial to the accused.

### **ARTICLES 10 & 11**

Section 13 of the Constitution provides for the protection of freedom of assembly and association and reads as follows-

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and, in particular, to form or belong to trade unions or other associations for the protection of his interests.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –
  - a. in the interests of defence, public safety, public order, public morality or public health;
  - b. for the purpose of protecting the rights or freedoms of other persons;
  - or
  - c. for the imposition of restrictions upon public officers,

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

The Industrial Relations Act (IRA) regulates the registration and administration of trade unions, the settlement of industrial disputes, the promotion of harmonious industrial relations, the establishment of a Permanent Arbitration Tribunal, an Industrial Relations Commission and a National Remuneration Board.

The right to organise has been explicitly recognised in the IRA. Section 49(1) protects in unambiguous terms the right of workers to be or not to be a member of a trade union and to participate in trade union activities, including the right to seek and hold appointment or election as officers of a union. Section 49(2) also protects the workers against discrimination, victimisation or termination of employment by the employer in the exercise of this right.

Section 27 of the IRA allows for the formation of a federation but does not make any provision for the formation of confederation or the right of unions to join international trade union organization. However, a number of confederations exist and several trade unions are affiliated to International Trade Union Organisations.

The actual powers of the Registrar of Associations as regards the internal administration of trade unions are considered to be excessive. This is viewed as being arbitrary and paternalistic by the trade unions. The intervention of the Registrar in the administration of the trade unions is viewed as a serious hindrance to the autonomy of these organisations.

Under the IRA, a strike becomes unlawful unless a dispute has been reported to the Minister and within 21 days there has been no settlement nor a referral either to the Industrial Relations Commission or the Permanent Arbitration Tribunal and the strike starts within 56 days from the date of the receipt of the report by the Minister.

In the case of **General Workers Federation v The Commissioner of Police 2003 SCJ 3**, the applicant was aggrieved by a decision of the respondent to prohibit a gathering, and referred the matter to the Judge in Chambers.

The facts were as follows: by virtue of the provisions of the Public Gatherings Act 1991, the applicants informed the respondent of their intention of holding a peaceful march in the City of Port Louis to protest against the unfair and unjust conditions contained in the African Growth and Opportunity Act and also against the policies of President Georges W Bush. The letter stated the itinerary of the proposed march as well as the time at which the march would end. The respondent took the decision to prohibit the march, but failed to inform the applicants of the decision with the delay of 48 hours imposed on him by Section 4 (3) of the Public Gatherings Act.

The reason given by the respondent for the refusal reads thus:

*"I wish to inform you that as the AGOA Conference will be in progress, no public gathering or procession will be allowed as the Force will be fully taken up with the commitments in connection with the said conference".*

Section 4 of the Public Gatherings Act provides for the powers of the Commissioner of Police after he has been duly notified of a proposed public gathering. That section reads as follows:

*"4. Regulation of public gatherings*

- (3) The Commissioner shall have power, for the purpose of preventing public disorder, damage to property or disruption of the life of the community, to impose conditions on the holding of a gathering.*
- (4) Where the Commissioner intends to exercise his powers under subsection (1), he shall within 48 hours from receiving notice of the gathering, call the organizers and inform them of his intention to impose conditions on the*

*holding of the gathering and the reasons for those conditions.*

- (5) *The Commissioner shall have the power to prohibit the gathering where he reasonably believes that imposing conditions would not be sufficient to prevent public disorder, damage to property or disruption of the life of the community and shall so inform the organizers within 48 hours of receiving the notice.*
- (6) *Any person aggrieved by a decision of the Commissioner under this section may refer the matter to a judge in Chambers who shall, after hearing the parties, make any such order as he may deem fit in the circumstances."*

It was held by the Court that the Commissioner of Police had made a wrong use of his powers under the Public Gatherings Act and he could only prohibit a gathering where it was not possible to impose appropriate conditions on its being held. The decision to prohibit the gathering was also held to be in violation of "the spirit of" Section 12 (freedom of expression) and Section 13 (freedom of assembly) of the Constitution.

29. In order to reform the industrial relations framework, promote effective tripartism and strengthen dialogue with social partners, a new Employment Relations Act was passed in August 2008. The Act focuses on, *inter alia*, the protection and enhancement of the democratic rights of workers and trade unions, the simplification of the procedures for registration and recognition of trade unions, the promotion of collective bargaining, the promotion of voluntary settlement and peaceful resolution of disputes, the strengthening of the disputes and conflict resolution procedures and institutions to ensure speedy and effective settlement, the right to strike as a last resort after conciliation and mediation have failed and the building of a productive employment relationship.

30. The Employment Rights Act which was passed at the same time aims at achieving the flexibility needed for creating demand for labour, together with security needed to protect the worker as he or she switches between jobs. The object of the Act is to revise and consolidate the law relating to employment, contracts of employment or service, the minimum age for employment, hours of work, payment of remuneration and other basic terms and conditions of employment with a view to ensuring appropriate protection of workers. Both the Employment Relations Bill and the Employment Rights Bill were widely discussed with national stakeholders and experts from the International Labour Organisation before they were introduced in the National Assembly. However, it is to be observed that both the Employment Relations Act and the Employment Rights Act have not yet been proclaimed and are not in force yet.

## **ARTICLE 12**

Freedom of movement is enshrined in section 15 of the Constitution and it includes the right to move freely throughout Mauritius, the right to reside in any part of Mauritius, the

right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

In the case of **Municipal Council of Port Louis v. Ibrahim Yousouf Aboobakar 2004 SCJ 10**, the Municipality sought a perpetual injunction to restrain the defendant from entering the premises of the Central Market, given that the defendant had become a hardened source of nuisance to tourists, stall occupiers and the public at large. In deciding the matter, the Supreme Court referred to Section 15 of the Constitution and the recent case of *Oliviera v. Netherlands (2003)* before the European Court of Justice. The Court observed that restrictions to freedom of movement may be granted so long as justifiable in a democratic society and proportionate to the mischief intended to be covered.

It was held that an order restraining a citizen's access to a market place altogether for his lifetime would go too far in a democratic society. The Bail Act 1999 imposes restrictions on the right to leave the country where one is charged with a serious offence. However, still by virtue of the same Act, a person may ask for a Variation Order. The Court may vary an order if it is satisfied that it is necessary to do so in the following instances -

- (1) to avoid loss or prejudice to the applicant;
- (2) to avoid damage or loss to the applicant's property;
- (3) where the health of the applicant or his next of kin is involved; or
- (4) in such other cases as the Court may deem fit.

The Court, where it makes a variation order, may on being satisfied that there are sufficient reasons to do so provide for multiple departures within a period to be specified by the Court .

### **ARTICLE 13**

In the case of **Cehl Mohamad Fakeemeeah v The Commissioner of Police (2001)**, the applicant was a detainee in prison on provisional charges and at the same time the leader of a political party and a candidate at the then scheduled Municipal Council elections. He sought an order directing the respondents to:

- (i) authorize him to campaign through press conference;
- (ii) make such arrangements as necessary for him as an elector to appear at the polling center to cast his vote on the election day;
- (iii) make such arrangements as necessary for him to attend as candidate at polling station centres on the election day;
- (iv) make such arrangements as necessary for him to attend as candidate on the counting day.

All four orders asked for were refused. The Court held that the applicant being in lawful custody and being unable to attend in person at the time and place described for polling was, by virtue of Section 44 of the Constitution, not entitled to vote at the Municipal Elections.

The right to vote was said not to be absolute under our Constitution. The Court referred to Article 25 of the International Covenant on Civil and Political Rights which, in the Court's view, "*prescribes that the right to vote may be subject to limitations provided they are not unreasonable*".

The Rodrigues Regional Assembly Act 2001 has been enacted to provide for the establishment of the Rodrigues Regional Assembly and the Executive Council of the Regional Assembly. The Regional Assembly consists of 18 members elected in accordance with section 4 of the Act, 12 of whom are local region members and the other six island region members.

#### **ARTICLE 14**

Section 8 of the Constitution provides for protection from deprivation of property. Please refer to Article 21.

## **PART II: SOCIAL, ECONOMIC AND CULTURAL RIGHTS**

#### **ARTICLE 15**

Mauritius is a party to the International Covenant on Economic, social and Cultural Rights (ICESCR) and every Mauritian citizen is entitled to work and to receive equal pay for equal work as guaranteed under Article 6 of the ICESCR.

Regarding the right to work, it is estimated that Mauritius has a workforce of about 500 000 people amongst whom around 70 000 are in public employment. The Pay Research Bureau determines the salaries and other conditions of employment for public sector employees. The National Remuneration Board fixes sectorial minimum wages in the private sector.

The right to the same employment opportunities between men and women is guaranteed by section 5 of the Sex Discrimination Act 2002 which provides:

*No employer shall, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, discriminate against that other person on the grounds of sex, marital status, pregnancy or family responsibility in –*

- (a) the advertisement of the job;*
- (b) the arrangements made for the purpose of determining who should be offered that employment;*
- (c) the terms and conditions on which employment is offered;*
- (d) the creation, classification or abolition of jobs.*

Wages and other terms and conditions of employment in the private sector are prescribed by Remuneration Order Regulations in 29 sectors or by collective agreement and arbitration awards. The wages are fixed on the basis of sectors and grades without distinction between male and female employees. There are, however, a few sectors of employment, namely the sugar industry, field crop and orchard sector, tea industry, livestock sector and salt-manufacturing industry, where basic wages are prescribed on a gender basis owing to the strenuous nature of some operations which female employees are not compelled to perform.

Such discriminatory provisions are being seriously looked into and the National Remuneration Board (NRB) has been requested to examine these gender-based job classifications and to make recommendations with a view to eliminating them. The NRB has been reviewing job appellations and classifications to ensure they are based on the principle of equal remuneration for work of equal value. References to “female worker” in various Remuneration Orders have been removed and gender neutral terms are being used.

As regards the public sector, the Pay Research Bureau (PRB) is responsible for reviewing salaries and other terms and conditions of employment. The wages and conditions recommended are fixed on the basis of job content without distinction between male and female employees. In its report issued in 2003, the PRB has replaced all gender-based job appellations by gender neutral ones.

**The table below gives the percentage distribution of the employed population. It shows that most working persons were engaged in the manufacturing sector, which provided jobs to 31% of employed women and 19% employed men. Among women, wholesale and retail trade, etc provided a further 15% of jobs, followed by education (9%) and ‘agriculture and fishing’ (8.5%).**

**% Employment by Industry and Sex, 2006**

<b>Industrial Group</b>	<b>Male</b>	<b>Female</b>
Agriculture, forestry and fishing	10.4	8.1
Mining and quarrying	0.1	0.0
Manufacturing	18.4	26.7
Electricity, gas and water	1.0	0.1
Construction	15.2	0.5
Wholesale and retail trade, etc	13.1	15.9
Hotels and restaurants	7.1	7.0
Transport , storage and communication	9.1	2.9
Financial Intermediation	1.6	2.7
Real estate, renting & business activities	4.6	3.9
Public administration and defence	9.0	5.0
Education	3.9	9.2
Health & Social work	2.3	4.9
Other community, social and personal services	4.4	13.0
<b>Total</b>	<b>100</b>	<b>100</b>

**Source: CSO, Continuous & Multipurpose Household Survey (CMPHS) 2006**

Working women tend to concentrate in small industrial sectors. The top 3 industries for women accounted for 55% of women's employment while the top 3 industries for men absorbed 49% of male's jobs.

**Table on Employment in Government Services by occupation and sex (2007)**

**A. Employment in Government Services by occupation & sex,  
Republic of Mauritius, March 2007**

<b>Occupation</b>	<b>Male</b>	<b>Female</b>	<b>Both sexes</b>
<b><i>Legislators, senior officials &amp; managers</i></b>	<b>1,218</b>	<b>801</b>	<b>2,019</b>
PS	18	9	27
PAS	33	23	56
Director/Manager	132	73	205
Rector, Principal	60	35	95
Head teacher, Deputy head teacher	525	527	1,052
Deputy/Assistant Director/Manager	43	16	59
Ambassador	18	3	21
First Secretary	19	4	23
Second Secretary	28	16	44
Senior Chief Executive	3	2	5
Minister Counsellor, Deputy High Commissioner	4	0	4
Other	335	93	428
<b><i>Professionals</i></b>	<b>2,868</b>	<b>2,128</b>	<b>4,996</b>
Judge	7	5	12
Magistrate	14	25	39
Doctor (medical)	641	202	843
Dentist	41	17	58
Pharmacist	13	8	21
Engineer	93	5	98
Economist	26	20	46
Statistician	18	10	28
Education Officer	1,126	1,552	2,678
Scientific Officer	33	13	46
Inspector, Supervisor - primary	67	36	103
Auditor, (senior/principal)	33	24	57
Accountant	12	4	16
Analyst/programmer	30	47	77

Advisor	54	6	60
Surveyor	59	4	59
Architect	21	6	27
Librarian	3	13	15
Other	577	131	708
<b><i>Technicians &amp; associate professionals</i></b>	<b>9,054</b>	<b>9,383</b>	<b>18,437</b>
Teacher, Senior Teacher	1,739	3,101	4,840
Technical officer, technician & technical assistant (agricultural sector)	199	67	266
Dispenser	168	52	220
Nursing officer, midwife, ward asst. & student nurse	1,486	2,203	3,689
Assistant Secretary	56	66	122
Establishment Officer	31	96	127
Executive Officer, HEO	245	468	713

**B. Employment in Government Services by occupation & sex,  
Republic of Mauritius, March 2007**

<b>Occupation</b>	<b>Male</b>	<b>Female</b>	<b>Both sexes</b>
Social Security Officer, Higher SSO, Senior SSO	219	260	479
Customs Officer	7	4	11
Labour Inspector	45	31	76
Statistical Officer, Senior SO	57	83	140
Personnel officer/Senior PO	49	73	122
Community health worker	51	179	230
Infant school teacher (pre-primary)	1	127	128
Instructor/instructress (dressmaking, etc.)	0	101	101
Finance Officer/Assistant Finance Officer	222	343	565
Examiner of accounts/Senior	37	43	80
Office Superintendent	14	28	34
Purchasing & Supply Officer	337	118	415
Other	4,091	1,940	6,031

<b><i>Clerks</i></b>	<b>1,540</b>	<b>3,919</b>	<b>5,459</b>
Clerk, clerical officer, school clerk	1,306	2,277	3,583
Confidential Secretary, typist/WPO & stenographer	21	1,432	1,453
Data entry operator	2	47	49
Telephonist	134	44	178
Other	77	119	196
<b><i>Service workers</i></b>	<b>11,277</b>	<b>702</b>	<b>11,979</b>
Police Constable, Officer, Sergeant	9,515	544	10,059
Prison Guard/Officer	817	70	887
Cook	150	59	209
Fireman/fire officer	729	0	729
Other	66	30	96
<b><i>Skilled agricultural &amp; fishery workers</i></b>	<b>282</b>	<b>1</b>	<b>283</b>
<b><i>Craft &amp; related trade workers</i></b>	<b>3,312</b>	<b>35</b>	<b>3,347</b>
<b><i>Plant &amp; machine operators</i></b>	<b>2,015</b>	<b>18</b>	<b>2,033</b>
<b><i>Elementary occupations</i></b>	<b>12,995</b>	<b>1,546</b>	<b>14,541</b>
Labourer/agricultural worker/gardener	4,836	261	5,097
Caretaker, Senior caretaker	763	112	875
Attendant, hospital servant/domestic	3,278	1,118	4,396
Cleaner & Sanitary Attendant	104	14	118
Other	4,014	41	4,055
<b>TOTAL</b>	<b>44,561</b>	<b>18,533</b>	<b>63,094</b>

### Disabled persons

With regard to disabled persons, the Training and Employment of Disabled Persons Act 1996 aims at preventing discrimination against disabled persons resulting from or arising out of their disability.

A disabled person has been defined as someone who has a physical, mental or sensory disability which gives rise to barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society.

Section 3 of the Act establishes the Training and Employment of Disabled Persons Board to prevent discrimination against disabled persons and to encourage the establishment of appropriate vocational centres and other institutions for the training of disabled persons.

By virtue of the same Act, every disabled person may apply to have his name and particulars entered in the register of disabled persons. Employers may no longer discriminate against disabled persons in relation to advertisement and recruitment for employment.

The Equal Opportunities Bill which will soon be introduced in Parliament shall also cater for persons suffering from mental and physical impairment.

A plan of action on disability is currently equally being worked upon by the Ministry responsible for the subject of social security.

#### **ARTICLE 16**

Health, being a fundamental right, is placed at the core of the socio-economic development agenda of Government. Besides, health services are provided, free of any user cost, to the entire population at the point of use, irrespective of age, sex, religion and race

The Mauritius Institute of Health Act provides for a Mauritius Institute of Health which is the provider of advisory services in matters of health care and the focal point and resource centre for the production, exchange and promotion of health learning and health information material, amongst others.

The Mauritius Mental Health Care Act provides for the establishment of the Mauritius Mental Health Care Association which aims at promoting good human relations and the highest level of mental health, either alone or in co-operation with other national or international organizations ; fostering the ability to live harmoniously in a changing environment and encourage research in the field of mental health; provide information, advice and assistance in the field of mental health; and promoting and managing a school for educationally subnormal children, amongst others.

The Medical Council Act provides for a Medical Council which exercises and maintains discipline in the practice of medicine, and establishes a Code of Practice for the medical profession on standards of professional conduct and medical ethics and monitoring compliance with such a code and promotes the education and training of medical practitioners generally, amongst others.

The Board of the Medical Council is responsible to the Ministry for –

- the planning and management of mental health care;

- the promotion of standards of good practice and the efficiency of mental health services;
- the protection of patients' rights;
- the promotion of the physical and mental health of patients;
- the promotion of measures to ensure that patients are given appropriate care;
- recommending measures for the occupational health care of patients;
- recommending measures on continuing education and training of nursing and paramedical staff;
- the investigation of complaints and grievances of patients, patients' next of kin, visitors and staff;
- recommending measures for the sound financial management of mental health services.

Section 9(1) of the Food Act provides that:-

Where the authorized officer is of opinion that the preparation, cooking or selling of food at any premises, or the addition of any ingredient to any food constitutes a hazard to health, the authorized officer may serve a prohibition order in the form specified in the Eighth Schedule on the person conducting the trade or business to cause the activity to be discontinued forthwith.

Section 10(1) of the Act provides that:-

Where the authorized officer is of the opinion that any food premises are in such condition that the manufacture, production, packaging, preparing, storing or selling of food therein, or product prepared therein, constitutes an imminent hazard to health, he may serve on the owner, occupier or licensee, as the case may be, a notice in the form specified in the Ninth Schedule.

The objects of the Mauritius Cancer Society set up by statute, are to relieve distress caused by cancer and to develop work in connection with the prevention, treatment and cure of the disease, amongst others.

The National Trust Fund for Community Health, set up by statute, promotes and supports primary health care activities with community participation; works in collaboration with the Ministry responsible for the subject of health in order to (i) set up Health Centres and provide other specialized health facilities in Mauritius and (ii) support the maintenance and repair of Health Centres and of other public health institutions; amongst others.

The National Agency for the Treatment and Rehabilitation of Substance Abusers coordinates and facilitates efforts at national level towards the implementation of programmes for the prevention of substance abuse and the treatment and rehabilitation of substance abusers; amongst others.

The National Council for the Rehabilitation of Disabled Persons Act provides for a Council which coordinates the activities of voluntary organizations catering for disabled persons, promotes the development and expansion of rehabilitative services and promote the welfare of disabled persons, amongst others.

The Occupational Safety and Health Act 2005 seeks to provide for the safety and health of employees at the workplace.

Section 4 of the Trust Fund for Specialized Medical Care Act provides for the objects of the Fund which are to set up and operate a Specialized Medical Care Centre and manage other institutions for the provision of high-tech medical care.

A draft Citizen's Charter is being elaborated by the Ministry of Health in order to provide for the following:-

Every citizen of the Republic of Mauritius will have the following rights:

- to receive health care on the basis of clinical need regardless of the ability to pay in the true spirit of a Welfare State;
- to receive any emergency Medical Assessment as a matter of life and death at any time in any health institution be it Private or Public of the State of Mauritius;
- to have the right to have access to his health records and have the right to confidentiality regarding his medical records and personal details;
- to be referred to a Medical Specialist or Consultant if required for a second opinion and to be informed correctly of the nature of illness, treatment and possible outcome;
  
- To choose:  
Whether or not he wishes to take part in medical research, nursing or paramedical training, case conference, clinical demonstrations or medical student training.
- to be given clear explanation for any treatment proposed, including any risk and any alternative before he decides whether he agrees to the treatment.
- to have any complaint about health services, Public & Private – whoever provides them – investigated and to receive a full and prompt written reply from the Regional Health Director or Senior Chief Executive.
- to have good/proper nursing care and safe and efficient para-medical and supportive services;
- not to be left unattended;
- to leave the hospital at any moment except those who by law cannot do so, after having been informed of the risk of such an action.
- to be addressed with respect and in a civil manner;
- Parents of child patient to have the right to stay and participate where appropriate;
- Relatives of elderly/disabled patient to have the right to participate in the care and management where appropriate; and
- to respect the religious, cultural and trans-cultural affinity without prejudice.
- As matters stand currently, free health care is provided by the Government at the national hospitals and the various day care health centres including free medicines and other related facilities.

The Public Health Service (PHS) is a central element of the Welfare State of the Republic of Mauritius. Health care services are delivered through a regionalised 3-tier system and specialised health institutions. The health delivery system is characterised by:

- a network of primary health care institutions;
- hospital care;
- tertiary care; and
- support services.

The crux of the Primary Health Care Policy since independence has been based on bringing about a more equitable distribution of health resources with greater accessibility to primary health care and its supporting services. On the basis of this fundamental policy, a sustainable programme of extending and developing the network of institutions providing integrated primary health care throughout the country has been developed and implemented. At present, the primary health care system comprises 21 Area Health Centres, 2 Medi-Clinics, 2 Community Hospitals and 112 Community Health Centres.

The hospital system of the country forms a significant part of the socio-economic activities of the nation, with more than 75 percent of the health budget allocated to public hospitals. Hospitals in Mauritius record an average of 2,900,000 outpatient attendances and 200,000 inpatient admissions every year. Universal coverage, equity, and free services continue to be the prominent cornerstone of the hospital services. The continuous acquisition of up to date medical devices and equipment, which are outcomes of the evolving world of medical science and technology, has considerably increased the range of clinical services and remarkably improved the quality of clinical management. The hospital network is made up of three district hospitals, five specialised hospitals, including the Cardiac Centre and five regional hospitals namely:

Dr A.G. Jeetoo Hospital.....	547beds
SSRN Hospital.....	462 beds
Flacq Hospital.....	306 beds
J. Nehru Hospital.....	437 beds
Victoria Hospital.....	660 beds

Support services in the public health system, include amongst others, the laboratory services, the blood transfusion unit, the hotel and ambulance services. These services have been strengthened to meet increasing demands of the primary and secondary care institutions. The “Service d’Aide Médicale d’Urgence’ (SAMU) has been set up at each Accident/Emergency Department in the five regional hospitals.

Furthermore, Government funds all interventions/examinations that are undertaken abroad for those patients who cannot be treated locally.

## **ARTICLE 17**

RIGHT TO EDUCATION & RIGHT TO PARTICIPATE FREELY IN THE CULTURAL LIFE OF HIS COMMUNITY

## **Right to Education**

### **Legislation**

Section 11(2) & (3) of the Constitution entitled "Protection of freedom of conscience" reads:-

*Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.*

*No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.*

The Mauritius Institute of Education provides facilities for and engages in educational research, curriculum development and teacher education in order to promote the advancement of learning and knowledge in the field of education and a teacher education which is responsive to the social, linguistic, administrative, scientific, agricultural and technological needs of Mauritius, amongst others.

Section 37 of the Education Act provides for education to be mandatory for all children up to the age of 16.

Free education is also available to all, irrespective of nationality, race, caste, religion, place of origin, political opinion, colour, creed or sex, without prejudice to the freedom to establish religious schools under section 14 of the Constitution.

Section 4 of the Tertiary Education Commission Act provides that the duties of the Commission shall be to foster the development of post secondary education and training facilities, amongst others.

Section 6 of the University of Mauritius Act entitled "No discrimination" provides:-  
No discrimination on account of nationality, race, caste, religion, place of origin, political opinion, colour, creed or sex shall be shown against any person in determining whether he or she is to –

- be appointed to the academic or other staff of the University;
- be registered as a student of the University; or
- graduate from, or hold any advantage or privilege of, the University.

Section 35 of the Education Act provides:

"State supported schools open to all : All Government schools and all schools in receipt of a regular grant in aid from public funds shall be open to pupils of any race or religion."

This Act is supplemented by the Education Regulations 1957, which in regulation 52 provides:

"A secondary school in Mauritius to qualify for registration as an approved secondary school shall comply with the following conditions –

“.. it shall not refuse admission to any pupil on the grounds of race or religion.”

### **Case Law**

In the case of **Government Teachers Union v Roman Catholic Education Authority 1987 MR 88** at page 94, Lallah ASPJ, as he then was, said:

*“Further our State being secular in character, even where the Constitution in section 14(1) confers a fundamental right on religious denominations or religious, social, ethnic or cultural associations or groups to establish and maintain schools at their own expense, the responsibility of regulating such schools is reserved to the State, by section 14(2), in the interests of students to an extent reasonably justifiable in a democratic society.”*

In the case of **Roman Catholic Diocese of Port Louis v Minister of Education 1991 MR 176**, the Court said:

*“Section 14 only formally protects the right of certain classes of persons in the religious, cultural and social fields to establish schools at their own expense. We are not in a situation where the right to establish denominational, or minority group, schools is guaranteed simpliciter, a situation which has resulted in the formulation, in certain foreign texts and decisions, of the principle that the State then has a constitutional duty to provide funds, where necessary, to enable that right to be exercised, and to do so with no unnecessary strings attached.”*

As the Judicial Committee of the Privy Council held in the case of **Bishop of Roman Catholic Diocese of Port Louis and others v Suttyhudeo Tengur and others, Privy Council Appeal No.21 of 2003:-**

*“Since the Catholic colleges now receive a regular grant in aid from public funds, section 35 of the Education Act also requires that they be open to pupils of any religion: while they have always admitted non-Roman Catholic pupils, the section must require that they be equally open to pupils of any religion as was made clear by regulation 52(1)(a) of the 1957 Regulations, which forbade refusal of admission to any pupil on the grounds of religion. Such refusal would inevitably be the result in the case of any non-Roman Catholic applicant to the Catholic colleges who would qualify for admission on the basis of his or her CPE grading but is refused admission to accommodate the Catholic colleges’ policy of filling 50 per cent of places with Roman Catholic pupils.”*

*As section 16(2) of the Constitution makes it clear, it is discrimination in the public domain, through the involvement of the state, which brings the prohibition on discriminatory treatment into play. If the Catholic colleges were entirely self-financing, the appellants’ admission policy would not attract the operation of section 16(2) since although some potential pupils would still be treated in a discriminatory manner, such treatment would not be “by any person acting in the performance of any public function conferred by any law” or “otherwise in the performance of the functions of any public office or any public authority”.*

## **Right to participate freely in the cultural life of his community**

### **A: The Constitution**

Section 11(1), (4) & (5) of the Constitution entitled "Protection of freedom of conscience" reads:-

*(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.*

*(...)*

*(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.*

*(...)*

*(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –*

*(a) in the interests of defence, public safety, public order, public morality or public health; or*

*(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion or belief without the unsolicited intervention of persons professing any other religion or belief, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.*

With a view to allowing Mauritians of all cultural denominations the opportunity to participate in religious and cultural activities of their choice and to foster harmony and mutual respect, laws have been enacted to provide for the establishment of different cultural centres. It must also be stressed that in the local Mauritian context, it is very difficult to distinguish clearly between religion and culture as the two are inextricably linked, and therefore often in practice the rights ensuring protection of one's culture may be extended to the protection of freedom of religion and vice versa. In this respect, students as from primary level are taught oriental languages (according to their personal liking or cultural/religious background, they may choose between Hindi, Mandarin, Tamil, Urdu, Arabic)

Section 12 of the Constitution guarantees the freedom of expression. This means that people can voice dissent within a democratic framework, allowing for a divergence of opinions on all issues of national interest. This provision confers the freedom to practise one's own culture, to express oneself in one's language, or through writing, music, drama, dancing, painting or even culinary arts. The freedom to receive and impart ideas and information without interference implies that one can discuss political, social,

cultural, economic issues as long as the rights and freedoms of others are not impinged upon. The press has the liberty to criticize politicians and other persons in the public eye and to discuss public issues freely. Wireless broadcasting allows for a diversity of expression and opinion and the promotion of culture.

Section 14 of the Constitution further provides for the “Protection of the freedom to establish schools” and reads as follows: ‘

- (1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision –
  - (a) in the interests of defense, public safety, public order, public morality or public health; or
  - (b) for regulating such schools in the interests of persons receiving instruction in them,
    - i. except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.
- (3) No person shall be prevented from sending to any such school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the Government.
- (4) In subsection (3), “child” includes a stepchild and a child adopted in a manner recognized by law, and “parent” shall be construed accordingly.

## **B: Legislation**

The Mauritian Cultural Centre Trust, set up by statute, aims at promoting Mauritian culture and developing a plural Mauritian cultural identity through, inter-alia

- the establishment of a register of Mauritian artists and associations of artists;
- the creation of facilities for multi-disciplinary documentation and research;
- the collection, publication and dissemination of information on Mauritian culture, and history;
- the organization of lectures, seminars, workshops, exhibitions and other activities to develop and improve the knowledge, understanding, and practice of Mauritian culture;
- the collaboration with other Cultural Centres both at national and international levels; and
- the establishment of links with organizations engaged in similar activities locally and internationally;
- the identification, development and perpetuation of Mauritian cultural heritage inclusive of oral traditions and folk arts;
- showcasing Mauritian culture worldwide, including the setting up of a website;

- encouraging Mauritian artistic and cultural creativity; and
- setting up a Mauritian Cultural Troupe.

The Mauritius Marathi Cultural Centre Trust Fund, the Mauritius Tamil Cultural Centre Trust Fund, the Mauritius Telegu Cultural Centre Trust Fund, the Islamic Cultural Centre Trust Fund and the Nelson Mandela Centre for African Culture Trust Fund have been set up by statute to preserve and promote Marathi, Tamil, Telegu, Islamic and African art and culture as well as the study of the Marathi, Tamil, Telegu, Arabic, Urdu and creole languages respectively.

Section 4 of the Aapravasi Ghat Trust Fund Act provides that the Trust Fund shall establish and promote the Aapravasi Ghat as a national, regional and international memorial site, preserve and restore the aesthetic and architectural aspects of Aapravasi Ghat and set a museum at Aapravasi Ghat and create public awareness in the history of the site and to depict the arrival, settlement and evolution of the immigrants in Mauritius, amongst others.

The 'Le Morne Heritage Trust Fund' (The "Fund") is established under the Le Morne Heritage Trust Fund Act . Its main objects are, amongst others, to promote Le Morne as a national, regional and international memorial site, to preserve and promote the historical, cultural, environmental and ecological aspects of Le Morne, to collect, publish and disseminate information pertaining to the history of slavery and "marronage".

The National Heritage Fund, set up by Statute, aims at-

- safeguarding, managing and promoting the national heritage of Mauritius;
- preserving the national heritage sites as a source material for scientific and cultural investigation and as an enduring basis for the purposes of development, leisure, tourism and enjoyment of present and future generations worldwide; and
- educating and sensitizing the public on cultural values, national heritage and instilling a sense of belonging and civic pride with respect to national heritage.

The following pieces of legislation have also been enacted to enable each community to promote their traditional values.

- a. The Hindi speaking Union (Amendment) Act 2002.
- b. The Urdu speaking Union Act 2002.
- c. The Roman Catholic Church Act.
- d. The Tamil Maha Sangam Act.

The main object of these Acts are to trigger and carry on educational work for physical, moral, intellectual, social, cultural and religious advancement by the establishment of schools, colleges and libraries and the organization of lectures and debates. They provide facilities for extensive exchange programs, scholarships and social intercourse with other organizations at regional and international level.

**C: Measures adopted and the progress made in achieving the observance of the following rights:**

- To take part in cultural life;
- To enjoy the benefits of scientific progress and its applications; and
- To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Promotion of Arts and Culture:**

Reinforcement of multiculturalism can actually be witnessed by the celebration of cultural and linguistic diversity as well as the recognition of multiple identities and the implementation of policies aimed at promoting national unity.

Mauritius does not have an indigenous population. The Mauritian Nation is a multicultural community comprising descendants of migrants hailing from Africa, Asia and Europe. Yet within a history spanning hardly over three centuries, Mauritius has emerged as a model of unity in diversity, where the cultural rights of all components of the population are safeguarded and promoted without any hindrance. It is precisely that unity in diversity which has been at the root of our socio-economic development.

Government's cultural policy is to provide financial and institutional support to ensure that all practised aspects of arts and culture in Mauritius are preserved and promoted. These aspects include the preservation and promotion of our ancestral languages and traditions. In this endeavour, Government benefits from the collaboration of several stakeholders such as Cultural Centres, socio-cultural organizations, the media (written and spoken), Non Governmental Organizations (NGOs) and the public at large.

All major cultural celebrations are marked by public holidays to enable the entire population to understand, appreciate and participate therein. Thus, it can be said that every Mauritian is a citizen of multiple identities.

Activities such as Divali and Eid celebrations, Christmas and Spring Festival are organized annually at national level. The objective behind these celebrations is to foster mutual understanding and sharing of values between the various communities as well as to encourage intercultural dialogue within the Mauritian community.

The concept of the programmes mounted lays emphasis on unity. A National Unity Award has been set up to acknowledge the contribution of individuals/organisations for their outstanding role in the promotion of national unity on a yearly basis.

### *Promotion of Cultural Heritage*

The Ministry celebrates several festivals at national level along with a significant number of other artistic and cultural events on the basis of an elaborate annual Calendar of Activities duly approved by Government, to ensure the promotion of all aspects of cultural heritage.

### *Promotion of Artistic Creation (such as painting, sculpture, music, drama, theatre, writing, etc.)*

Workshops, Exhibitions, Programmes, Concerts, Plays in ten languages and Creative Writing (subsidized) are organised on a regular basis. The book loaning-cum-reading culture too is growing more and more vibrant. The publication of books is subsidised by the Ministry of Arts and Culture and the President's Fund for Creative Writing in English.

### *Creation of specialised institutions:*

With a view to offering a specialised service in the fields of arts and culture to members of the public, the following institutions have been set up:

- *Aapravasi Ghat Trust Fund;*
- *Board of Film Censors and Stage Play Censors;*
- *Centre de Lecture et d'Animation Culturelle;*
- *English Speaking Union;*
- *Hindi Speaking Union;*
- *Islamic Cultural Centre;*
- *Le Morne Heritage Trust Fund;*
- *Malcom de Chazal Trust Fund;*
- *Mauritius Council of Registered Librarians;*
- *Mauritius Museums Council;*
- *Mauritius Society of Authors;*
- *National Archives Department;*
- *National Art Gallery;*
- *National Heritage Fund;*
- *National Library;*
- *Nelson Mandela Centre for African Culture;*
- *President's Fund for Creative Writing in English;*
- *Professor Basdeo Bissoondoyal Trust Fund; and*
- *Urdu Speaking Union.*

### *Safeguarding both tangible and intangible cultural heritage .*

The National Heritage Fund (NHF) has been entrusted the responsibility of managing the built and intangible heritage of Mauritius. The vision of the NHF is to develop a sense of belonging by caring for the past and bequeathing it to the future. Its mission is to identify, valorise and promote National Heritage.

To achieve its objectives, the NHF undertakes several activities such as:-

- Public Awareness campaigns;
- Excavation campaigns;
- Underwater archaeological campaign;
- Mare aux Songes Excavation campaigns (unearthing of remains of the extinct Dodo);
- Workshops;
- Inventories;
- Exhibitions;
- Publications;
- Declaration of new sites as National Heritage Sites;
- Proposed drawing of a list of potential religious heritage sites;
- Feasibility Studies;
- Comprehensive inventory; and
- Strategic Management Plan of built heritage.

## **ARTICLE 18**

### **PROTECTION OF THE FAMILY BY THE STATE**

Family law in Mauritius is primarily governed by the Civil Code which is inspired from French law. As from January 2008, two Judges of the Supreme Court are hearing family law matters on a full-time basis everyday during term-time. Previously family law matters, other than very urgent matters, were heard only on Fridays during term-time.

The Law Reform Commission, which is tasked with, inter alia, undertaking the systematic review and reform of the Laws of Mauritius, has also been working on a review of family law, in the light of the recommendations made in Lord Mackay's report on the reform of the judiciary.

### **The main relevant laws providing for protection of the family are as follows-**

The Relevant sections of the Civil Code dealing with the family include namely:

- Articles 143 – 228: le mariage
- Articles 229 – 279: divorce et séparation de corps
- Articles 312 - 370: la paternité et la filiation
- Articles 371 - 387: l'autorité parentale
- Articles 388: la minorité

Articles 389 - 448: la tutelle  
Articles 476 - 478: l'émancipation par le mariage

Section 7(1) of the Divorce and Judicial Separation Act provides for the possibility of reconciliation of the parties seeking a divorce.

On presentation of a petition, the Judge in Chambers shall inquire from the petitioner and from the respondent, if in attendance, and their counsel or attorney, as to whether an attempt has been made to effect a reconciliation of the parties.

This Act also provides for the procedure to be followed for the institution of divorce proceedings.

Section 3 of the Mauritius Family Planning Association Act provides that the Association shall, *inter alia*, promote family welfare in all its aspects, personal, material and sociological, amongst others.

The 'Action Familiale' Act created the Action Familiale Association which, *inter alia*, promotes the welfare and happiness of families, fosters the ideas of harmonious married life and responsible parenthood and supports the propagation of all natural methods for regulating child birth.

Section 4 of the National Women's Council Act provides that the Council shall, *inter alia*, establish and maintain effective communication with women and organizations of women, ensure coordination of activities of groups of women and organizations and assist in the implementation and evaluation of Government policies as they relate to the needs of women amongst others.

Section 4(1) of the National Youth Council Act provides that the Council shall, *inter alia*, establish and maintain effective communication between the Government and youth organizations and ensure coordination of activities of youth organizations amongst others.

## **PROTECTION OF WOMEN**

### Existing Provisions in relation to maternity protection

*Normal duration of maternity leave, entitlement to such leave and entitlement to maternity allowance:*

i. Remuneration Orders (Regulations)

12 weeks' leave to be taken at employee's discretion before and/or after confinement provided that at least 6 weeks' leave is taken immediately following confinement.

Where a female employee is in the continuous employment of the same employer for 12 months immediately preceding her confinement, the leave is with pay and she is entitled to a maternity allowance.

Where a female employee who has at any time had 3 confinements is pregnant or where she reckons less than 12 months' continuous service preceding her confinement, the leave is without pay and there is no entitlement of maternity allowance.

Maternity allowance – is payable within 7 days of confinement and varies from Rs 300 to Rs 2, 000.

- ii. The Labour Act provides for 12 weeks' maternity leave entitlement to a female worker.

Leaves deductible from the 12 weeks' entitlement may be taken within a period of 6 weeks before confinement, provided that if the leave taken exceeds four days consecutively, the worker shall produce a medical certificate to that effect. Such entitlement shall not prejudice the right of a worker to go on sick leave within the period of 6 weeks before confinement.

#### *Work related benefits*

Apart from maternity protection which women enjoy and the criteria for travelling refund which differ for male and female workers in certain sectors (i.e. Cleaning Enterprises, Electrical Engineering & Mechanical Workshops, Field Crop and Orchard, Livestock Breeding, Nursing Homes, Printing Industry & Tea Industry), the above benefits accrue equally to individuals irrespective of gender. It is to be noted that the criteria for travelling refund are gradually being standardised by the National Remuneration Board as and when the relevant Remuneration Orders are being revised.

#### *Maternity Benefit*

Following revision of certain Remuneration Orders after 1990, the allowance was subsequently increased to Rs 500 in the following sectors:

- Field crop and Orchard
- Livestock Breeding
- Public Transport
- Security Guards
- Tea Industry
- Road Haulage Industry
- In the "Baking," "Catering," "Cinema," "Construction," "Distributive Trades" and "Light Metal and Wooden Furniture" sectors the allowance has been revised to Rs 2000.

In the sugar industry and tea industry, a female worker is entitled to 800 millilitres of milk per day during 3 months following her confinement or a daily allowance of Rs 3, for the sugar sector, and Rs 6 for the tea sector if milk is not readily available.

A female worker, who is nursing her breastfed child, is entitled to a break of one hour daily or a break of half an hour twice daily for the purpose of nursing the child, under Section 19(3) of the Labour Act. Additionally, express provision has also been made for

the grant of such break in the following Remuneration Orders: Attorneys & Notaries, Baking, Construction, Catering, Distributive Trades, Cinema and Light Metal & Wooden Furniture.

Further, specific provisions exist in most Remuneration Orders in respect of miscarriages whereby a female is entitled to 2 weeks' leave on full-pay immediately after the miscarriage, duly certified by a medical practitioner.

Moreover, in 6 sectors (Baking, Construction, Catering, Distributive Trades, Light Metal & Wooden Furniture and Cinema) provisions exist whereby a female employee who gives birth to a stillborn child shall be entitled to opt for either 2 weeks' leave on full pay or 12 weeks' leave, the latter leave being deductible from the 3 confinements entailing paid maternity leave.

Besides, according to a Circular Letter from the Ministry of Civil Service & Administrative Reforms, dated 01 March 2006 (No.6 of 2006), Government has decided that women public officers who are in their 9<sup>th</sup> month of pregnancy may now, on request, be allowed to leave office half an hour earlier in the afternoon to avoid peak time rush, such release to be reckoned against their normal leave entitlement.

Protection is also provided to female workers who have reached their 7<sup>th</sup> month of pregnancy, by providing them with light fieldwork or by prohibiting the lifting or carrying of materials or equipment. During intercrop season, in the case of a female worker who is employed otherwise than on task work, the length of a normal work day's work, excluding any time allowed for meal break is 6 hours on every day, other than a Saturday or a public holiday after she has entered the 7<sup>th</sup> month of pregnancy. Furthermore, female workers of the salt manufacturing industry shall not be compelled to do any work involving the carrying of a load of more than 18 kilos.

A female employee in the sugar industry is also entitled to an allowance equivalent to 15% of her wages whenever in the course of a normal day's work, she is required to do trashing, '*relevage de paille*', spreading of fertilisers or any operation comprised in planting including the application of ash, sand, scum and manure.

The law also provides for optional retirement of female employees (50 years in the sugar industry and 55 years in the salt manufacturing industry, and 58 years in the tea industry) with appropriate compensation.

## **Violence against Women**

Mauritius ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985. It also signed the SADC Declaration on Gender and Development in 1997, and the Addendum to the Declaration on the Prevention and Eradication of Violence against Women and Children in September 1998. At the Fourth World Conference on Women in Beijing in 1995, Mauritius identified gender based violence as one of the critical priority areas.

## ***Legislation***

In May 1997, the Protection from Domestic Violence Act was enacted .It was proclaimed partly in August 1997 and fully in March 1998. The Act provides for the issue of emergency protection orders, occupation orders and tenancy orders and includes a wide definition of domestic violence to include physical, emotional, sexual violence and even threatened violence. Mauritius is one of the few countries in the region to have introduced a comprehensive law to combat domestic violence. The aim of the Act is to protect spouses, including persons who are cohabiting, children and elderly persons from violence at home.

**The Protection from Domestic Violence Act has subsequently been amended to make it more responsive to the needs of victims of domestic violence and to ensure better protection to the victims.**

Section 2 of the Protection against Domestic Violence Act as amended in 2004 defines “domestic violence” as including any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof -

- willfully causing or attempting to cause physical injury;
- willfully or knowingly placing or attempting to place the spouse or the other person in fear of physical injury to himself or to one of his children;
- intimidation, harassment, ill-treatment, brutality or cruelty;
- compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain;
- confining or detaining the spouse or the other person against his will;
- harming a child of the spouse;
- causing or attempting to cause damage to the spouse’s or the other person’s property;
- threatening to commit any act mentioned in paragraphs (a) to (g).

The Protection from Domestic Violence (Amendment) Act of 2007 inserted a new section 8A was inserted and which provides that the Courts may where it thinks appropriate , order a respondent spouse to pay an aggrieved spouse and any child of the parties alimony. Additionally Section 13 has been amended to include new and harsher penalties on a second or subsequent conviction. Under this section police officers to whom an offence under this Act is reported shall forthwith inform the nearest hospital or the Permanent Secretary where the complainant is in an urgent need of medical assistance or of counseling and/or psychological support. A new section 13 A has furthermore been inserted to provide in exceptional cases for the court to make an order to attend counseling sessions following a conviction.

Conscious of the need to address the issue of gender based violence in a comprehensive manner, the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection (MWCDFW&CP) has adopted a broad framework to respond to gender based violence and the areas of focus are:

**Prevention**

Through ongoing IEC Campaigns, regular talks and activities are organised in different regions falling under the purview of the Family Support Bureaux to sensitise the public at large on issues pertaining to domestic violence.

The year 2008 has been declared as “L’année 2008: L’Année Sans Violence” ( i.e 2008: year without violence). The campaign was launched in December 2007 to solicit the collaboration of various stakeholders, namely socio cultural organisations, religious groups and NGO’s in the fight against violence. However, to sustain the campaign throughout the year, the ministry in collaboration with several stakeholders, will conduct talks, workshops both at regional and national levels targeting youth, women and men.

Ongoing public awareness campaigns which aim at reducing the incidence of domestic violence in Mauritius are organised by the Ministry. Moreover, a simplified version of the CEDAW has been published and distributed widely across the island and is also available on the Website of the Ministry.

**Financial support to address the needs of victims and witnesses**

Under the Families in Distress Scheme, women victims of Domestic Violence who for various reasons cannot return to their previous residence are temporarily placed at a shelter following an Interim Protection Order. Upon their discharge from the shelter, they are given an allowance of Rs 3,000 to meet their immediate needs.

*The table below indicates the number of cases registered at the Family Counselling Service/Domestic Violence Intervention Unit/Integrated Services Centres by nature of problem and sex in 2003, 2004 and 2005*

	2004		2005		2006	
	Male	Female	Male	Female	Male	Female
Total registered	4,287	10,555	4,418	10,848	5,022	11,468
Made up of:						
Follow up cases	2,325	4,949	1,817	4,337	3,038	6,561
New cases	1,962	5,606	2,601	6,511	1,984	4,907
Which are due to:						
Accommodation	7	19	46	72	1	26
Alcoholism/drug addiction	27	716	82	1,549	21	409
Alimony	27	109	24	146	-	32
Conflict with in-laws	50	235	40	354	38	264

Conflict with partner	343	1,773	434	2,114	298	1,622
Damage	8	50	9	300	3	31
Divorce	36	154	52	282	38	154
Extra-marital affairs	65	395	69	615	60	287
Family dispute	22	64	19	101	17	25
Harassment	60	661	53	894	25	345
Ill-treatment	61	645	53	891	28	315
Legal problems	47	235	24	77	56	195
Physical assault	99	1,116	66	1,140	39	519
Sexual abuse	13	144	30	314	1	47
Sexual harassment	3	32	7	90	-	8
Threatening assault	21	319	39	1,319	21	224
Threatening behaviour	15	328	25	975	2	47
Verbal abuse	66	806	65	1,212	29	438

Source: Ministry of Women's Rights, Child Development, Family Welfare & Consumer Protection

The Ministry also assists victims of Domestic Violence by providing services of Barristers as and when required at Court Level as well as financial assistance when victims leave the shelter. The Ministry further refers victims to the Ministry of Social Security for social aid in cases where the victims have been abandoned by their spouse and are faced with financial constraint. Support services to victims include:

- Shelters provided by NGO's and by Government shelter;
- Free legal assistance by Government;
- Medical assistance through the public hospitals which are free of charge;
- Police assistance for protection and removal of goods from residence;
- Family counselling through the Family Counselling Services;
- Placement of children in case the parent cannot take care of them.

### **PROTECTION OF CHILDREN**

In 1993, Government signed the Hague Convention on Civil Aspects of International Child Abduction and in 2000 legislation was enacted to give force of law to the Convention and designate the Ministry of Women's Rights, Child Development and Family Welfare as the Central Authority to deal with cases of Child Abduction.

### ***Convention on the Rights of the Child***

Mauritius has also acceded to the Convention on the Rights of the Child (CRC) which contains a comprehensive set of international legal norms for the protection and well-being of children. It has also signed the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography on 11 November 2001. There have been 36 reported cases of child abduction from the period 2000 to January 2008 .

Mauritius, as a State Party, has the obligation under Articles 34 and 35 of the CRC, to protect the child from all forms of sexual exploitation as well as to take appropriate measures to prevent the sale of and trafficking in children. Mauritius has submitted its Second Report on the CRC to the United Nations, which report has been examined by the Committee on the Rights of the Child. A report under the African Charter on the Rights and Welfare of the Child has also been prepared which provides a status on the implementation of policies and programmes for children.

### **RELEVANT LEGISLATION**

The Mauritius Child Care Society Act provides that the objects of the Society shall be to promote motherhood skills and child care in Mauritius through lectures, home visits, baby shows and exhibitions and to do such things as are incidental or conducive to the attainment of these objects.

The National Children's Council (NCC) Act 2003 which became effective as from 28 February 2004 , aims at making the National Children's Council more dynamic and responsive to the needs of children and ensuring better participation of children. The NCC Act provides that the Council shall:

- be the key consultative and coordinating national body on all activities related to children;
- protect the rights of children, promote their interest and well-being and ensure their participation in matters of interest to them; and
- promote activities for the welfare of children in line with the Convention on the Rights of the Child.

Section 4 of the National Adoption Council Act provides that the Council shall inquire into all demands for the adoption of citizens by non-citizens before any application is made to the Judge in Chambers and advise the Minister on all matters relating to such demands for adoption amongst others.

The Child Protection (Amendment) Act was enacted in 2005 to palliate the lacunae in our laws with regard to trafficking in children in compliance with the Optional Protocol to the UN Convention against Transnational Organized Crime (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime).

'Exploitation' was defined in the Act as including the exploitation of the prostitution of children or other forms of sexual exploitation, forced labour or services, slavery or, practices similar to slavery, servitude or the removal of organs.

The 2005 Act also provides for the offence of child trafficking, abduction and abandonment. The Act provides for the following penalties: where the victim is mentally handicapped, to penal servitude for a term not exceeding 15 years; in any other case, to penal servitude for a term not exceeding 10 years.

The Ombudsperson for Children Act which was passed in 2003 was amended in 2005 in its section 7 to confer on the Ombudsperson for Children the power to summon witnesses and examine them on oath, call for the production of any document or other exhibit and obtain such information, file or other record, upon application to the Judge in Chambers whenever necessary under any law, as may be required for the investigation.

#### *Study on Commercial Sexual Exploitation of Children (CSEC)*

The Government of Mauritius is firmly committed to the survival, development and protection of children from any form of abuse and exploitation. Sexual abuse and commercial sexual exploitation have been a special concern for the Ministry.

A study on the Protection of Children against Sexual Abuse including Commercial Sexual Exploitation of Children (CSEC) was carried out in September 2001 in order to have a better understanding of the problem. The study recommends the preparation of a National Plan of Action (NPA) in order to prevent and progressively eliminate CSEC, to protect CSEC victims and ensure their recovery and integration in society. While preparing the NPA, an integrated and holistic approach has been adopted for the implementation of activities on protection of children. It has a broad scope geared towards the overall protection of children from any forms of abuse including commercial sexual exploitation in line with existing legislation and the provisions of the CRC. The objective of the NPA is to ensure the protection of our children from any form of abuse and the creation of a conducive environment within the family and the civil society. It also aims at developing strategies and activities to be implemented by all stakeholders including Government institutions, the private sector, non-Governmental organisations, the community and the family for the best interests of the child. The NPA is based on the four components of the Agenda of Action against CSEC adopted at Stockholm in Sweden as follows:

1. Coordination and Cooperation;
2. Prevention;
3. Protection; and
4. Recovery and Reintegration.

As regards concrete measures taken to prevent sexual commercial exploitation of children, a drop-in day care centre operates in Bell Village under the aegis of the Ministry of Women's Rights, Child Development, Family Welfare and Consumer Protection, which centre provides day care facilities for the rehabilitation and reinsertion of victims. The Ministry is planning to operate a residential institution for such victims in the near future. The National Children's Council is also instrumental in the campaign

against sexual exploitation of children in as much as it regularly holds informative sessions in schools, in women's centres as well as with NGOs. On the other hand, there is ongoing training programs carried out for trainers who in turn are called upon to sensitize the public, children, and other vulnerable groups with the aim of preventing and gradually eliminating CSEC. The Police Force has a special unit called "Brigade pour la Protection des Mineurs" which works in close collaboration with the Ministry in the campaign against CSEC and since the beginning of 2008, several "crack down operations" have been carried out by this special unit in places such as beauty parlours, guest houses, gambling houses as part of the campaign against child prostitution.

## **Child Labour**

Legislation

### *Child Protection Act 1994*

The Child Protection Act was enacted in 1994 to ensure protection of children from all forms of abuse and protection. The national laws have been harmonized in line with the Convention on the Rights of the Child. In this respect, a number of laws pertaining to children have been amended in the form of Child Protection (Miscellaneous) Act, the Criminal Code (Amendment) Act and the Criminal Code Supplementary (Amendment) Act.

The Child Protection Act was amended in December 2005 as follows:

- The definition of the word "harm" has been extended so that "harm" now is defined as including physical, sexual, psychological, emotional or moral injury, neglect, ill-treatment, impairment of health or development",
- The definition of "place of safety" has been amended to also include "a convent, a charitable institution, an institution for children and a hospital",
- The category of persons habilitated to report cases of suspected abuse has been enlarged,
- Provisions of the Criminal Code relating to child abandonment and child abduction have been transferred to the Child Protection Act,
- Tougher penalties are provided for in case of contravention of the provisions of the law. Penalties under the present Child Protection Act for sexual offences and indecent photographs of children have been revised from a fine of Rs 50,000 and imprisonment not exceeding 5 years to Rs 75, 000 and 8 years respectively. Where the victims are mentally handicapped, offenders will be liable to a fine of Rs 100, 000 and imprisonment for a term not exceeding 15 years instead of Rs 75,000 and 8 years respectively.

### The Criminal Code (Amendment) Act 1998

The Criminal Code was amended in 1998 to increase penalties for offences against children including sexual abuse. The offence of sexual harassment was introduced along with penalties provided for the abandonment of a pregnant spouse, failure to pay alimony, etc.

### Computer Misuse and Cybercrime Act 2003

The Computer Misuse and Cybercrime Act 2003 which was enacted in 2006 *inter alia* makes child pornography a criminal offence. An Inter-Ministerial Committee chaired by the Minister of Information Technology is looking into the introduction of comprehensive legislation for Online Child Protection.

### Ombudsperson for Children Act 2003

The Ombudsperson for Children Act 2003 provides for the establishment of an office of Ombudsperson for Children.

The objective of the Office is to:

- ensure that the rights, needs, interests of the children are given full consideration by public bodies, private authorities, individuals and associations for individuals;
- promote the rights and best interest of children; and
- promote compliance with the Convention on the Rights of the Child, and more particularly, to create an effective mechanism for the investigation of complaints regarding violation of children's rights.

The Act enables the Ombudsperson for Children to assume the role of an advocate for children's rights, to advise the Minister and other public bodies and institutions on matters relating to promotion and protection of children's rights and to carry out any such investigations as the Ombudsperson for Children may decide, on complaints relating to the rights of the child.

### *Ombudsperson for Children (Amendment) Act 2005*

Amendments were brought to the Act in 2005 to:

- empower the Ombudsperson for Children to compel witnesses to attend and give evidence on oath before and produce documents to the Ombudsperson in connection with investigations conducted under the Act; and
- provide for various offences, including failure to attend and take the oath before the Ombudsperson for Children, giving false evidence, insulting the Ombudsperson for Children and wilfully interrupting proceedings conducted before the Ombudsperson for Children.

The Ombudsperson for Children is responsible for promoting children's interests, protecting victims of exploitation, investigating complaints of violations and presenting proposals for preventing trafficking.

The Labour Act prohibits the employment of children under the age of 16 and also provides that no child under the age of 18 shall be employed on work which is harmful to his health, dangerous or otherwise unsuitable for him. Any person who contravenes these provisions commits an offence and shall on conviction be liable to a fine not exceeding Rs2, 000 and to imprisonment for a term not exceeding one year.

The Labour Act is actually being revised so as to also prohibit the employment of children under 18 on work which by its nature is likely to jeopardise their safety, physical, mental, moral or social development and to increase the penalty for the offence from Rs2, 000 to Rs10, 000.

Generally speaking, employers and workers have now become more aware of the child labour issue. The regular site inspections effected by enforcement officers act as a deterrent to such practice so that fewer and fewer cases are being detected.

The current policy of the Ministry of Labour, Industrial Relations and Employment is to issue warnings prior to envisaging prosecution. Out of the cases of child employment detected in 2007, 3 cases have been referred to Court and 8 other cases are being processed for criminal action

Furthermore, the reforms undertaken in the education sector will undoubtedly contribute to a significant reduction, if not eradication, of child labour in view of the positive impact in terms of increased access to education, rise in enrolment rate, reduction in the number of school drop outs as well as compulsory schooling up to the age of 16. The Ministry of Education & HR is currently laying emphasis on the role of Social Workers and Parent Mediators to assist and support the parents and children from ‘Zones d’Education Prioritaires” (ZEP) schools in their effort for an improved parenting and for creating the right learning environment for the children.

The attendance of chronic absentees is being closely monitored at the level of schools and Head Teachers arrange with Social Workers of the Ministry of Education & Human Resources to contact the parents of these children and explain to them the need for their ward to attend classes and to improve their attendance at school. This issue is also raised during meetings of the Parent Teachers Associations.

The new curriculum reform initiated by the Ministry of Education & Human Resources will consolidate literacy and numeracy skills and develop as from primary level, competencies for autonomous life long learning. Emphasis in the new curriculum will be given to an inclusive pedagogy to develop the whole child. The new continuous assessment mode at primary level to boost achievement level will encourage students to stay longer in the educational system and make learning more relevant and meaningful. It will go a long way towards alleviating poverty and bringing social equity.

In Mauritius, for the period from 1 June 2003 to 31 May 2005, out of 5,679 inspection visits effected in connection with child employment, 20 cases involving 24 children were detected. The employment of these children was stopped forthwith and the employers concerned were warned accordingly. The detected cases were also referred to the Child Development Unit for rehabilitation purposes. During the period from 1 June 2005 to May 2006, 5,690 inspection visits were carried out. No case of child labour was detected.

In Rodrigues, 45 site visits were effected but no case of child employment was detected during the period under review.

Available statistics reveal that the magnitude of child employment in Mauritius is quite minimal. According to the 2000 Housing and Population Census some 763 children, that is about 0.1% of the working population, were in employment at the time the survey was

carried out. For reasons mentioned above, this figure is bound to decrease further in the years to come.

Additionally, at the initiative of the Ministry of Women's Rights, Child Development, and Family Welfare and Consumer Protection, 42 children, abandoned or at risk, have been placed in 31 foster homes.

### **Evaluation of the National Plan of Action( NPA)**

The National Plan of Action incorporates prevention measures, such as the development of an appropriate Information, Education, Communication (IEC) strategy, the training of trainers and training of community/youth leaders and awareness campaigns on the Rights of the Child. Support has also been organized for the recovery and rehabilitation of those who manage to get out of the sex trade. Therefore, the different stakeholders were required to participate in the successful implementation of the NPA in order to combat child abuse in all its forms. After two years of implementation of CSEC, an evaluation exercise has been carried out with a view to:-

- Evaluation of the NPA on CSEC ;
- identify bottlenecks, weaknesses in the course of implementation; and
- make recommendations, as appropriate.

### *National Children's Policy (NCP) 2003*

The Ministry of Women's Rights, Child Development, Family Welfare and Consumer Protection with the assistance of UNICEF has prepared a National Children's Policy with a view to establish linkages with all relevant Government Institutions and NGOs, to co-ordinate and monitor children's policies. The adoption of the NCP is an important step taken by Government in its commitment to human rights generally and to child rights and welfare specifically.

### *National Plan of Action (NPA)*

A National Plan of Action (NPA) has been prepared with a view to implementing the policy statements stipulated in the National Children's Policy (NCP). The discussion process in the preparation of the NPA with stakeholders aimed at:

- Streamlining the objectives and action areas ensuing directly from the objectives already outlined in the NCP;
- Stating responsibilities of parties involved in implementation;
- Proposing measures for evaluating the effectiveness of such actions and programs;
- Examining the possibility of immediate launching of actions and programs for each core policy area;
- Following the Rights-based approach; and
- Addressing the Key issues of Participation, Community Development, Partnership Development, Information, Communication and Research, and Institutional Mechanisms and Legislations outlined in the Policy Document.

### Institutional Mechanisms

### *Child Development Unit*

The Child Development Unit of the Ministry of Women's Rights, Child Development, Family Welfare and Consumer Protection was set up in 1995. It is the executive arm of the Ministry to intervene in cases of child abuse and neglect. It is also responsible for the implementation of policies and programmes pertaining to the development, protection and survival of children. This Unit works closely with other agencies such as the Police Department, to provide 24-hour service through hot lines to children at risk as well as free legal assistance and psychological counselling to children.

### *Child Protection Unit*

A Child Protection Unit has been set up in collaboration with the Police Department and the Ministry of Women's Rights, Child Development, Family Welfare and Consumer Protection to provide immediate assistance and protection to children, victims of sexual abuse.

### *Creativity Centre for Children*

A Creativity Centre for Children based on the National Bal Bhawan Model in New Delhi has been set up at Mahebourg. The setting up of the Creativity Centre enables children to participate in a variety of activities, thus promoting their social, intellectual, moral and physical development.

### *Shelter for Children Victims of Abuse at Bambous*

In line with Government's commitment to the development and protection of children from any forms of abuse and exploitation, it has been proposed to construct a shelter for children at Bambous which will accommodate an optimum number of victims of abuse: some 100 children in addition to mothers accompanied by their children. The building will be equipped with all the necessary infrastructures and facilities.

### **The setting up of a Community Child Protection Programme (CCPP) based on a closed loop participatory evaluation of Service Delivery**

The Ministry has launched the CCPP that provides for the setting up of formal forums on a district wise basis as well as at grassroots level to ensure community development with respect to child protection and welfare. This programme allows for interplay of dynamic top down and bottom up forces to provide for equilibrium in an otherwise open system, and as such will be a recipient of much information, education and communication campaign as well as empowerment processes. This programme should, if well implemented, also provides for penetration of communities and eventually reach out to those families & children who are marginalized and excluded for a process of reconstruction.

District Committees have been launched in Riviere du Rempart, Port Louis and Plaines Wilhems.

Community Child Watch Meetings have been launched in Cite Mangalkan, Camp Levieux and Cite Mere Theresa.

The main components of the programme are as follows:

- The Community Child Watch to be set up in the immediate locality of high risk areas to ensure early detection and reporting of child at risk cases.
- The Case Conference at Family Support Bureau level with officers of the Ministry to review and monitor the handling of cases and so to expedite as far as possible on lessening trauma and trigger early rehabilitation of children victims of abuse and neglect.
- The Area Child Protection Committee comprising regional stakeholders to ensure better collaboration and coordination in the handling of cases.
- The District Child Protection Committees to take cognisance, review and monitor Child Protection issues at their level.
- The National Child Protection Committee to coordinate and monitor the work of the 6 ACPCs, to develop and agree on policies, review and monitor procedures for inter-agency work for protection of children, to make appropriate recommendation to ensure coordination and concrete action, including training/IEC in relation to Child Protection.

#### *Tardy Declaration*

A child who is not declared does not have any identity and is not recognized as a citizen of Mauritius. Declarations of birth must be done within 45 days following the birth of the child. The process of tardy declaration of birth is lengthy and cumbersome. The Ministry is facilitating the registration process of undeclared children through a coordinated approach, in collaboration with the Ministry of Education, Ministry of Health and other Government departments. Undeclared children who are identified to be tardily declared are referred to the vaccination unit of the Ministry of Health for immunization. The Ministry of Education then steps in to get the children admitted in pre-primary, primary or vocational schools, according to their age and abilities.

#### *High Level Committee (Tardy Declaration)*

A *High Level Committee* co-chaired by the Attorney General and the Minister of Women's Right's, Child Development, Family Welfare and Consumer Protection was set up in August 2005 to take stock of the situation regarding tardy declarations and to find means to improve upon the existing system and monitored the tardy declaration of birth program on a weekly basis.

- The following action was taken to streamline the procedures for the tardy declaration of birth:
- A pool of 3 Attorneys was set up to deal with cases, providing free legal aid
- Arrangements have been made with the Magistrate to be on call at court in cases of tardy declaration
- Transport facilities are provided to parents
- Tardy declaration of birth can be made through a hotline which operates on a 24 hour basis.
- Sensitization is being carried out regularly in the media to increase public awareness

Since the setting up of the Committee, there have been 479 cases of undeclared persons (including children) registered. However, there are still some pending cases – 84 children and 26 adults.

### Foster Care System

One major step towards implementing measures aimed at ensuring better protection to children, especially those at risk and providing a better alternate for rehabilitation and care of children is the introduction of the Foster Care System on a pilot basis. The aim of the Foster Care System is to provide the children with an alternative family environment, which will foster their physical, emotional and social development. Some 50 children have been placed in 35 families so far and more and more families are showing their interest in this project. With the success of this project, the Foster Care Unit has been integrated with the Child Development Unit as from 31 May 2004. An Advisory Committee has been set up to monitor the Foster Care System.

A Child Mentoring Programme is also currently under study.

### Drop – in – Centre

A Residential Drop-In Centre for Children Victims of Commercial & Sexual Exploitation of Children, including sexual abuse, shall soon be set up in line with the commitment taken by the Government at the Committee of the Convention on the Rights of the Child. The Residential Drop-In-Centre shall accommodate some 20 children and have separate dormitories for the different age groups. It will provide continuous support & counselling to victims with a view to facilitating the re-insertion of the abused children into the mainstream of society.

### Shelter for Women and Children Victims of Abuse

In line with Government's commitment to the development and protection of children from any forms of abuse and exploitation, the Ministry is proposing to construct a shelter for children at Bambous. Same will accommodate an optimum number of victims of abuse, namely children in addition to mothers accompanied by their children. The building will be equipped with all the necessary infrastructures and facilities.

### Shelter

There are two shelters for children, one of which is run by a Trust Fund and the other is under this Ministry. The main types of abuse experienced by the children who are sent to shelters and charitable institutions are related to 'child neglect, abandonment of children, incest and violence. The majority of the children are in 11-14 age groups.

### Police Family Protection Unit (PFPU)

The Police Family Protection Unit (PFPU) was set up with the special mandate to provide specific services to a category of people who are termed vulnerable within society. This category of people includes women, children and the elderly. They are considered as vulnerable because they are less able to protect themselves when faced with crimes and criminal justice system as compared to other members of the society.

Given their position of vulnerability, their rights are more likely to be violated than others. Hence, a special policing approach towards them is required.

PFFPU also has a special Children’s Corner which has been set up with the help of a child psychologist. It contains items atypical of children such as small colourful tables and chairs, toys, white board with markers, coloured pencils, drawing books and so on.

*Brigade Pour La Protection Des Mineurs (BPM)*

As children are becoming more and more vulnerable in our society, the Mauritius Police Force has at the request of this Ministry, set up a new unit styled “Brigade pour la Protection des Mineurs” as from May 2004. One of the priorities of the Brigade is to act as a watchdog against all forms of exploitation and abuse against children. The Brigade is providing a meaningful and sound customer care service aimed at optimising the protection of children and helping to alleviate the anxiety of parents whose children have been subjected to such abuses. This Unit is now effective; one of the measures regularly taken are to “track down” during school hours, students who fail to attend school and are found on the streets or in public places.

**It is to be noted that NGO’s play a very active role in protecting and promoting the rights of the child and of the family cell.** (Please refer to list/ table below)

Residential Care Institutions for Children

Several organizations/charitable institutions\* provide residential care facilities for children victims of abuse/neglect. These children are under the Ministry of Women’s Rights, Child Development, Family Welfare and Consumer Protection following the issue of an Emergency Protection Order/Interim Committal Order/ Committal Order and are placed in these institutions which are considered as places of safety at the level of the District Courts. These children are removed from the care of their biological parents as the latter are not in a position to ensure their safety and security. The Court Orders are issued as per the provisions of the Child Protection Act 1994.

1	Shelter : Forest Side, Albion
2	Terre de Paix
3	Foyer Pere Laval
4	Foyer Mgr Leen
5	SOS Children’s Village Beau Bassin
6	CEDEM: Floreal, Hollywood
7	SOS Children’s Bambous
8	Crèche Coeur Immaculé De Marie
9	Gayasing Ashram
10	Mauritius Muslim Orphanage
11	WEAM
12	YMCA
13	Save the Children Mauritius
14	Halley Movement

15	Rivière du Rempart Pre Primary Teachers Association
16	Bahai Child Pre-Education Committee
17	Probation Home for Girls
18	Federation of Playgroup
19	Societe Mauricienne pour la Protection de L'Enfant
20	Pathfinders Club
21	SACIM
22	Institute for Consumer Protection
23	MAPBIN CHAN
24	Mauritius Mental Health Association
25	Fondation Georges Charles
26	SENS
27	Amnesty International
28	Institute for Children's Rights

The *Association de Parents d'Enfants Inadaptés de L'île Maurice (APEIM)*, founded in 1970, initiated an Early Intervention Programme in 1983, to train parents and volunteers in Community Based Care. This programme has now been expanded and decentralized. APEIM has conducted mass media campaigns about the rights and needs of handicapped children, and public awareness has increased, as more children come to their centres at an earlier age. Children who cannot be integrated into normal schools are sent to special schools, and extremely handicapped children are provided home visits.

The *Bethleem Diocèse Crèche (BDC)*, displays the Convention at its centres, and distributes it to parents. Since its inception in 1979, the BDC has trained over 1,500 trainees in its Early Childhood Development Training Centre.

The *Centre d'Education et de Développement des Enfants Mauriciens (CEDEM)* has been providing assistance to normal and handicapped children since 1984. CEDEM concentrates on a process of integrating children, except for the severely handicapped, who need special assistance, in all their activities. CEDEM runs several types of training programmes, including basic programmes in remedial education for parents, teachers, helpers, police officers, probation officers, social workers and other concerned parties. It runs the "Riviere du Rempart Home" for abused girls and conducts "learning through play" programmes in deprived areas once a week. It conducts awareness campaigns about the Convention by door-to-door counselling, and various animated activities. Children in the CEDEM Youth Wing are encouraged to express their concerns, advocate for their rights, and lobby Ministers and Organizations through letters, songs, paintings and other activities.

The *Organisation Mondiale Pour l'Education Pre-Scolaire (OMEP)*, formed in 1972, has specialized in training teachers, and running parent awareness classes, and conducting workshops in childcare and development. At present, it has trained over 1,000 teachers in areas from child nutrition to recognizing child abuse.

The *Mauritius Family Planning Association (MFPA)*, has since 1957 been working successfully towards family planning issues, but has shifted its approach since 2000, towards a "broader concept of sexual and reproductive health", which includes promoting gender equality, and programmes on adolescent sex and reproductive health issues. In 2003, the Mauritius Family Planning Association was entrusted by the Ministry to manage the Drop-In Centre designed specifically to help and assist sexually abused children and commercial sexual exploitation victims. The Association provides Family Life Education (FLE) sessions in various schools, IVTB institutions and institutions catering for children and adolescents with special needs.

Regular medical check-ups and consultations including immunization services are offered and educational sessions on Childhood Development are conducted. The Association has also integrated Voluntary Counselling and Testing for HIV/AIDS in its services and acts as a Referral Point. The Association liaises with funding agencies such as the Trust Fund for Social Integration of Vulnerable Groups to submit income generating project proposals to meet their specific needs.

The MFPA has been active in disseminating information about the Convention in secondary schools, through the “Well Women-Clinic”, (launched in 2000, so that all women could have access to general medical care), through Parent Teacher’s Association (PTA) , through the University of Mauritius, and through Women Empowerment Group (WEG), located in 9 districts in Mauritius, and in Rodrigues.

*Action Familiale* since its foundation has contributed to the welfare of children by having family life education as a strong component of its service to couples, aiming at providing the couples with tools to help them achieve harmonious family life and develop parental skills.

The *Mauritius Scout Association* was formed in 1912, and is active in 7 districts in Mauritius and in Rodrigues. It is estimated that there are 3,500 Scouts in Mauritius. As part of the training of trainers, Scout leaders are given basic knowledge of the Convention of the rights of the child.

The *Mauritius Girl Guides Association* created in 1926 is active in Mauritius and in Rodrigues, with approximately 1,200 Girl Guides. Information about the Convention is given to all Girl Guides, and they help disseminate the information. They have also helped sensitizing the youth about AIDS, and encouraged students with low academic performance.

#### The Women’s organizations and other NGO’s

The Ministry also secures the participation of NGO’s. Below is a list of these NGO’s:

- Mauritius Council of Social Services (MACOSS)
- Action Familiale
- Association des Femmes Mauriciennes
- Business & Professional Women of Mauritius
- Federation des Travailleurs Unis
- Soroptimist International IPSAE
- Mauritius Family Planning Association
- Association Mauricienne des Femmes Chefs d'Entreprise
- Brahma Kumari World Spiritual Raja Yoga Centre
- Mauritius National Women's League
- Women's Bahai Association
- Mauritius Alliance of Women
- SOS Femmes
- Centre de Formation EVA
- Muslim Youth Federation
- Women's Self-Help Association
- Federation des Syndicats des Corps Constitués
- Jagriti Handicraft Cooperative Society
- National Federation of Young Farmers Women's Unit
- Women's Committee of Socialist Working Youth League
- Women's International Association

- Mouvement Liberasyon Fam
- Women's Association for the Promotion of Chinese Culture
- SMF Wives' Club
- Association Maison D'Entraide "Women's Handicapped"

## PART III: PEOPLES'S RIGHTS

### **ARTICLE 19**

#### **RIGHT TO EQUALITY**

UN Convention on the Rights and Dignity of Persons with Disabilities

Government is committed to upholding and applying the provisions of the UN Convention on the Rights and Dignity of Persons with Disabilities. In this context, a Steering Committee under the aegis of the Ministry of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions is looking into the implementation of the Convention and is organising activities to raise awareness on this issue.

The Constitution of Mauritius

Section 3 of the Constitution entitled: "Fundamental rights and freedoms of the individual" reads:-

- b. *It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –*
- c. *the right of the individual to life, liberty, security of the person and the protection of the law; freedom of conscience, of expression, of assembly and association and freedom to establish schools; and the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation, and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.*

Section 16 of the Constitution entitled "Protection from discrimination" reads:-

- (1) *Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.*
- (2) *Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.*
- (3) *In this section, “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.*
- (4) *Subsection (1) shall not apply to any law so far as that law makes provision –*
  - (a) *for the appropriation of revenues or other funds of Mauritius;*
  - (b) *with respect to persons who are not citizens of Mauritius; or*
  - (c) *for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description.*
- (5) *Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, caste, place of origin, political opinions, colour, creed or sex) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local authority or any office in a body corporate established directly by any law for public purposes.*
- (6) *Subsection (2) shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5).*

- (7) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13, 14 and 15, being such a restriction as is authorized by section 9(2), 11(5), 12(2), 13(2), 14(2) or 15(3), as the case may be.*
- (8) *Subsection (2) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.*

*The Sex Discrimination Act 2002: Please refer to comments under Article 3 above.*

Section 3 (1) of the Social Aid Act provides that a person who, as a result of –

- *any physical or mental disability;*
- *any sickness or accident certified by an approved medical practitioner;*
- *abandonment by his spouse; or*
- *any sudden loss of employment which has lasted continuously for not less than 6 months, is temporarily or permanently incapable of earning adequately his livelihood and has insufficient means to support himself and his dependants,*
- *shall be qualified to claim social aid.*

Section 4 of the Training and Employment of Disabled Persons Act provides for a Board which shall prevent discrimination against disabled persons resulting from or arising out of their disability; amongst others. *Please refer to comments on article 15.*

Section 3 of the Society for the Welfare of the Deaf Act provides for the objects of the Society which shall aid, train and educate all deaf persons; assist deaf persons in obtaining medical treatment and suitable employment; grant deaf persons any material relief of which they may be in need; and erect, open and manage training centres, schools and hostels.

Section 3(1) of the Unemployment Hardship Relief Act provides that every person under the age of 60 who is unemployed, has a wife or a child or who is a disabled person, satisfies the prescribed conditions relating to residence; and whose resources are insufficient to meet his requirements, shall be qualified to claim hardship relief.

The Ministry of Social Security which is also responsible for the subject of National Solidarity and Senior Citizens has undertaken a host of measures with regard to the protection and welfare of the elderly and disabled persons.

Moreover, persons aged 60 and above benefit from a pension from Government. Pensioners and disabled persons as well as students during school hours are also eligible for free bus transport.

The Trust Fund for Soroptimist Day Care Centres for the Elderly Act was enacted in 2004 to set up a trust fund to establish and operate day care centres to provide day care, nursing and other services to the elderly and promote the welfare of the elderly generally.

The Protection of Elderly Persons Act was passed in 2005. The object of the Act is to set up a legal and administrative framework to ensure that adequate protection and assistance are made available to elderly persons in Mauritius and Rodrigues. The Act makes provision for the creation of the following institutional mechanisms to, inter-alia, ensure, promote and sustain the physical, physical, emotional, social, cultural and economic protection of elderly persons:-

- Protection of the Elderly Network;
- Monitoring Committee for the Elderly;
- an Elderly Person's Protection Unit; and
- Elderly Watch for different regions of Mauritius.

#### The Lois Lagesse Trust Fund and the Mauritius Union of the Blind

The Lois Lagesse Trust Fund and the Mauritius Union of the Blind provide training to persons with disabilities in Mauritius. The Lois Lagesse Trust Fund caters for people with visual disability in Mauritius. Its main objective is to educate, train and seek employment for them. It runs a Primary School and a pre-primary unit, and a program to identify and rehabilitate disabled persons through home visits. It provides equipment and mobility aids (white canes). It runs a sheltered workshop where persons with visual disability are involved in basketry and cane work. Other services include training in mobility and orientation, guidance and counseling, job placement, home visits and talking library. It also runs a Resource Centre on visual impairment.

The Mauritius Union of the Blind runs a school for persons with visual disability. It also runs a unit in a mainstream school and prepares visually impaired children and adults to integrate society by providing them with training in mobility, orientation, daily living skills and education. The Mauritius Union of the Blind is also involved in sports and cultural activities.

#### **General Policies**

The Ministry of Social Security and National Solidarity also provides for 5,000 inmates of charitable institutions, disabled children attending special schools and elderly persons aged 90 and above to be vaccinated against influenza. In addition, this year, persons

aged 65 and above will also be vaccinated. In this context, the Ministry is purchasing 45,000 vaccines.

One of the objectives of Government as per Government Programme 2005 – 2010 is to promote the concept of an inclusive society so that persons with disabilities are better integrated in the mainstream of society. To achieve this goal, a host of measures are being taken.

### Pensions and allowances

In line with the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities which stipulate States should ensure the provision of adequate income support to persons with disabilities, a wide range of pensions and allowances are provided to disabled persons. These include the Basic Invalidity Pension, Social Aid where it is applicable and Carer's Allowance to those who are severely disabled.

### Assistive devices

With a view to enhancing the mobility of disabled persons, a host of assistive devices like wheelchairs and hearing aids are provided to those in need.

### Education

To create an inclusive society, it is important that children with disabilities benefit from education on the same level as non-disabled children

In this context, the Ministry of Education and Human Resources has come up with a Strategy Paper on Inclusive Education. Efforts are being made to integrate more and more disabled children in mainstream schools.

At the level of the Ministry of Social Security, incentives are provided to children with disabilities to pursue secondary and tertiary studies. For example, they benefit from a scholarship scheme known as the François Sockalingum Award.

Furthermore, to encourage parents to send their disabled children to schools, bus fares of children are refunded if they travel by special means of transport. In case they are accompanied, the bus fare of the accompanying parent is refunded too. For those who travel by ordinary means of transport, free bus passes are provided.

The target is to enable the maximum number of children with disabilities to study in mainstream institutions. Those who are severely disabled will continue to attend special schools run by NGO's.

### Training and employment

A cornerstone of Government's policy is to empower persons with disabilities. One way of doing so is to provide quality training to disabled persons so that they can access the

labour market and join the world of work. This will enable them to become self-reliant. They can earn a living and lead an independent life.

In this context, a Memorandum of Understanding has been signed between the Training and Employment of Disabled Persons Board and the Industrial Vocational and Training Board (IVTB). The latter has agreed to open its training institutions to disabled persons who will benefit from the same kind of training as non-disabled persons. Employers will also be sensitised on the need to provide job opportunities to trained disabled persons.

Steps are also being taken to make the Civil Service more disabled-friendly.

On the other hand, micro-credit facilities will be provided to encourage disabled persons to be self-employed.

### Accessibility

No integration can be effective without making public buildings and places accessible to persons with disabilities.

In this context, the Building Act has been amended to make new public buildings accessible to disabled persons. Section 15A of the Act provides that the Authority may, in respect of the construction of a building, or extensive alterations, additions or repairs to a building, to which the public may have access, impose such conditions as it thinks fit for the provision of suitable means of access to any part of the building, car park or cartilage for the use of the building and its facilities by disabled persons.

Accessibility also means access to information. In this context, a Mauritian Sign Language (MSL) is being developed. News on TV is being signed for the benefit of deaf citizens.

### Sports, culture and leisure

The talents of persons with disabilities have to be developed.

In this context, it is proposed to set up a national troupe of artists with disabilities.

Disabled persons should also have access to leisure activities. In this context, apart from holiday camps, there will be special programmes for disabled persons in hotels, parks, shopping centres, etc. Activities will also be organised in collaboration with the Ministry of Tourism and Leisure.

## **ARTICLE 20**

### **RIGHT TO SELF-DETERMINATION**

Mauritius became independent in 1968 and became a Republic in 1990.

## A: The Chagos Archipelago

A member of the Chagossian community first instituted legal proceedings before the English courts in the mid 1970's but the case was withdrawn following an agreement between the parties. A sum of GBP 4 million was paid for the benefit of the Chagossian community in Mauritius. In 1998 another member of that community challenged the validity of the British Indian Ocean Territory Immigration Ordinance of 1971 prohibiting the entry of any person into the territory without a permit

The Ordinance was held invalid in a High Court ruling **R v Secretary of State for the Foreign Commonwealth Office, ex parte Bancoult 2000 ICHRL 81**. The immigration law was in consequence amended to allow Chagossians to return and reside in any part of the territory (except on Diego Garcia for defence reasons).

In 2002 the Chagos Refugee Group, a Mauritius-based group of Chagos islanders applied to the UK courts for further compensation, but the High Court ruled however in favour of the British Government on all claims brought.

The High Court of England and Wales held in their judgment delivered on 11 May 2006 **[2006] EWHC 1048 (Admin)** that the Chagossian people have the right to return to their homeland i.e. the Chagos Archipelago excluding Diego Garcia, thereby rendering nugatory the Order in Council issued by Her Majesty in Council namely the British Indian Ocean Territory (Constitution) Order 2004 which declared that no person has the right of abode in BIOT nor the right without authorisation to enter and remain there

The Government appealed against that decision and on 23 May 2007 the Court of Appeal (Civil Division) ruled once again in favour of the Chagossians. The Court did not grant the Government leave to appeal; however, it ruled that the Government seek permission from the House of Lords for permission to appeal the decision. The Government applied to the House of Lords for permission to appeal in June 2007. The House of Lords has as at 22 October 2008 allowed the appeal of the Government and have held that section 9 of the British Indian Ocean Territory (Constitution) Order 2004 is not invalid.

Ever since the unlawful excision of the Chagos Archipelago, including the island of Diego Garcia from the Mauritian territory in 1965, the Republic of Mauritius has maintained vis-a vis the Government of the United Kingdom and the international community that it has sovereignty over what is now referred to by the United Kingdom as the British Indian Ocean Territory (which Mauritius does not recognise).

The United Kingdom Government has given an undertaking to the effect that the Chagos Archipelago would be "returned" to Mauritius when it is no longer required for defence purposes. Bilateral negotiations are to take place between senior representatives of the two Governments on the issue of the Chagos Archipelago including Diego Garcia.

## B: Tromelin

This island situated 350 miles northwest of Mauritius is a subject of dispute between Mauritius and France. There are ongoing bilateral negotiations with the French Government in this respect and a Joint Meeting of Experts was held in Paris in January 2006. The issue of “co-gestion” or co-management of the maritime zone surrounding Tromelin was raised during the official visit of the Mauritian Prime Minister in France in June 2008.

#### C: Rodrigues

In 2001, the Constitution (Amendment) Act was passed by the Parliament of Mauritius to give a certain degree of autonomy to its dependant territory of Rodrigues. The Rodrigues Regional Assembly Act was enacted in the same year establishing a Rodrigues Regional Assembly, which can make and implement its own policy in a number of specified areas of responsibility.

#### D: The Local Government Act

This Act which is partly in operation was adopted in 2003 and provides for further decentralisation and transparency in the performance of the functions of local authorities in Mauritius. The Local Government Act is being comprehensively reviewed by a British expert.

#### E: Electoral System

Mauritius enjoys a system of free and fair elections and every 5 years general elections must be held. They are conducted by the office of the Electoral Commissioner. International observers as well as an independent Electoral Supervisory Commission (established under the Constitution) oversee the elections.

### **ARTICLE 21**

#### **RIGHT TO PROPERTY**

The right to property is essentially dealt with under the Civil Code. However this right is equally guaranteed under the Constitution.

Section 8 (1) of the Constitution entitled “Protection from deprivation of property” reads:-

No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where-  
:

- the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the social and economic well-being of the people of Mauritius; and
- there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

- provision is made by a law applicable to that taking of possession or acquisition –
- for the payment of adequate compensation; and
- securing for any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation.

The Land Acquisition Act regulates all cases of compulsory acquisition of land whereas the State Land Act regulates the sale or lease of state lands. The Succession and Wills Act regulates the division or partition of private property to their respective heirs.

Section 62 of The Planning and Development Act 2004 entitled “Grant of Compensation” provides:-

Subject to this Act, any person –

- whose property is injuriously affected by the coming into operation of a planning instrument; or
- who, for the purpose of complying with any provision contained in any planning instrument has incurred expenditure which is rendered abortive by a subsequent revocation or modification of the planning instrument,
- shall, where he makes a claim within 3 months of the coming into operation of the planning instrument, be entitled to recover as compensation from the planning authority the amount by which his property is decreased in value, or, so far as it was reasonably incurred, the amount of the abortive expenditure as the case may be.

## **ARTICLE 22**

### **RIGHT TO DEVELOPMENT**

Though the Mauritian Constitution does not provide for a specific right to development, the following legislations may be considered to be promoting attainment of the Millennium development Goals and the Right to Development:-

The Planning and Development Act 2004 provides for the promotion and coordination of the orderly and economic use and development of land as well as the proper management, development and conservation of natural and man-made resources for the purposes of providing the social and economic welfare of the community and a better environment. A National Planning and Development Commission is also established under the Act.

The Convention on Social Security Act provides for the Convention which was signed on 22nd April 1981 between the Government of Mauritius and that of the UK to have force of law.

The Financial Services Commission established under the Financial Services Commission Act 2007 has the task of ensuring the orderly administration of the financial services and global business activities as well as sound conduct of business in these sectors.

The Freeport Act 2004 has the task of promoting freeport trade.

The Government Guarantees (Development Purposes) Act makes provision for the Government to provide guarantees for the repayment of any money borrowed by a Mauritian for development purposes subject to conditions established under the Act.

The Government Social Welfare Centres Act establishes the Social Welfare Committee to manage social welfare centres which have the responsibility to further health, advance education, provide facilities for mental and physical training and generally for recreation and for social, moral and intellectual development.

The Human Resource Development Act 2003 establishes the Human Resource Development Council to advise the Government, amongst others, on Human Resource Development policies and strategies.

The Investment Promotion Act 2000 establishes the Board of Investment to stimulate the development of the Mauritian economy and promoting Mauritius as an international investment business and service centre and to formulate investment policies and the Act also provides the procedure for the application of investment certificates.

The Mauritius Industrial Development Authority Act 1983 establishes the Mauritius Industrial Development Authority to develop and operate industrial sites and estates to promote the export of goods and services from Mauritius and to advise the Government on all matters relating to export promotion, amongst others.

The Mauritius Oceanography Institute Act 2000 establishes the Mauritius Oceanography Institute to foster interest in research and development in relation to oceanography and to advise the government on the formulation and implementation of policies and programmes, amongst others. The Removal of Sand Act 1982 deals with the regulation of sand quarries.

The Mauritius Research Council Act 1992 establishes the Mauritius Research Council to advise the government and to foster research and development in all spheres of scientific, technological, social and economic activities.

The Mauritius Sugar Industry Research Institute 1982 establishes the Mauritius Sugar Industry Research Institute to promote by means of research and investigation, the technical progress and efficiency of the sugar industry. The Mauritius Sugar Authority Act 1984 establishes the Mauritius Sugar Authority which has the task of advising the government on matters in relation to the sugar industry

The Mauritius Tourism Promotion Authority Act 1996 establishes the Mauritius Tourism Promotion Authority to promote Mauritius as a tourist destination.

The National Productivity and Competitiveness Council Act 2000 establishes the National Productivity and Competitiveness Council to stimulate and generate productivity and quality consciousness in all sectors of the economy.

The Road Development Authority Act of 1998 establishes the Road Development Authority which is responsible for the construction, care, maintenance and improvement of motorways and main roads.

The Waste Water Management Authority Act 2000 establishes the Waste Water Management Authority which is responsible for waste water management in Mauritius.

The Wildlife and National Parks Act 1994 establishes the Wildlife and National Parks Advisory Council to advise the Government on any matter related to wildlife, national parks and other reserved land and conservation generally.

The National Women Entrepreneur Council Act 1999 establishes the National Women Entrepreneur Council to promote entrepreneurial activities of women and the National Women's Council Act 1985 establishes the National Women's Council to assist in the implementation and evaluation of Government policies relating to the needs of women.

The Noise Prevention Act 1982 which provides that an authority (i.e a municipal council or a district council) may make regulations against noise prevention.

The Outer Islands Development Corporation Act 1983 establishes the Outer Islands Development Corporation which shall be responsible to advise the government on the development of such activities which may lead to a more economic exploitation of the outer islands.

The Small Enterprises and Handicraft Development Authority Act 2005 establishes the Small Enterprises and Handicraft Development Authority which has the task of promoting entrepreneurial culture as well as sustaining the development of small and handicraft enterprises at national and international level.

The Patents, Industrial Designs and Trademarks Act 2002 establishes the Industrial Property Office to investigate any allegation of an industrial property offence. The Copyright Act of 1997 provides for protection of works.

The Protection against Unfair Practices (Industrial Property Rights) Act 2002 ensures criminal and civil liability for unfair practices.

The Fair Trading Act criminalises prohibited consumer trade practices and provides for powers of inspection of any premises for the purpose of trade.

The Computer Misuse and Cybercrime Act 2003 regulates the unauthorized access to computer data and electronic fraud.

## **ARTICLE 23**

### **RIGHT TO NATIONAL AND INTERNATIONAL PEACE AND SECURITY**

#### **Promotion of Peace and Security**

In a spirit of regional cooperation, Mauritius has been contributing to the national reconciliation process in Comoros. Mauritius hosted the Donors' Conference for the Union of the Comoros in December 2005 and pledged to provide all possible assistance to contribute to the smooth conduct of free and fair elections.

Mauritius also supports the efforts of the African Union to find a fair and comprehensive solution to the conflict in Darfur, Sudan. Our contribution to the enhancement of AU Mission in Darfur (AMIS) has been in terms of civilian police personnel.

As a member state of SADC, Mauritius is regularly involved in consultations with its partners to address and seek solutions to political crisis in the region. The SADC Organ on Politics, Defence and Security is the institutional framework whereby member states of SADC coordinate their policies and activities in the areas of politics, defence, security and human rights.

During the period Mauritius chaired SADC, it often impressed upon leaders and governments of the region the necessity to adhere to the principles of democracy, good governance and the rule of law.

No domestic laws have been enacted in Mauritius concerning asylum.

In the case of **Mahmotaky v The State of Mauritius 2003 SCJ 238**; it was held that since the U.K adhered to the Protocol relating to the Status of Refugees of 31 January 1967 (which came into force on 4 October 1967) on 4 September 1968 i.e after Mauritius had become independent, Mauritius is not a party to the Protocol but is only a party to the 1951 Convention which applies only to those who have become refugees before 1 January 1951. By virtue of customary international law, upon independence, Mauritius succeeded to many treaty rights and obligations of the United Kingdom as was also explained in the case of **Danche v The Commissioner of Police 2002 SCJ 171**.

The Supreme Court further considered, even though applicant could not be termed a 'refugee', whether sending him back to Madagascar in the circumstances related by him would actually mean sending him to the gallows. The Supreme Court held that he should at least be allowed to remain in Mauritius, pending the Judicial Review case to give an opportunity to the Supreme Court to consider whether the decision not to allow him to stay in Mauritius is contrary to the Declaration on Human Rights but no such application for Judicial Review was filed.

Furthermore, there is no domestic law in Mauritius, concerning refugee status. However, though there is no specific procedure provided for 'refoulement' in our statutes, the Extradition Act provides with regard to extradition crimes namely in its section 7, that an offender shall not be surrendered to a foreign State where the offence

in respect of which the request for his surrender is one of a political character or where the Minister has reasonable grounds for believing that the request for surrender is being made for the purpose of prosecuting or punishing the offender on account of his race, caste, place of origin, nationality, political opinions, colour or creed or where the Minister is satisfied that it would be unjust, oppressive or too severe a punishment to surrender the offender, amongst others.

As was rightly pointed out by the learned Judges in the case of **Ramankhan v The Commissioner of Prisons 2002 SCJ 140**, “This is not to say that the Executive’s decision to surrender an offender cannot be questioned in the Courts, as was the case in *Soering v United Kingdom* 1989 EHRR 439. The offender can, of course, do so by means of judicial review proceedings in Mauritius.....”

In the case of **Heeralall v Commissioner of Prisons 1992 MR 70**, the Supreme Court observed in matters of extradition proceedings that -

“.....In countries which recognise fundamental rights and where fundamental rights, including rights of due process, are entrenched in the Constitution, the extradition legislation must be read subject to those guarantees. Extradition being a derogation from the right to liberty and freedom of movement recognised in sections 5 and 15 of our constitution, it is doubtful whether provisions governing its implementation would be interpreted otherwise than strictly. The judgment of the European Court in the case of *Soering* against the Government of the United Kingdom delivered on 7 July 1989 confirms this approach.”

Following the same reasoning, it would seem to us that, if a question is raised as to whether a person who is proposed to be extradited by the Courts in Mauritius would be deprived of the guarantees against forced interrogation and his right to silence, then our Courts would be bound by the provisions of our Constitution not to extradite him since our Courts would not be in a position to protect that person or to ensure that those guarantees are made available to him”.

Under the Deportation Act, an asylum-seeker has no possibility of appealing against a decision to deport. A deportation order may be made only against:-

- A convicted person;
- An undesirable person;
- A destitute person;
- A prohibited immigrant; as are defined in section 2 of the Act.

Section 5 of the Act provides for the procedure to be followed where the Minister proposes to make a deportation order, a notice shall be served on the person requiring him to show cause before a Magistrate in Chambers why the order should not be made. The Magistrate shall then make a report to the Minister setting out his findings. The Minister is however, not bound by the findings of the Magistrate.

Pending the decision of the Minister, the Magistrate may further order, that the person charged be detained for a period not exceeding 28 days. Flouting a deportation order is an offence with a term of imprisonment not exceeding 6 months and a fine not exceeding Rs 500.

Though there is no possibility of appeal under the Deportation Act, in the well known case of **Jogee and Megadama v Government of Mauritius 1993 MR 133**, an application for injunction relief was entertained by the Judge in Chambers. In that case, Megadama was deported whilst a case to prohibit her deportation was pending before the Judge in Chambers. The Judge held that the deportation, a deliberate act of the executive which was carried out behind the back of the Supreme Court, had deprived the judge of his jurisdiction. The matter was then referred to the DPP to consider whether contempt proceedings were called for. The Supreme Court did not hesitate, once it had been apprised of a given situation wherein the civil rights of an individual were being deliberately flouted by an authority, to intervene strongly and expeditiously.

Mauritius has enacted the Mutual Assistance in Criminal and Related Matters Act to enhance cooperation at the regional and international levels in the fight against terrorism and other serious offences. A “serious offence” is taken to include an offence whose maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months; or an offence against a law of a foreign State for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months. It also includes an international criminal tribunal offence

Mauritius has also enacted the Explosives Act, the Biological and Toxin Weapons Act and the Chemical Weapons Convention Act to further the fight against terrorism in all its forms and manifestations:

The Explosives Act 1959 seeks to license and regulate the use of explosives in Mauritius. It provides that no person shall either manufacture, handle, import, transport, store, purchase, sell, blast or otherwise be in possession of explosives without a valid licence issued by the Commissioner of Police.

The Biological and Toxin Weapons Convention Act 2004 was enacted to give effect to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. It prohibits, in addition, the development, production, stockpiling, acquisition, retention or transfer of biological agents or toxins and biological weapons, other than for protective or other peaceful purposes.

The Chemical Weapons Convention Act 2003 gives effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (commonly called the Chemical Weapons Convention). It creates a National Authority to act as a national focal point to liaise with the other State Parties and the Organization for the Prohibition of Chemical Weapons and prohibits the development, production, stockpiling, acquisition and use of chemical weapons.

PART II of the Prevention of Terrorism Act 2002 entitled “Acts of Terrorism and Related Offences” provide for the offences of Prohibition of acts of terrorism; Proscribed organizations; Terrorist meetings; Support; Harboring terrorist; Information about acts of terrorism; Obstruction of terrorist investigation; International terrorism and Hostages.

PART III of the Act entitled “Terrorist cash and Terrorist Property” provide for the offences of Dealing in terrorist property; Attachment of property; Property tracking and Extra-territorial jurisdiction.

The Civil Aviation (Hijacking and Other Offences) Act 1985 provides that the Hague Convention, the Montreal Convention and the Tokyo Convention shall have force of law in Mauritius.

## **ARTICLE 24**

### **RIGHT TO A CLEAN AND DECENT ENVIRONMENT**

Environmental protection is one of the pillars of Sustainable Development (SD). The mismanagement of our valuable environmental resources has a direct impact on the social welfare and economic growth of a country. Mauritius has set the stage and the enabling environment for the attainment of SD, by providing for the necessary environmental policies, the institutional set up and the legal framework. These are outlined below:

#### Legislative Framework

##### Environment Protection Act (EPA) 2002

The EPA 2002 is the main environmental legislation. The underlying principles of this legislation are the protection of the environment and human health. It provides for:

The protection and management of the environmental assets of Mauritius so that their capacity to sustain the society and its development remains unimpaired;

Ensuring harmony between quality of life, environmental protection and sustainable development for the present and future generations;

The legal framework and the mechanism to protect the natural environment;

Planning for environmental management and coordination of the inter-relations of environmental issues;

#### *Environmental Stewardship*

An important concept put forward by the EPA 2002 is Environmental Stewardship, which puts a duty on each and every citizen of Mauritius to preserve and enhance the quality of life by caring responsibly for the natural environment.

### *Environmental Impact Assessment*

In order to mitigate environmental impacts resulting from developments taking place throughout the island, the EPA 2002 warrants an Environmental Impact Assessment licence or a Preliminary Environmental Report approval for scheduled undertakings. These licences are granted after carefully evaluating all possible impacts and the means of mitigation. This mechanism is an important tool to ensure a sound and sustainable environment.

The EPA provides for an appellate mechanism (Environment Appeal Tribunal) geared at persons aggrieved by the decision of the Minister.

### *Environment Protection Fee (EPF)*

The EPA makes provision for a green tax based on the “Polluter Pays Principle” (PPP). The Environment Protection Fee is the first step in the phased introduction of the PPP and was introduced in 2000. The EPF is presently levied on hotels, boarding houses and the stone crushing industry and will be extended to other sectors in the future.

The EPA is presently in the process of being amended to make it more responsive to the challenges being posed by the new economic architecture and to ensure corporate environmental ethics.

### *Standards and Regulations*

The EPA also provides for the formulation of regulations and standards pertaining to protection of the environment. Several regulations and standards have been promulgated; including standards for drinking water quality, noise, air and regulations for discharge of effluent. In 2005, regulations providing for the declaration of 41 other enactments or part of enactments were made to enable use of the enforcement mechanism under the EPA. A few examples are the Ground Water Act, the Fisheries and Marine Resources Act and the Noise Prevention Act.

### *Other laws*

Apart from the EPA, there are other sectoral legislations, which deal with environmental issues, such as the Local Government Act for solid waste management, the Planning and Development Act for land use issues, the Public Health Act for environmental nuisances and sanitation.

The Forests and Reserves Act regulates the public use of forests and state reserves.

The Board of Agriculture, Natural Resources and the Environment Act 1977 establishes the board to enquire and report to the Minister concerned on all matters relating to agriculture, forestry and utilization and preservation of natural resources and the environment.

The Dangerous Chemicals Control Act 2004 regulates the commercial use of dangerous chemicals and ensures that they are properly stored and manufactured.

Section 2 of the Inflammable Liquids and Substances Act provides that:-

No inflammable liquid or inflammable substance shall be imported, unloaded, loaded, trans-shipped, transported or kept except in accordance with regulations made under this Act.

Section 6 of the Radiation Protection Act provides for the functions of the Board created under this Act which shall advise the Minister on all matters relating to the use of ionising radiation sources or other radioactive substances; grant permits for the importation, production, processing, handling, use, holding, storage, transport and disposal of natural and artificially produced radioactive substances; and grant permits for the use and operation of other radiation sources including diagnostic x-ray machines and for any other activity which involves a hazard arising from ionising radiation; amongst others.

#### Institutional Set up

The EPA provides for the setting up of the institutional framework and other organizational system for managing the environment. The Ministry of Environment & National Development Unit, through its Technical Department of Environment, maintains the primary responsibility of ensuring environmental protection, planning, monitoring, coordination and awareness raising.

The National Environment Commission is the supreme environmental body chaired by the Prime Minister and comprising of all the Ministers dealing with environmental protection. It is the highest policy-making body mandated to monitor and review the work of public departments dealing with environment and make recommendations accordingly.

The Environment Coordination Committee (ECC) is steered by the Ministry of Environment. Public departments and enforcing agencies dealing with environmental protection meet in this platform to ensure that environmental laws, including standards, and policies are being complied with. The committee also advises the Minister on matters relating to pollution control measures and codes of practice for environmental protection.

The Environmental Liaison Officers (ELO) meeting, provided for under the EPA ensures coordination among Enforcing Agencies for enforcement of environmental laws.

The national network for sustainable development under the chairmanship of the Minister of Environment and comprising of representatives from the public sector, private sector, parastatal bodies, NGO's academia acts as a forum for discussions and consultations on environmental policies and plans, quality & state of the environment, integrated pollution prevention and control, built-up environment and visual pollution in order to protect the environment and to achieve sustainable development.

The National Environment Fund is one of the co-funding mechanisms established under the EPA 2002 to fund projects, promote environmental education and research, support environmental NGOs and encourage local initiatives amongst others for the benefit of environment

## Environmental Policies

The present policies for environmental management are contained in several documents such as the National Environment Policy (NEP) of 1991, the National Environmental Strategies (NES) of 1999 and other sectoral plans. The NES, which is a 10-year planning framework for environmental management, was commissioned to meet the challenges of changing production and consumption patterns which result as a consequence of economic growth. The 1991 policy has been reviewed into the draft White Paper on new National Environment Policy. The NES is under review to include emerging environmental concerns and the implementation of multilateral environmental agreements.

The NEP of 1991 sets out the principle that the Government shall ensure that there exists an appropriate legislation, enforcement and judicial mechanism, which guarantees the citizens protection from the risks associated with pollution. It also fosters the "Polluter Pays Principle" in that the polluter must pay for the cost of cleaning up the pollution.

The National Environment Policy is now being reviewed in order to have a consolidated comprehensive policy statement. The need for this new policy is driven foremost by the fact that Sustainable Development is recognized as the dominant development paradigm in the present global context. This environment policy framework, anchored in the concept of SD will incorporate the relevant recommendations of the various global conferences on environment [Rio Earth Summit (1992), Millennium Development Summit (2000), Johannesburg World Summit (2002) and Mauritius International Meeting on Small Island Developing States (2005)].

Emphasis is being laid on improving environmental governance:

- Improved access to information ( public information centre, raised level of awareness across all stakeholders groups, websites, early warning in case of disasters such as tsunami/ oil spills )
- Enhanced public participation in decision making (e.g. comments during EIA process and environmental standards/ policy/ strategy development/ ICZM Committee)
- Strengthened enforcement (including decentralization to local authorities, empowerment of enforcing agencies, recourse to Ombudsperson )
- Innovative Enforcement mechanisms like fixed penalties
- E-Government Services (online environment complaints)
- Access to justice ( for example : Redress in court)
- Liability and compensation in case of spills and environmental emergencies
- Adaptation measures with regard to the impact of climate change in all spheres of economic and social activities

## Progress in Management of Natural Resources

Mauritius has a narrow natural resource base comprising of very limited land resources, freshwater, air, coastal & marine resources, biodiversity (flora & fauna), solar & wind energy and mineral resources.

## Land Use

With regard to land use and management, Government has developed new laws and new institutional arrangements to manage change efficiently and sustainably, whilst allowing flexibility and innovation. These are:

- The National Development Strategy
- The review of the town planning legislation
- Democratisation of Land, a Strategy for Social Change
- Land Administrative Reform
- Freshwater
- Safe water and sanitation for all has been a principal feature of development. Steps have been made in recent years to increase supply, reduce water cuts, improve water quality; metre based charges and reduce pollution of water resources. Future plans include improving integrated management to ensure better supply and more effective use of water, especially in agriculture and in industry, the heaviest users.

## Biodiversity

A high proportion of native plants are threatened or endangered mainly due to introduced exotic plants. Major conservation and restoration projects for plants and birds in mainland of Mauritius and outer islets have proved successful. Mauritius has also prepared its Biodiversity Strategy and Action Plan.

## Coastal Resources

In addition to the terrestrial biodiversity, Mauritius has a rich coastal and marine biodiversity including coral reefs, mangroves and wetlands. The establishment of a 200-mile Exclusive Economic Zone (EEZ) has vastly extended the fisheries and other marine resources available.

Major initiatives to protect the coastal zone have been undertaken as part of the integrated coastal zone management, including the banning of sand mining, the development of methods for beach nourishment, a national sewerage program and daily beach cleaning.

## Air

Though the ambient air quality is well within our air standards, local air pollution occurs principally due to emissions from the industrial sector and the transport sector. Government has defined a strategy to improve air quality in Mauritius which consists of:

- Introduction of diesel with lower sulphur content
- Introduction of unleaded petrol
- Promulgation of legislation for the control of vehicular emissions
- Fiscal incentives to encourage use of autogas
- The Air Standards have been reviewed. Government also plans to devise and implement policies and management tools to improve air quality.

#### Progress made in other sectors

##### Climate Change and Sea Level Rise

The National Climate Change Action Plan defines the system to monitor the progress of global warming and to prepare for measures of adaptation in line with the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

##### Waste Management

The steady economic and social development of the country has increased the level of consumption, which has resulted in greater amounts of wastes being produced. The construction of a sanitary landfill together with peripheral transit facilities has eased the problems arising from the previous uncontrolled waste dumps. Mauritius has also devised its Solid Waste Management Strategy, which puts much emphasis on waste minimization. Future plans include composting, recycling and the possible setting up of a waste to energy plant.

##### Vulnerability to Natural Disasters and Preparedness

Mauritius is highly vulnerable to natural disasters and impacts of climate change and sea level rise. Being situated in the inter-tropical convergence zone, Mauritius is highly exposed to cyclones. On average, one cyclone passes within 100 km of Mauritius each year. Wind gusts of 118 km per hour or more are experienced. With such strong winds and accompanying heavy rainfall, cyclones can cause flooding and have a potential to produce physical damage with a serious impact on the environment and economy.

Mauritius has adapted itself to cyclones with precautionary measures, early warning systems and disaster system programs. Computer plotting of cyclones and their trajectories and immediate and long-term precautions, have transformed the capacity of the country to survive and continue working effectively.

With the tragic Asian experience of the latest tsunami, which occurred on 26 December 2004, Mauritius has reinforced its vigilance against such natural disasters. Many proactive measures have been initiated with a view to increase our preparedness for tsunamis. Government has set up a National Tsunami Warning Centre under the Central Cyclone and other Natural Disasters Committee. Meanwhile, an inundation map has been prepared and an evacuation strategy will be worked out. Sensitization programs have been organized with the youth and other programs targeting other quarters of the society are envisaged. The establishment of a Tsunami Early Warning System is also in the pipeline.

#### Multilateral Environmental Agreements (MEAs)

As a small island state with a fragile ecosystem and limited resources the Republic of Mauritius has continued to support international initiative and in a spirit of international co-operation, has signed some 36 environment related conventions and Protocols.

The obligations of most conventions and protocols have been implemented through the development of strategies, formulation of policies, implementation of projects through technology transfer and capacity building.

The Ministry of Environment & National Development Unit has decided to set up a high level Ministerial Committee to co-ordinate implementation of the environmental conventions, to have regular meetings with all the stakeholder Ministries for co-ordination and compilation of updated information on a regular basis.

## **PART IV: SPECIFIC DUTIES ON STATES**

### **ARTICLE 25**

#### **STATE'S DUTY FOR THE DISSEMINATION OF INFORMATION ON HUMAN RIGHTS**

##### The Human Rights Centre

The recently inaugurated Human Rights Centre aims to be the main platform for the promotion of Human Rights in Mauritius. The Centre will also act as a channel for information and aims at making the public aware of existing institutions and laws so that they may better avail themselves of such.

In addition to its numerous tasks in matters of education and sensitisation, the Centre will also serve as one of the main human rights forum where-

- non-religious groups and associations, clubs and even political parties from all spheres will be welcome to organise debates and meetings on human rights related issues;

- foreign visitors in the field of human rights will hold conferences and talks on a regular basis in the premises of the Centre. The members of the UN Sub Committee on Prevention of Torture met Mauritian stakeholders for discussions on the said premises;

- proper training shall be given to various people from NGO' s and trade unions who will in turn assist in the empowering of citizens at grassroots level; and

- all year round sessions will be held by local guest speakers, on a voluntary basis, from different spheres of society on different topics in the human rights area.

The Human Rights Centre initiates Human Rights campaigns and the publication of brochures and pamphlets on human rights issues.

The main Human Rights Conventions ratified by Mauritius and specially the rights contained therein will be widely disseminated to the general public.

#### National Action Plan on Human Rights

Mauritius is at present finalising a National Action Plan on Human Rights. This National Action Plan seeks to develop a strong culture of human rights in Mauritius by providing better protection for individuals, creating more effective programmes that enhance the quality of life for all, particularly vulnerable groups, and by improving national harmony. It also aspires to achieve promotion of greater awareness of human rights, both in the general public and in specific sectors. The overarching objective of the National Action Plan is to bring about tangible improvements in the observance of all categories of human rights.

The National Action Plan has been developed on the basis of realistic objectives and clear targets and it covers a broad field of areas. It includes an expose relating to the international and national legal framework, a description of the different categories of human rights enjoyed by Mauritians, the role of national institutions and civil societies and lays emphasis on the need for human rights education. It describes the actions taken so far in each field and the shortcomings which need to be overcome, and proposes measures to address these shortcomings. The National Action Plan also proposes specific time frames for the achievement of its objectives, with short term, medium term and long implementation of the measures. The provision of a time frame will ensure that those involved in realizing the targets of the Action Plan have a deadline to structure their activities and should ultimately facilitate monitoring and final evaluation.

#### Distribution of copies of the Constitution

Over 35000 copies of the Constitution have been printed and distributed free among various groups of the population. Another 30 000 copies are actually in print and will be distributed to all secondary students. It is also intended to make copies of the Constitution available in Braille for the benefit of those who have a visual impairment.

### Human Rights education to be incorporated in all school curricular

The Ministry of Education and Human Resources in line with its Human Rights Education Plan of Activities is currently working on the integration of Human Rights Education into the school curricula at primary level. On the finalization of the National Curriculum Framework for secondary schools, Human Rights Education will be introduced at lower secondary level.

Furthermore this plan has provided for the training of curriculum writers who are responsible for the development of proper teaching and learning materials (Textbooks and teacher's guides); The training which may involve the assistance of technical experts in human rights curriculum, will ensure that Human Rights Components are integrated in the different disciplines in the school curricular, in line with the National Curricular Framework.

The Ministry of Education has committed itself to see to it that modules of Human Rights Education be introduced in the 'in-service' and 'pre-service' courses of the MIE intended for primary and secondary school teachers as well as for PGCE students.

A series of events and activities have been designed, under the Human Rights Education Revised Plan of Activities, with a view to achieve a better awareness of human rights issues in primary and secondary schools:

- Launching of a series of a number of activities including
- essay/poem/song competitions, drawing/ poster competition, story-telling, debates, elocution contests
- Exhibitions of the best entries above
- Preparation of a kit on human rights for distribution to schools
- At morning assembly, schools may be requested to devote some assemblies to human rights messages; resource persons to be invited to talk on human rights; school rules and regulations could be subject for Human rights education; the life and achievements of great freedom fighters also to be the subject of dissemination

### Human Rights Club

Many schools are already operating "Amnesty Clubs". It is proposed that Human Rights Clubs be set up in secondary schools where there is no Amnesty club.

### International Humanitarian Law

The National Humanitarian Law Committee set up under the aegis of the Prime Minister's Office has the task of implementing and spreading knowledge of international humanitarian law instruments to which Mauritius is a party. Recently, the subject entitled "Exploring Humanitarian Law" has been introduced in State Secondary Schools on a pilot basis. Procedures are currently under way to extend the project to private secondary schools. At the tertiary level, a module on International Humanitarian Law has been introduced for "Bachelor of Laws with Honours" courses at the University of Mauritius. The National Humanitarian Law Committee also actively sensitizes the public

on International Humanitarian Law through workshops, seminars and distribution of books to the National Library of Mauritius.

## ARTICLE 26

### **INDEPENDENCE OF THE JUDICIARY AND THE ESTABLISHMENT OF APPROPRIATE NATIONAL INSTITUTIONS**

#### **Independence of the Judiciary**

The Constitution provides for the independence of the Judiciary not only vis-à-vis the Legislature and the Executive but also vis-à-vis other political or social forces, as illustrated by the entrenched provisions governing the appointment of Judges, their terms of office and security of tenure, the provisions governing their removal in case of misconduct and the oath which they are required to honour under Chapter VII of the Constitution.

Our Constitution has conferred on the Judiciary the role to ensure the proper functioning of a democratic society. The Judiciary under our Constitution is made to operate within a system where the legislative and executive powers of the State are separate from those of the Judiciary. It is charged with the special duty of ensuring that legislative and executive powers are exercised in accordance with the Constitution and within the limits authorised by the Constitution. It is also charged with the duty to safeguard fundamental rights themselves often at risk in the exercise of legislative or executive powers.

Section 85 of the Constitution provides for the establishment of the Judicial and Legal Service Commission.

Section 86 (1) of the Constitution entitled 'Appointment of judicial and legal officers' provides for power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Judicial and Legal Service Commission.

It is a fundamental tenet of the Constitution that there should be a separation of powers between the legislature, the executive and the judiciary. It was highlighted by the Court in the case of **Mahaboob v Government of Mauritius 1982** that parliament has no more right to pronounce judgments than the Supreme Court has a right to make laws. The

judiciary as one of the pillars of a democratic society enjoys powers that cannot be abrogated by the executive or by the legislature.

Furthermore, it is also to be noted that section 10(1) of the Constitution entitled "Provisions to secure protection of law" provides -

Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

The case of **Abdool Cader Abdoul Gaffoor v. The Commissioner on Drugs 2005 SCJ 140** upheld the decision of the Court of Appeal in England in the case of "**In re Medicaments and Related Classes of Goods (No. 2) [2001 1 WLR 700]**". The Court in that case held that, giving effect to the right to a fair trial by an independent and impartial tribunal as provided by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, a right enshrined in section 10 of our Constitution – the proper approach was whether the relevant circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, that is, a real danger, of the Judge being biased.

In deciding this question, the meaning of "bias" must be clearly understood. As explained by the Court in that case, at p. 711, paragraph 37,

*"Bias is an attitude of mind which prevents the judge from making an objective determination of the issues that he has to resolve. A judge may be biased because he has reason to prefer one outcome of the case to another. He may be biased because he has reason to favour one party rather than another. He may be biased not in favour of one outcome of the dispute but because of a prejudice in favour of or against a particular witness which prevents an impartial assessment of the evidence of that witness. Bias can come in many forms. It may consist of irrational prejudice or it may arise from particular circumstances which, for logical reasons, predispose a judge towards a particular view of the evidence or issues before him."*

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In the case of **Tannoo v. Her Honour, Mrs Magistrate R. Teelock & The Director of Public Prosecutions 2005 SCJ 287**, the Supreme Court upheld the following judgments:-

In **R v London JJ ex parte South Metropolitan Gas Co (1908) 72 JP 137**, it was held that the decision whether there is a real likelihood of bias is one of degree to be taken in each individual case, and the basis is the effect likely to be produced on the public mind as to the fairness of the administration of justice if in the individual circumstances the justice hears the case.

In the case of **Poonoosamy & others v. State 1996 MR 1**, the Court referred to the decision of the European Court of Human Rights in **Piersack v. Belgium 1982 5 EHRR 169** which held that the test applicable in determining whether a trial Magistrate is

objectively independent and impartial is to consider whether he offers “*guarantees sufficient to exclude any legitimate doubt in this respect.*”

In the case of **Chundensing v The State 1997 MR 202**, the Court referred to the decision of the House of Lords in Regina v. Gough [1993 2AER 724] which held that the test whether bias affected a trial was “*whether a reasonable and fair minded person sitting in the Court and knowing all the relevant facts would have had a reasonable suspicion that a fair trial of the defendant was not possible.*” Their Lordships went on with the following pertinent remarks at page 737:

- i. “*In formulating the appropriate test it was unnecessary to require that the Court should look at the matter through the eyes of a reasonable man, because the Court personified the reasonable man.*”
- ii. “*For the avoidance of doubt the test should be stated in terms of real danger rather than real likelihood, to ensure that the Court was thinking in terms of possibility rather than probability of bias.*”

A democratic society would be at serious risk if the Judiciary were not given, in these circumstances, the means to protect itself and to maintain its independence and integrity in the face of a purported exercise of freedom of expression without regard for the “duties and responsibilities” which the legitimate exercise of that freedom requires in a democratic society.

One of the permissible limitations of freedom of expression in our law is the need to maintain “the authority, independence and impartiality of the courts” as recognised in international instruments and, indeed, in section 12(2) (b) of our Constitution. Such a need has always been demonstrable, given the particular role, which the Judiciary has always been called upon to play in systems which are based on the rule of law. This is the reason why the law of contempt has been part of the panoply of laws of those systems.

Government is also committed to make or support far-reaching reforms to the justice sector with a view to improving the delivery of justice, as per the recommendations made by the Presidential Commission chaired by Lord Mackay of Clashfern. Amendments are to be made to the Constitution shortly to provide for separate Court of Appeal and first instance Court within the Supreme Court of Mauritius. Since January 2008, two Judges have been hearing criminal cases and two others have been hearing family law cases on a full-time basis with a view to clearing the backlog. As from January 2009, two Judges will be hearing commercial cases on a full-time basis.

## **The establishment of appropriate national institutions**

### **The National Human Rights Commission**

Section 4 of the Protection of Human Rights Act provides for the functions of the Commission as follows--

- Subject to subsection (2), the Commission may, without prejudice to the jurisdiction of the Courts or the powers conferred on the Director of Public Prosecutions or the appropriate Service Commission –
- enquire into any written complaint from any person alleging that any of his human rights has been, is being or is likely to be violated by the act or omission of any other person acting in the performance of any public function conferred by any law or
- otherwise in the performance of the functions of any public office or any public body;
- enquire into any other written complaint from any person against an act or omission of a member of the police force in relation to him, other than an act or omission which is the subject of an investigation by the Ombudsman;
- where it has reason to believe that an act or omission such as is referred to in paragraph (a) or (b) has occurred, is occurring or is likely to occur, of its own motion enquire into the matter;
- visit any police station, prison or other place of detention under the control of the State to study the living conditions of the inmates and the treatment afforded to them;
- review the safeguard provided by or under any enactment for the protection of human rights;
- review the factors or difficulties that inhibit the enjoyment of human rights;
- exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.

The Commission shall not enquire into any matter after the expiry of 2 years from the date on which the act or omission which is the subject of a complaint is alleged to have occurred.

The Commission shall, in the first place, attempt to resolve any complaint, or any matter which is the subject of an enquiry pursuant to subsection (1) (c), by a conciliatory procedure.

Where the Commission has not been able to resolve a matter through conciliation, it shall, on the completion of its enquiry,

- where the enquiry discloses a violation of human rights or negligence in the prevention of such violation, refer the matter to –
- the Director of Public Prosecutions where it appears that an offence may have been committed;
  - the appropriate Service Commission where it appears that disciplinary procedures may be warranted;
  - to the chief executive officer of the appropriate public body where it appears that disciplinary action is warranted against an employee of a public body who is not within the jurisdiction of a Service Commission;
  - recommend the grant of such relief to the complainant or to such other person as the Commission thinks fit;
  - inform the complainant, if any, of any action taken under this subsection.

### **Recommendations of National Human Rights Commission**

Among the main recommendations made by the National Human Rights Commission for the year 2007, the following may be noted-

#### Economic, social and cultural rights

A future new Constitution of Mauritius to provide explicitly for the promotion of economic, social and cultural rights such as the right to education, health, housing, social security, food and water.

The Creole language to be used as a medium of instruction in the early years of schooling.

#### Police

More power should be given to the proposed Independent Police Complaints Commission.

#### Prisons

The National Human Rights Commission recommends the rationalization of the system of inspection of prisons and the processing of complaints.

Remission should be introduced even for serious crimes.

Inhabitants of Rodrigues serving sentence in Mauritius should serve their sentence in Rodrigues to be closer to their families.

Consideration should be given to the eventual setting up of an open prison for women.

#### Sex Discrimination

Sex offenders should be tried as soon as possible to protect the victims and should be given psychological treatment.

## Migrant Workers

A legal framework to protect the rights of migrant workers could be put into place.

## Administration of Justice

Consideration may be given to the setting up of an Office for Legal Complaints to deal with complaints against the legal profession. (It is to be noted that under the Law Practitioners Act, complaints may be made against law practitioners to the Attorney-General.)

## **The Ombudsperson for Children**

Section 5 of the Ombudsperson for Children Act provides for the objects of the office of the Ombudsperson for Children as follows:-

The Ombudsperson for Children shall –

- ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals.
- promote the rights and interests of children;
- promote compliance with the Convention.

Section 7(1) of the Ombudsperson for Children Act provides for the powers of investigation as follows:-

Where the Ombudsperson for Children considers, either upon complaint made to him or on his own motion, that it is necessary to investigate a matter relating to the rights of a child, the Ombudsperson for Children shall investigate the complaint in such manner as he considers appropriate.

## **The Ombudsman**

The Office of the Ombudsman has been created under section 96 of the Constitution in 1968.

The mission of the Ombudsman is to serve the Mauritian community by addressing issues arising from alleged maladministration in the public sector and redressing wrongs that may be found to have been committed. The Ombudsman does so through independent, objective and impartial investigations initiated upon receipt of written complaints or acting on his own initiative. He attempts to strike a fair balance between what the citizen expects from government services (now also local authorities) and the government (or local authority) that provides these services.

Section 97(1) of the Constitution provides for the powers of investigation by the Ombudsman as follows:-

- ‘.....the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative

functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken and in which –

- a complaint under this section is made;
- he is invited to do so by any Minister or other member of the Assembly; or
- he considers it desirable to do so of his own motion.
- the Ombudsman’s ultimate objective is to bring about a public service culture characterized by fairness, openness and accountability.

As regards statistics please find hereunder some figures covering the period 1995 to 2005 –

Year	No. of complaints received
1995	225
1996	470
1997	492
1998	457
1999	441
2000	288

Year	No. of complaints received
2001	329
2002	326
2003	458
2004	364
2005	329

## **Constitutional provisions**

### The Public Service Commission

The Public Service Commission is established by Section 88 of the Constitution. It is vested with the power to appoint persons to hold or act in any offices in the public service, to exercise disciplinary control over persons holding or acting such offices and to remove such persons from office.

### The Disciplined Forces Service Commission

The Disciplined Forces Service Commission is established by Section 90 of the Constitution. It is vested with the power to appoint persons to hold or act in any office in the disciplined forces (i.e. the military force, the Police Force, the fire service and the Mauritius Prison Service), to exercise disciplinary control over the persons holding or acting in such offices and to remove such persons from office.

### The Electoral Supervisory Commission

The Electoral Boundaries Commission and the Electoral Supervisory Commission are established by Section 38 of the Constitution. The office of the Electoral Commissioner is created by Section 40 of the Constitution.

The duty of the Electoral Boundaries Commission is to review the boundaries of constituencies from time to time and to make recommendations to the National Assembly relating to same.

The Electoral Supervisory Commission has general responsibility for and supervises the registration of electors for the election of members of the National Assembly and the conduct of elections of such members.

The Electoral Commissioner shall have such powers and other functions relating to such registration and elections as may be prescribed. He shall have the right to attend meetings of the Electoral Supervisory Commission and to refer to the Electoral Supervisory Commission for their advice or decision any question relating to his functions.

Every proposed legislation and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of the National Assembly shall be referred to the Electoral Supervisory Commission and to the Electoral Commissioner for comments before being introduced in the National Assembly or as the case may be, the regulation or other instrument is made.

### **Rodrigues Regional Assembly**

In 2002, provision was made for a decentralized form of Government in the island of Rodrigues by setting up the Rodrigues Regional Assembly which is responsible for the formulation and implementation of policy for specified matters in relation to Rodrigues (such as agriculture, child development, employment, environment and tourism). Regional Assembly Laws may be adopted in relation to those areas of responsibility. Members of the Rodrigues Regional Assembly are elected by citizens of Mauritius who are residents of Rodrigues.

## **PART V: INDIVIDUAL DUTIES**

### **ARTICLE 27**

Chapter II of our Constitution provides for the exercise of the fundamental rights and freedoms found under this Chapter to be subject to the rights and freedoms of others and the interests of defence, public safety, public order, public morality or public health. These restrictions must further be reasonably justifiable in a democratic society.

### **ARTICLE 28**

## RIGHT AGAINST DISCRIMINATION

Please refer to comments under article 19 above.

### **ARTICLE 29**

With regard to the responsibility of the individual for the security of the State, the following observations are noted -

#### Not to compromise the security of the State whose national or resident he is:

The primary function of policing is to maintain or restore social order. The State relies on the Police, or the Paramilitary force in extreme cases, to suppress civil disturbance, which threatens life, property or national security. It is the State's responsibility to ensure that the police response to civil disorder, including criminality, is conducted within the parameters of International and Regional Human Rights Standards.

As law enforcement agents, the police have the statutory right to use force including deadly force. The circumstances under which deadly force is permitted are specified in our criminal law and the Police Act. The fundamental human rights principles are also catered in our law namely that, whenever the use of force and firearms is unavoidable, law enforcement officials must 'exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved' and the 'intentional lethal use of the firearms may only be made when strictly unavoidable in order to protect life' and 'only if other means remain ineffective'.

The use of firearms by law enforcement officers is restricted to situations where it is strictly necessary for self defence or the defence of other against the imminent threat of death or serious injury; to prevent the perpetration of a serious crime involving grave threat of life, and to arrest a person presenting such a danger and resisting authority or to prevent their escape. In that connection the Mauritius Police Force is guided by its internal Standing Order vide SO 93 – "Use of Firearms by Police".

The Police Force is also called upon to combat terrorism under the Prevention of Terrorism Act 2002. Under this Act, where the security of the State is at stake, intelligence gathering is most solicited. We have the National Security Service and its newly set up Crime Intelligence Cell for this particular issue.

#### 2. To strengthen social and national solidarity, particularly when the latter is threatened:

Under the Government Programme 2005/2010, the present Government has flagged the motto "Putting People First" to build trust and confidence within the public. Such cooperation between the Police and the public is being created in many areas through neighbourhood watch schemes, victim support projects, community-based crime prevention programmes, Police Public Partnership policing, lay visitor schemes and other civil society partnerships with Police which opens up avenues to discuss policing matters in area of concern.

3. To preserve and strengthen the national independence and the territorial integrity of the country and to contribute to its defence in accordance with the law; amongst others.

Please refer to The Prevention of Terrorism Act 2002 quoted above. With regard to the security of our territorial waters and coast, the National Coast Guard is entrusted with the responsibility for the surveillance of the Exclusive Economic Zone (EEZ).

In addition to this, the Mauritius Police Force regularly communicates with the Interpol, Sub Regional Bureau of SARPCO to deal with any matters pertaining with the security of our region.

The legislation on tax is as follows:-

Section 3(1) of the Attachments (Rates and Taxes) Act entitled 'Recovery of rates and taxes by attachment' provides:-

Where with a view to secure and enforce payment of money due for rates or taxes, it is expedient to attach in the hands of a third party money due by the latter to the debtor, an order to that effect, as nearly as may be in the form specified in the Schedule may be issued under the hand of the attaching officer, and a copy thereof shall be served personally by an usher upon the party in whose hands such money is to be attached.

The Customs Act, Excise Act, Foreign Travel Tax Act, Hotel and Restaurant Tax Act, Income Tax Act, Land (Duties and Taxes) Act, Registration Duty Act, Shooting and Fishing Lease Act and Value Added Tax Act provide for their respective leviable duties.

The Mauritius Revenue Authority is established by the Mauritius Revenue Authority Act 2004 as an agent of the State for the management and operation of an effective and efficient revenue-raising organisation.

Its main functions are to administer, operate and enforce Revenue Laws (e.g. the Customs Act, the Customs Tariff Act, the Excise Act, the Income Tax Act, the Value Added Tax Act) and, for that purpose, assess liability to, collect and account for, all taxes. It is also responsible to combat fraud and other forms of tax evasion.

It is indeed trite law that in so far as the imposition of a tax is concerned, the power of Parliament is not restricted by the provisions of section 8 of the Constitution on deprivation of property, except to the extent that the measures provided for the enforcement of the tax are shown not to be reasonably justifiable in a democratic society – vide **Union of Campement Sites Owners & others v Government of Mauritius & ors [1984] MR 100-** it was stated that *“the concept of a tax and the general right of protection from deprivation of property proclaimed in article 3 of the Constitution are mutually exclusive”*.

It is important to bear in mind as it was further stated in that case that, *“taxation measures and policies are matters of political philosophy and judgment and not matters for judicial review and decision”*.

## **CONCLUSION**

Consultations have been held earlier this year on the report that has been submitted to the Committee on Economic, Social and Cultural Rights. The comments obtained during the consultations have been taken on board whilst drafting the present report. The National Human Rights Action Plan is in the process of being finalized. Further consultations are expected to be held on this report, a summary of which will be presented and addressed upon in due course before the Committee.