



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Third periodic reports of States parties due in 2002  
submitted in response to the list of issues (CAT/C/MUS/Q/3)  
transmitted to the State party pursuant to the optional  
reporting procedure (A/62/44, paras. 23 and 24)**

**Mauritius<sup>\*</sup>, <sup>\*\*</sup>**

[14 October 2010]

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\* The second periodic report submitted by the Government of Mauritius is contained in document CAT/C/43/Add.1; it was considered by the Committee at its 368th, 371st and 375th meetings, on 28–29 April and 3 May 1999 (CAT/C/SR.368, 371 and 375). For the concluding observations, see A/54/44, paras. 1 and 18–123.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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## I. Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

### Articles 1 and 4

#### Reply to the questions raised in paragraph 1 of the list of issues (CAT/C/MUS/Q/3)

1. Following the recommendations of the Committee against Torture, the Criminal Code (Amendment) Act 2003 was passed by Parliament in order to incorporate into Mauritian law the definition of torture as set out in Article 1 of the Convention.

2. It is considered that section 78 of the Criminal Code fully satisfies the conditions set out in Article 2 of the Convention. Section 78 reads as follows:

**“78 Torture by public official**

(1) Subject to subsection (3), where:

(a) Any person who is a public official, or is otherwise acting in an official capacity; or

(b) Any person, at the instigation of, or with the acquiescence of, a public official or a person otherwise acting in an official capacity, intentionally inflicts severe pain or suffering, whether physical or mental, on any other person:

(i) To obtain a confession or other information from that other person, or a third person;

(ii) To punish that other person for an act which that other person or a third person has committed, or is suspected of having committed;

(iii) To intimidate or coerce that other or a third person; or

(iv) For any reason based on discrimination of any kind, he shall commit the offence of torture and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) Where the act constituting an offence under subsection (1) has been committed outside Mauritius and:

(c) The victim is a citizen of Mauritius;

(d) The alleged offender is in Mauritius; or

(e) The alleged offender is in Mauritius, and Mauritius does not extradite him, a Court shall have jurisdiction to try the offence and inflict the penalties specified in subsection (1).

(3) Subsection (1) shall not apply to any pain or suffering arising only from, or inherent in, or incidental to, a lawful sanction.

(4) It shall not be a defence for a person charged with an offence under subsection (1) to prove that he acted by order of his superior.”

**Reply to the questions raised in paragraph 2**

3. They may be prosecuted under section 78 of the Criminal Code, which provides for the offence of “torture by public official” as already elaborated upon in reply to question 1.

**Article 2****Reply to the questions raised in paragraph 3**

4. Section 5 of the Constitution states that no person shall be deprived of his personal liberty save as may be authorized by law in a number of circumstances, including where there is 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 be brought before a Court of law 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.

5. Section 10 of the Constitution lays down provisions to secure the protection of the law, amongst which are the presumption of innocence, the right to be informed as soon as reasonably practicable of the nature of the offence and in a language that the accused understands, the right to be given adequate time and facilities for the preparation of one’s defence, the right to defend oneself in person or by a legal representative of one’s own choice or, where so prescribed, by a legal representative provided at the public expense, the right to the assistance of an interpreter if one cannot understand the language used at the trial.

6. In the case of *Gordon-Gentil and ors v. State of Mauritius and ors 1995 SCJ 118*, the Supreme Court held that it is the constitutional right of every person to be told immediately of the reason for his arrest and to be detained and brought before a Magistrate only on the basis of an offence known to the law, notwithstanding the fact that the information exhibited to the Court is provisional.

7. 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. In fact, the right to be tried without undue delay has become more alive since the decision in *Darmalingum*.

8. In the case of *P. Boolell v. The State [2005] PRV 39*, the Judicial Committee of the Privy Council 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 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.

9. If a person cannot afford to retain the services of a legal representative, there is the possibility to apply for legal aid under the Legal Aid Act subject to certain conditions as required under the Act being fulfilled. In the case of *Degrace v. The State* [2001] SCJ 45, the Supreme 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 United Kingdom and the United States of America, made the following observations:

“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 for the offences specified in the Schedule to the Legal Aid Act.”

10. Furthermore, it is a well established practice that a person should be questioned in line with the Judges’ Rules which are administrative rules but which have gained the force of law over the years. In the case of *R. v. Boyjoo* 1991 SCJ 401, the Court held that the Judges’ Rules 1964 of England which were made applicable to Mauritius by a despatch of the Secretary of State for the Colonies in 1965 have become part of the rights of an accused person which are protected by sections 3 and 5 of our Constitution. The Court went on to say that it is the duty of the police to inform an accused person of the right to retain counsel and not only to assume that the person is or should be aware of that right and it is up to the police to ensure that the accused has understood that right.

11. It was also held in the case of *The State v. Pandiyan* 1993 SCJ 317 that Paragraph 3(c) of the Introductory Notes (Appendix A) and paragraph 7 of the Administrative Directions (Appendix B) in the Judges’ Rules relating to the right of a person in custody to consult a legal representative form part of the protection of the law of the individual in Mauritius and that there is a duty on the police to inform people of this right.

12. There are equally Standing Orders of the Mauritius Police Force that set out the parameters within which the Police should operate whilst handling a . There are, to this effect, specific standing orders on the “safe custody of prisoners”, “care and treatment of prisoners”, “consultation or interview with legal advisers”, “interviews of and warrants against prisoners”, “juvenile offenders” and “female prisoners”.

13. Further, an updated document entitled “Rights of Detainees in Police Custody” has been pasted in all Police Stations and Branches for the information of detainees and their families in three languages, that is, English, French and Creole.

14. A suspect can also avail himself of the procedure of Habeas Corpus if he contends that he has been illegally detained. 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.”

**Reply to the questions raised in paragraph 4**

15. Although there is no specific provision to this effect in the law, Courts in Mauritius are unlikely to find that exceptional circumstances can justify torture.

**Reply to the questions raised in paragraph 5**

16. Section 78 (4) of the Criminal Code provides specifically that it shall not be a defence for a person charged with an offence under subsection (1) to prove that he acted by order of his superior.

**Reply to the questions raised in paragraph 6**

17. The National Human Rights Commission (NHRC) which was established under the Protection of Human Rights Act 1998 is operational since April 2001. It was granted accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in April 2002 and is governed by the principles relating to the status of national institutions for the promotion and protection of human rights (“Paris Principles”). The Commission has thereafter always been accredited A compliant and this bears testimony to the fact that the Commission has been complying generally with the Paris Principles.

18. The NHRC mainly enquires into complaints from persons alleging violation of their rights under Chapter II of the Constitution by the acts of public bodies or public officers and complaints against acts of members of the police force. It can also enquire of its own motion into such acts. Its functions also include visiting police stations, prisons and other places of detention to study detainees’ living conditions.

19. The financial resources for the running of the NHRC are provided annually by the Prime Minister’s Office. It is to be noted that these funds are not included in the budget of the Prime Minister’s Office but are separate as they are scrutinized separately at Committee stage at the time of the allocation of resources during the passing in the National Assembly of the relevant Appropriation Bill.

20. In line with its mandate, the Commission investigates into written complaints. Following investigation, the Commission may, depending on the outcome of the investigation, make appropriate recommendations either to the Commissioner of Police, Commissioner of Prisons or the Director of Public Prosecutions or dispose of the case.

21. Since its coming into operation, the Commission has been instrumental in ensuring the number of complaints against police brutality has not increased. Through focused sensitization campaigns to police officers in the police force, more particularly the newly recruited police officers, the Commission is bringing its contribution to ensure that the newly recruited police officers are equipped with the necessary mindset conducive to the protection of the human rights of the citizens of the Republic of Mauritius.

22. The NHRC has equally been actively involved in the preparation of the draft Police Complaints Bill. However, the draft Bill is still in the process of being finalized.

**Reply to the questions raised in paragraph 7**

23. A draft National Preventive Mechanism Bill is under preparation. Pending the enactment of legislation to establish a National Preventive Mechanism as required under the Optional Protocol to the Convention against Torture, the National Human Rights Commission has been entrusted the task to act as National Preventive Mechanism.

**Reply to the questions raised in paragraph 8**

24. The duties of Inspectors and Chief Inspectors of Police are laid down in the Standing Orders of the Mauritius Police Force. These include among others, supervision of Police Stations and Police Officers, as well as making regular reports. The Police Department falls under the responsibility of the Prime Minister's Office. The National Human Rights Commission may enquire into complaints from any person against an act or omission of a Police Officer, or where it has reason to believe that such act or omission has occurred, is occurring or likely to occur, visit any Police Station or other place of detention.

25. There is also the Complaints Investigation Bureau (the "CIB") which was set up administratively in October 1999 to enquire into complaints made by members of the public against the police. It is the only organ of the Police Department vested with the authority and responsibility to enquire into complaints against the police force. Although the CIB operates under the supervision and in accordance with the directives of the National Human Rights Commission, it remains under the administrative control of the Commissioner of Police.

**Reply to the questions raised in paragraph 9**

26. Several recommendations were made by the NHRC in its annual report for the year 2007. With regard to the police, prisons and the administration of justice, the recommendations included the following:

(a) Measures should be taken to ensure the impartiality of disciplinary action against police officers;

(b) Police investigations should respect certain rules aimed at protecting the right to liberty and measures should be taken to prevent the recurrence of death in police custody;

(c) Measures should be taken to rationalize the system of inspection of prisons and the processing of complaints and remission should be reintroduced even for serious crimes and proper medical care should be afforded to prisoners who are genuinely ill;

(d) Consideration should be given to the setting up of an open prison for women.

27. Furthermore, in the Annual Report for the year 2007 at paragraph 101 (page 47) on death in Police Custody, the National Human Rights Commission (NHRC) has made seven recommendations. These recommendations have been implemented as follows.

*(a) Recommendations 1, 2, and 3*

28. The Police Standing Order No. 120 and CP's Circular No. 22 of 2005 deal with "Prisoners and Accused Parties" and "Security over Police Cell" respectively.

29. Whenever a prisoner is committed to, or removed from, Police cell or any detail pertaining to detention, movements, etc., of any person, an entry is made by the concerned Officer in a separate register-cum-prisoner's Diary Book which is kept at every Police Station or Detention Centre for that purpose.

30. Officers visiting Police Stations or Detention Centres also check the cells so as to ensure that the relevant orders in relation to sentry over Police cells are being complied with. They also insert entries in the Prisoner's Diary Book in respect of their visits.

31. As regards the recommendation to insert an entry every time the Station Orderly opens the gate to the Corridor leading to cells, it is complied with all cases where Police Stations or Detention Centres are provided with doors.

(b) *Recommendation 4*

32. The Police are responsible for the proper treatment, care and custody of detainees so far as their conditions of detention are concerned.

33. In year 2005, the Police Department reviewed the conditions of Police cells with a view to providing detainees with humane and secure environment in compliance with the recommendations made by the NHRC, with regard to, adequate lighting (natural light as far as practicable), sufficient aeration, enough space for detainees to move inside, preventing access to bars by detainees, hazards and other security aspects. These measures were implemented to prevent cases of suicide by hanging. Polycarbonate sheets were placed over cell doors and openings with a view to avoiding access to the metal bars by detainees.

34. NHRC has not submitted any acceptable norms/standards for Police cells, but has during its visits to various Police Stations and Detention Centres, suggested several modifications according to situations prevailing at a given Police cell.

35. Nevertheless, United Nations norms and standards are respected. Based on these recommendations and United Nations Conventions, several cells at Police Stations have been renovated, such as the Rose Hill Police Station where ten cells were converted into five so as to cater for more space. Furthermore, Detention Centres are equipped with closed-circuit television (CCTV) cameras so as to ensure better security.

36. As from year 2008, all new Police Stations that have been constructed, have been provided with cells according to the recommendations of the NHRC. These Stations include the Roche Bois Police Station, the Curepipe Police Station, etc.

37. The Police have always aimed at providing humane and secure (free from hazards for suicide) environment to detainees by adhering to the following criteria:

- Adequate lighting (natural light as far as practicable)
- Sufficient aeration
- Enough space for detainees to move inside
- Preventing access to bars by detainees and
- Other aspects of security

(c) *Recommendation 5*

38. There are 70 places of detention under the responsibility of the Mauritius Police Force (i.e. Police Stations/Police Detention Centres) where there are in all 243 cells.

39. At least, one Police Attendant each is posted to Police Stations in Mauritius and in Rodrigues and who is responsible for the cleaning of the Police Stations including cells, toilets and bathrooms. In some places, there are two Police Attendants.

(d) *Recommendations 6 and 7*

40. These recommendations are being considered by the Police when a detainee is placed in cell.

41. In the Government Programme 2010–2015, it has been stated that an Independent Police Complaints Bureau will be set up for the purpose of investigating complaints against the Police. A Police Complaints Bill is currently under preparation.

42. Government equally intends to adopt a new Police Act and a Police Procedures and Criminal Evidence Act, with Codes of Practice designed to regulate the conduct of persons entrusted with the duty of investigating offences.

### Article 3

#### Reply to the questions raised in paragraph 10

43. No new legislations have been introduced. However, 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.

44. 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.”

45. 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.

46. In the case of *Mahmotaky v. The State of Mauritius 2003 SCJ 238*, the Supreme Court 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 Universal Declaration on Human Rights but no such application for Judicial Review was filed in the end.

#### Reply to the questions raised in paragraph 11

47. Extradition requests were granted and the offenders were surrendered in the following cases.

48. The decision to surrender may be challenged by way of judicial review before the Supreme Court. In the case of *Ramankhan v. The Commissioner of Prisons 2002 SCJ 140*, the Court held that “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”.

#### **Reply to the questions raised in paragraph 12**

49. Section 7 of the Extradition Act provides 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.

50. There has been no extradition, expulsion or “refoulement” of any person charged under anti-legislation.

#### **Articles 5, 6, 7 and 8**

##### **Reply to the questions raised in paragraph 13**

51. Please see reply to questions raised in paragraph 1 of the list of issues, especially section 78(2) of the Criminal Code which establishes the jurisdiction of the Mauritian courts to try offences which are committed outside Mauritius in certain specific circumstances. All accused parties including foreigners enjoy the same rights as any Mauritian citizen as provided for under the Constitution and are afforded same treatment upon arrest, during detention, trial and post conviction.

##### **Reply to the questions raised in paragraph 14**

52. There has been no such request made to Mauritius.

#### **Article 10**

##### **Reply to the questions raised in paragraph 15**

53. The provisions of the Protection of Human Rights Act have been included in the curriculum of training of all newly recruited police officers. Moreover, with a view to inculcate in police officers issues pertaining to human rights, lectures are often delivered by representatives of the National Human Rights Commission to senior police officers who, in turn, impart same to junior officers. New recruits, Sergeants and Inspectors are additionally examined on Human Rights issues during the end-of-course assessments.

54. Amongst others, the following subjects pertaining to human rights issues are taught at the Police Training School:

- The Constitution of Mauritius
- The Protection of Human Rights Act 1998
- Ethical and Legal Police Conduct
- Policing in Democracies
- Police and non-discrimination
- Arrest and Detention

- Use of Force and Firearms
- Police and the Protection of Juveniles

55. Moreover, the curriculum of the Certificate/Diploma/BSc (Hons) Degree Course in Police Studies taught at the University of Mauritius comprises a module on Human Rights and another one on International Humanitarian Law.

56. All self-defence courses have been replaced by 'Officer Safety' courses specifically tailored to meet the requirements of the concept of reasonable force in line with human rights principles.

57. A copy of the Universal Declaration on Human Rights has been circulated to police officers, thus enabling police officers to get acquainted in an elaborate manner about international human rights standards to be observed by all bodies involved in law enforcement.

58. In order to prevent unlawful acts such as police brutality, Divisional Commanders and Branch Officers, including Heads of the different divisions of the Central Investigation Department and the Anti Drug and Smuggling Unit have been urged to regularly address human rights issues, so that all officers under their orders are sensitized on the importance of respecting human dignity and human rights values at all times. Moreover, whenever recommendations are made by the National Human Rights Commission on police procedures and practices to counter police brutality, these are taken into consideration and if need be are incorporated through circular letters and daily lectures.

59. Training on Human Rights issues was dispensed to more than 700 prisons officers and to new recruits in the Prisons Department. From year 2009 to June 2010, another 590 Officers have undergone training in Human Rights. In 2007, the United Nations Development Programme (UNDP) assisted the Prisons Department by providing two consultants to carry out an assessment and a revision of the Prisons Officers' Training Curriculum. Human rights concepts and practices are to be mainstreamed through a revision of the curriculum. The United Nations Development Programme (UNDP) also supported the Prisons Department in the Training of Trainers' course in Human Rights for 20 senior officers and its assistance has now been requested for an expert to head the Prisons Training School. Workshops are being organized to empower Prison Officers to combat drugs and HIV/AIDS in prisons.

60. Prisons Officers equally receive training to ensure awareness of what constitutes torture. The basis of all courses lies on the fact that prisoners are sent to prisons as a punishment and not for further punishment. Moreover, Section 12 of the Reform Institutions Act provides the parameters within which officers may resort to the use of force:

**"S. 12 Use of Force**

(1) No officer shall use force against a detainee except such force as is reasonably necessary:

- (a) In self defence;
- (b) In the defence of another person;
- (c) To prevent a detainee from escaping;
- (d) To compel obedience to an order which the detainee wilfully refuses to obey; or
- (e) To maintain discipline in the institution.

(2) Any officer may, where he has reasonable cause to believe that he cannot otherwise deal with the situation, use any weapon or firearm which has been issued to him against a detainee who:

(a) Is escaping or attempting to escape from an institution or from lawful custody and refuses, when called upon to return;

(b) Is engaged with others in riotous behaviour in an institution and refuses to desist when called upon;

(c) Is endangering the life, or is likely to inflict serious bodily injury on, any person.”

61. The Mauritius Police Force has on 24<sup>th</sup> February, 2010 launched the National Policing Strategic Framework (NPSF) with the collaboration of the UNDP/United Nations Office on Drugs and Crime (UNODC). This strategic plan relies on six main pillars. One among the main pillars is dedicated to “Achieving a Human Rights Compliant Organisation”.

62. The Forensic Science Laboratory works directly under the authority of the Prime Minister’s Office. As far as medical personnel are concerned, it is to be noted that our Police Medical Officers are holders of post-graduate qualification in forensic medicine and therefore, they are also trained in the field of torture prevention and rehabilitation.

63. Training programmes conducted by the Mauritius Police Force cover important aspect concerning torture with particular emphasis on the Convention against Torture, the Code of Conduct for Law Enforcement Officials (Article 5) as well as Domestic Legal Provisions on Torture.

64. As regards other relevant aspects of the Istanbul Protocol, the future training programme of the Police will be reviewed to include these matters.

#### **Reply to the questions raised in paragraph 16**

65. Please see reply to questions raised in paragraph 15 of the list of issues. In addition, the Police Training School ensures that Police Officers are made aware of the prohibition against torture. Copies of the Code of Ethics and the United Nations Code of Conduct for Law Enforcement Officials are also handed over to each Police Officer.

### **Article 11**

#### **Reply to the questions raised in paragraph 17**

66. Section 7(1) of the Constitution guarantees the right to freedom from torture, inhuman or degrading punishment or other such treatment thus placing the enforcement of the provisions of the Convention on Torture, Inhuman or Degrading Treatment or Punishment into the ambit of the jurisdiction of the Supreme Court. The Constitution itself makes provision under section 17 for redress to be afforded by the Supreme Court to any individual whose rights under Chapter II have been, are being or are likely to be contravened.

67. Furthermore, the inclusion of torture as an offence (section 78 of the Criminal Code caters for the offence of torture by public official) provides for the new possibility to additionally prosecute public officers guilty of having carried out such acts.

68. Other good practices and measures include the following:

(a) Various measures have been taken to sensitize law enforcement personnel, through education and information, on the importance of respecting the fundamental rights

of suspects, including their right to protection from torture. Please see reply to questions raised in paragraph 15 of the list of issues;

(b) When a person is arrested or detained, the interrogation should be held within the parameters of certain constitutional guarantees. These relate to the suspect's fundamental right to consult a legal representative of his own choice and his right to be brought to Court without undue delay. With these guarantees into place, the risk of the suspect being victim of any act of torture is substantially reduced. Any such act, if committed, can be complained of at the earliest possible opportunity to either his legal representative or to the Magistrate, and necessary action initiated against the offenders.

69. The police officers also need to comply with the Judges Rules and Administrative directions applicable to them when they are involved in interrogation of suspects and taking down of statements. These rules relate, amongst others, to the fundamental rights of the suspect like his right to silence, right to be represented by a lawyer. The Administrative directions require the police officers to ascertain that reasonable arrangements are made for the comfort and refreshment of persons being questioned or making the statement.

70. Section 27(1) of the Prevention of Terrorism Act deals with incommunicado detention. Inbuilt safeguards are contained in the Prevention of Terrorism Act to ensure that the human rights of suspects are not baffled. Section 27(3) makes provision for a person detained under section 27(1) of the Prevention of Terrorism Act to be informed of the right to be examined by a Government Medical Officer as soon as a direction is issued under subsection (1). Section 28 of the Prevention of Terrorism Act provides for a custody record and a video recording to be kept in relation to any person detained pursuant to the powers conferred by section 27 of the Act. The video recording shall, notwithstanding the common rule against hearsay, be admissible in evidence in the course of any judicial proceedings to the same extent and in the same manner as documentary evidence would be admissible.

71. With regard to mandatory denial of bail, in the landmark case of *Police v. Abdool Rashid Khoyratty* 2004 SCJ 138, the Supreme Court declared a provision of the Dangerous Drugs Act (DDA) as being unconstitutional as the provision in question allowed the Executive to detain a citizen indefinitely on a provisional charge of "drug dealing" without the Judiciary being in a position to control the Executive and afford protection to the citizen as regards his personal liberty and his fundamental human right of being protected from inhuman or degrading treatment. The relevant provision of the DDA provided that where a person was detained for an offence under some specific provisions of the Act, he should not be admitted to bail in case he has already been convicted of any drug offence. This implied that if the detainee had been involved in a previous drug offence, however minor that offence might be, he would be automatically deprived of being granted bail. It was alleged that this provision of the DDA infringed, inter alia, Section 7 of the Constitution which guaranteed protection from inhuman treatment. The Court was of the opinion that the provision offended the principle of proportionality and robbed the judiciary from its prerogative to assess the particular circumstances of each case before deciding whether to admit a detainee to bail.

72. The Prevention of Terrorism (Denial of Bail) Act 2002 specifies the offences under the Prevention of Terrorism Act 2002 in relation to which an arrested person or detained person will not be admitted to bail in certain circumstances. However, in view of the decision of the Judicial Committee of the Privy Council in the case of *The State v. Khoyratty*, where it has been held that the amendment brought to section 5 of the Constitution (which provided for persons arrested for offences related to terrorism and drugs offences not to be afforded bail) was unconstitutional, the Prevention of Terrorism (Denial of Bail) Act 2002 may no longer be valid.

73. It is to be noted that there has so far not been any prosecution under the Prevention of Terrorism Act.

74. The Law Reform Commission, which is a statutory body, is responsible for keeping under review in a systematic way the laws of Mauritius and making recommendations for their reform and development. The Commission has produced Discussion Papers and Reports on matters such as “The Criminal Justice System and the Constitutional Rights of Accused Parties” and “Access to Justice and Limitation of Actions against Public Officers and the State”, which are under consideration by the Government.

## Articles 12 and 13

### Reply to the questions raised in paragraph 18

75. Allegations of torture had been made against Prisons Officers of Phoenix Prison following the visit of the Sub-Committee on the Prevention of Torture in October 2007. Police started an investigation and arrested five officers. The said five Prison Officers had been interdicted (in the designation of Superintendent of Prisons, Prisons Officer Grade I, and Chief Prisons Officer) and had been charged with the offence of “torture by public official” under section 78 of the Criminal Code. However, the cases have been dismissed by the District Court of Curepipe as at 26 February 2009.

76. No case of torture has been reported to the police for the year 2009 up to 31 July 2010.

77. Hereunder are statistics on the number of complaints against police officers made to the National Human Rights Commission for the year 2010 (as at 31 August 2010).

Table 1

#### Statistics: complaints to the NHRC as at 31 August 2010

	<i>No. of complaints</i>	<i>Dealt with</i>	<i>Pending</i>
I	Complaints against police		
	A. Alleged police brutality	21	3
	B. Verbal abuse	5	1
	C. Service delivery	3	1
	D. Other complaints	35	26
	<b>Subtotal</b>	<b>64</b>	<b>31</b>
II	Complaints against public bodies		
	E. Prisons authorities ( <i>Note</i> )	10	6
	F. Ministries/government departments	5	4
	G. Local authorities/parastatal bodies	5	4
	H. Government owned companies	1	1
	<b>Subtotal</b>	<b>21</b>	<b>15</b>
III	Complaints against institutions other than public bodies (outside jurisdiction)		
	I. Judiciary	6	5
	J. DPP	3	3

	<i>No. of complaints</i>	<i>Dealt with</i>	<i>Pending</i>
K. Miscellaneous complaints	10	8	2
<b>Subtotal</b>	<b>19</b>	<b>16</b>	<b>3</b>
<b>Total</b>	<b>104</b>	<b>62</b>	<b>42</b>

*Note:* Two complaints referred to allegations of brutality against Prisons Authorities. After enquiry the complaints were set aside they were not substantiated.

#### **Reply to the questions raised in paragraph 19**

78. Government is committed to make or support far-reaching reforms to the judiciary 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 a separate Court of Appeal and a 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 are equally hearing commercial cases on a full-time basis.

79. In the Government Programme 2010–2015, it has been stated that an Independent Police Complaints Bureau will be set up for the purpose of investigating complaints against the Police. A Police Complaints Bill is currently under preparation.

#### **Reply to the questions raised in paragraph 20**

80. Any person whose right under Chapter II of the Constitution has been, is being or is likely to be contravened may apply to the Supreme Court for redress, under s17 of the Constitution. Any law which is inconsistent with the Constitution shall, to the extent of the inconsistency, be void. Acts of public bodies may also be challenged in Court by way of applications for Judicial Review on grounds of illegality, “Wednesbury” unreasonableness, abuse of power and procedural impropriety.

81. The National Human Rights Commission (NHRC) was established under the Protection of Human Rights Act 1998 and is operational since April 2001. It was granted accreditation by the International Coordinating Committee of National Institutions in 2002 and is governed by the Paris Principles. The NHRC mainly enquires into complaints from persons alleging violation of their rights under Chapter II of the Constitution by the acts of public bodies or public officers and also complaints against police officers. It can also enquire of its own motion into such acts. Its functions also include visiting police stations, prisons and other places of detention to study detainees’ living conditions.

82. The office of the Ombudsman was created under section 96 of the Constitution in 1968 in order to address issues arising from alleged maladministration in the public sector and 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 (including local authorities) and the Government (or local authority) that provides these services.

83. The inclusion of torture as an offence under section 78 of the Criminal Code, which caters for the offence of torture by public official, provides for the possibility to prosecute public officers suspected of having carried out such acts.

84. In fact, allegations of police brutality are enquired into and dealt with expeditiously and firmly by the National Human Rights Commission and the Courts. A judicial enquiry is held promptly where a person dies in prison or in police custody. Where enquiry discloses prima facie evidence against police or prisons officers, the officers are prosecuted before Court. The State has, in a few recent cases, made ex gratia payments to the next of kin of persons who have died in police custody, without awaiting the judgment of the Supreme Court on its liability.

85. Minor petitions can equally be addressed to the Attorney General, who, in turn can refer the matter to the competent authorities for enquiry. Complaints can also be made to the Director of Public Prosecutions.

#### **Reply to the questions raised in paragraph 21**

86. Government intends to introduce special measures for the protection of witnesses and vulnerable persons, including the elaboration of a Witness Protection Programme and circumstances where the out-of-court statements of such witnesses, video-recorded under oath, would be admissible as evidence in Court. It is intended equally to amend the law so as to prevent intimidation of witnesses in drug-related cases and other serious cases.

87. Victims Right Act and a Victims Charter to better safeguard the rights of victims will be adopted. The Victims Charter will outline the standard of service to which a victim of crime is entitled.

#### **Reply to the questions raised in paragraph 22**

88. Please see the detailed statistical information provided for in reply to the questions raised in paragraph 18. Depending on the nature of the complaint, the outcomes of the investigation are communicated in writing to some of the complainants. Where the complaints fall outside the jurisdiction of the National Human Rights Commission, they are “put aside” at the level of the Commission.

#### **Reply to the questions raised in paragraph 23**

89. Whenever there is an alleged act of torture which has resulted in the death of a person, the enquiry is conducted by the Major Crime Investigation Team (MCIT) in liaison with the NHRC and forwarded to the Director of Public Prosecutions for advice.

90. Whenever a detainee who is in a police cell or in the prison or at any detention centre dies, the Commissioner of Police or the Commissioner of Prisons writes officially urgently to this Commission. The same procedure has been adopted for a few cases where detainees died while they were in detention.

91. On receipt of the official communication, the National Human Rights Commission normally sends a delegation to visit the place where detainee has been found dead. Thereafter, the Commission calls for all relevant documents pertaining to the detainee and upon obtaining the relevant documents from the concerned organization, the Commission carries out its own investigation. Following its investigation, the Commission thereafter submits its report and its recommendations on the investigation to the Prime Minister’s Office for information.

92. The Commission has been actively involved in the preparation of the draft Independent Police Complaints Commission Bill. The draft Bill is being finalized and will, thereafter, be introduced in the National Assembly. As already pointed out, an Independent Police Complaints Bureau will be set up for the purpose of investigating complaints against the Police.

**Reply to the questions raised in paragraph 24**

93. A judicial enquiry was instituted under sections 111 and 112 of the District and Intermediate Courts (Criminal Jurisdiction) Act, to investigate into the circumstances surrounding the death of Mr Topize during detention. The enquiry ended on the 10th January 2002, and the findings were filed in 2003. Counsel whose services were retained by the family of the deceased was informed of the conclusions of the learned magistrate to the effect that there was no conclusive evidence of foul play.

94. In the meantime Mrs Topize, widow of late Mr R. Topize had entered an action for damages, jointly against the State, the Commissioner of Police and 3 other police officers, before the Supreme Court on the 20th February 2001. An agreement was reached between the parties in this case. The State, without in any way admitting liability, nonetheless agreed to make an *ex gratia* payment to Mrs Topize and her two minor children, in the sum of 4.5 million rupees in full and final satisfaction of their claim. The Supreme Court therefore gave judgment on the 9th October 2006 in terms of the agreement reached.

**Reply to the questions raised in paragraph 25**

95. Four police officers were prosecuted in relation to the incidents leading to the said death on charges of “committing an arbitrary act prejudicial to the Constitution of Mauritius” and “wilfully and unlawfully conspiring to do a wrongful act”. On 29<sup>th</sup> May 2009, the Intermediate Court dismissed the case against all 4 accused parties. The Director of Public Prosecutions has lodged an appeal against the said judgment and same is scheduled to be heard on 21<sup>st</sup> February 2011.

96. As for payment of compensation to the family of the victim, following a civil case entered by the dependants of Mr Ramlogun against the State, an agreement was reached between the parties and the State paid an *ex gratia* amount of 7.5 million rupees in full and final satisfaction of the claim to the dependants.

**Reply to the questions raised in paragraph 26**

97. Concerning the death of “B” whilst in police custody in 2007, the National Human Rights Commission had, after thorough investigation of the case, submitted its report on 2 July 2007 to the Commissioner of Police for any action that he may wish to take against the relevant police officer for failing to perform his duties properly. On 18 December 2007, the Secretary of the Disciplined Forces Service Commission informed the NHRC that disciplinary proceedings, if necessary, would be initiated against the said police officer. On completion of the police enquiry into the case of “B”, same was forwarded to the Director of Public Prosecutions who advised the holding of a judicial enquiry.

**Article 14****Reply to the questions raised in paragraph 27**

98. Section 17 of the Constitution provides for redress to a citizen who alleges that any of his constitutional rights has been, is being or is likely to be contravened. Section 17(2) furthermore confers on the Supreme Court very wide powers to make such orders, issue writs and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of the alleged infringed right. Section 17 also ensures that any person whose rights and freedoms are violated shall have an effective remedy.

99. Section 7(1) of the Constitution guarantees the right to freedom from torture, inhuman or degrading punishment or other such treatment thus placing the provisions of the Convention on Torture, Inhuman or Degrading Treatment or Punishment into the ambit of

the protection of the Supreme Court. Furthermore, the inclusion of torture as an offence provides for the new possibility to additionally prosecute public officers guilty of having carried out such acts.

100. Furthermore, the victims of acts torture, as well as their dependants (where the primary victims have passed away) can enter action in damages against the perpetrators of the acts and/or their 'commettants'. Such recourse was adopted by the dependants of the deceased in both the cases of Mr Ramlugun and Mr Topize, and an agreement was reached by the parties in both cases to compensate the dependants.

## **Article 15**

### **Reply to the questions raised in paragraph 28**

101. If the defence challenges the admissibility of any statement alleged to have been obtained out of torture, a *voir-dire* is normally held and it is for the Court to decide whether to allow the statements to be produced in Court. There are instances in criminal proceedings whereby the Court has ruled statements to be inadmissible on the basis of having been obtained in breach of Judges Rules or where the accused has made allegations that the statement has not been given voluntarily, for example, under oppression.

### **Reply to the questions raised in paragraph 29**

102. Government intends to adopt a new Police Act and a Police Procedures and Criminal Evidence Act together with Codes of Practice designed to regulate the conduct of persons entrusted with the duty of investigating offences.

103. On the other hand, police is making use of DNA Testing and Scene Crime management including extensive use of forensic experts, Fingerprints experts to avoid relying solely on confessions.

## **Article 16**

### **Reply to the questions raised in paragraph 30**

104. Corporal punishment is prohibited in schools by virtue of regulation 13 (4) of the Education Regulations 1957, and in any place under section 13 (1) of the Child Protection Act and section 230 of the Criminal Code. Circulars are sent to schools by the Ministry of Education at the beginning of every term reminding them of those provisions and teachers are required to acknowledge having taken cognizance of same. Programs on the Convention on the Rights of the Child are carried out in schools by the Ministry of Gender Equality, Child Development and Family Welfare. However, some cases of physical molestation including sexual abuse are reported every year to the Ministry and, in most cases, they are referred to the police and disciplinary action is taken against the culprit. The Office of the Ombudsperson for Children also monitors any allegation of child ill-treatment. It is to be noted that the issue of corporal punishment will be taken up in the Children's Bill which is currently under preparation.

105. The Ombudsperson for Children launched a campaign on the prevention of violence against children in 2004. During this campaign, parent educators, social workers as well as members of the press and the public had been sensitized on the negative aspects of corporal punishment and the need to adopt positive disciplinary measures. A kit on the Prevention of Violence at School was published in 2007 and is being used for the training of school staff in the pre-primary, primary and secondary sectors. A workshop on Violence against Children was organized in 2007 and in 2008, a similar workshop was organized in

Rodrigues island. A plan of action is now in the process of being finalized. The Ombudsperson for Children has equally set up a National Committee on Violence grouping stakeholders from the civil society to deal with all forms of violence against all vulnerable groups of society.

106. It is worth highlighting that though corporal punishment is not specifically prohibited in penal institutions and alternative care setting, section 13 of the Child Protection Act makes it an offence to expose any child to harm, including inflicting any physical injury of a child. This offence is punishable by a term of imprisonment not exceeding 5 years and a fine not exceeding 25,000 rupees.

107. The word “harm” includes physical, sexual, psychological, emotional or moral injury, neglect, and ill-treatment, impairment of health or development. The Act provides for the issue of an emergency protection order by the Magistrate where it is reasonably believed that a child is suffering or likely to suffer significant harm.

**Reply to the questions raised in paragraph 31**

108. With regard to the legislative framework to address the issue of domestic violence against women and children, the Protection from Domestic Violence Act was passed in 1997. This Act provides for the issue of protection orders, occupation orders and tenancy orders.

109. The Protection from Domestic Violence Act has subsequently been amended in 2004 to make it more responsive to the needs of victims of domestic violence and to ensure better protection to the victims.

110. The Protection from Domestic Violence (Amendment) Act 2004 makes provision for the following:

- (a) Providing protection to all family members sharing the same roof;
- (b) Increasing the time limit before an application is heard from 7 to 14 days;
- (c) Increasing the penalty for breach of order from Rs 10,000 to Rs 25,000;
- (d) Making provision for counselling of perpetrators of domestic violence.

111. The Protection from Domestic Violence Act was amended in 2007 which makes provision for the following:

- (a) Empowers the Court to make an ancillary order as to alimony with respect to the aggrieved spouse or child of the parties;
- (b) An increase in penalty for the offence of failing to comply with any order made under this Act;
- (c) Empowers the Court, in exceptional circumstances, to order the offender to attend counseling sessions, instead of sentencing him. If the offender fails to comply with the counseling order, then the original sentence applies.

112. However, though the amendments brought to this Act in 2007 have already been passed, they have not yet been proclaimed. A Rules Committee has been set up by the Chief Justice to make rules of procedure which will be applicable to applications under this Act, and the amendments will be proclaimed once the rules have been finalized.

113. Policy measures to combat violence against women include the following:

Eight Police Family Protection Units have been set up across the island namely a Head Office based at Port-Louis and seven (7) Divisional Sub Units) for:

- Giving assistance to victims in terms of counselling, court procedures for the obtention of court orders under the Protection from Domestic Violence Act.
- Referring victims to the Ministry of Gender Equality, Child Development and Family Welfare for application of Court Orders, psychotherapy and legal counselling.
- Referral of women and children victims of domestic violence and who are in need of refuge to be temporarily placed in shelters. There are three (3) shelters which provide accommodation to women and children, namely the Shelter “La Colombe” a Government Shelter found at Pointe-aux Sables and run by the National Children’s Council which operates under the Ministry of Gender Equality, Child Development and Family Welfare; Shelter “Soda’s Haven” found at Coromandel and run by a Non-Governmental Organisation and the Shelter for Women and Children in Distress Trust found at Forest Side.
- Ongoing sensitisation campaigns on issues related to family welfare and domestic violence conducted by the Ministry of Gender Equality, Child Development and Family Welfare and the Police Family Protection Units.

(a) *Men as partners*

114. The project has been implemented in fifteen (15) regions. In 2009, the project has been extended to an additional region. Some 13,296 persons have benefitted from the project.

(b) *Premarital counselling and marriage enrichment programme*

115. From July 2009–March 2010, five (5) workshops were conducted for 105 engaged couples and 72 married couples.

(c) *Zero Tolerance Clubs*

116. Six (6) Zero Tolerance Clubs are operational in different regions across the island. From April 2009–March 2010, some 2,303 persons have been targeted with the programme.

117. Since 2005, the following projects have, amongst others, been implemented:

- Awareness Campaign on Domestic Violence by Police Department
- Training of Trainers Programme and Sensitisation Campaign to Combat Domestic Violence by Mauritius Council Of Social Services in collaboration with the Aryan Women Welfare Association
- Parents Sensitisation Programme in Schools by the Ministry of Education and Human Resources

118. Talks/workshops have been organised by the Ministry of Gender Equality, Child Development and Family Welfare with the collaboration of other governmental bodies and NGOs and some 11,016 people have already been sensitised on issues related to domestic violence.

119. IEC materials, Audio CDs and DVDs are disseminated and a website on domestic violence is also operational. An online service is operational for reporting of cases of alleged domestic violence.

*(d) Capacity-building*

120. The Ministry has conducted a capacity building programme with the National Women's Council, a parastatal body under the aegis of the Ministry of Gender Equality, Child Development and Family Welfare and its affiliated Women's Associations to further strengthen their involvement in the promotion of family welfare and protection from domestic violence at community and grassroots level.

121. A capacity building programme was also conducted with the Police Department and Personnel of the Sexual Assault Unit of the five (5) Regional Hospitals on the "Protocol of Assistance to Adult Victims of Sexual Assault".

*(e) Support services provided to women and children victims*

122. At present, the concept of Shelter in Mauritius is only focused on providing a temporary security place for battered women. There are three shelters to cater for victims of domestic violence:

(a) Shelter "La Colombe" at Pointe-aux Sables a Government shelter run by the National Children's Council operating **under** the aegis of the Ministry of Gender Equality, Child Development and Family Welfare;

(b) Shelter "Soda's Haven" at Coromandel run by a Non-Governmental organisation;

(c) Shelter for Women and Children in Distress Trust at Forest Side.

123. Rehabilitation of victims of domestic violence is ensured through psychological counselling by a pool of seven (7) psychologists employed on a permanent basis. Under the Families in Distress Scheme, women victims of Domestic Violence who are temporarily placed at Shelter following an Interim Protection Order and who cannot for various reasons, return to their previous residence and have to look for another residence, they are given a one-off allowance of Rs 3,000 to meet their immediate needs. An amount of 9,000 rupees is also provided to a spouse whose husband has died following an accident, a murder or any similar tragedy.

124. Area Domestic Violence Committees have been set up engage officers to deal with cases reported at regional level in an expeditious manner and to organise case conferencing. The Area Domestic Violence Committees are operational at the level of the six (6) Family Support Bureaux.

*(f) Projects/programmes**(i) OASIS association*

125. The objective of the association is to provide support and rehabilitation opportunities to victims of domestic violence. The OASIS Association provides opportunities for victims of domestic violence to meet as a group, share experiences and conduct activities for self-help. This process is facilitated with the regular intervention of Psychologists through counseling and group therapy. Psychologists conduct the group therapy activities. Family Welfare and Protection Officers motivate victims to join OASIS Association and initiate and organize activities aimed at establishing a network & support service.

126. Through this Association, victims of domestic violence are referred to the National Women Council and National Women Entrepreneur Council to encourage them to join Women Associations and empower them to get out of the vicious cycle of domestic violence. Survivors are also referred to the Ministry of Labour, Industrial Relations and

Employment which through its Employment Divisions across the island can assist victims at seeking job placement.

(ii) Anger management

127. The Ministry of Gender Equality, Child Development and Family Welfare solicited the services of an International Consultant for a Training of Trainers Programme on “Anger Management & Counseling Techniques” in 2008, which was conducted with key stakeholders working/dealing with perpetrators of domestic/family violence. The objective is to provide support to perpetrators of domestic/family violence to enable them to better control their aggressive behaviour towards their partners.

(g) *Forging partnerships to combat domestic violence*

128. A multidisciplinary and comprehensive framework that builds on partnerships between Ministries, NGOs and Community based Organisations has also been adopted by the Ministry of Gender Equality, Child Development and Family Welfare to bring meaningful changes in addressing the issue of gender violence.

(h) *National strategic planning and capacity-building workshop to combat domestic violence*

129. One component of the National Action Plan to Combat Domestic Violence necessitates the need to sensitise religious and community leaders with a view to breaking down taboos regarding domestic violence and conducting sensitisation campaign against domestic violence. In this endeavour, the Ministry has successfully engaged into partnership with religious bodies and socio-cultural groups in 2008 to sensitise them on the issue of domestic violence. The Ministry of Gender Equality, Child Development and Family Welfare has also forged partnerships with the Youth Wings of the Council of Religions in 2009.

(i) *Institutional mechanism*

(i) Family Welfare Unit

130. In line with one of the United Nations’ recommendations that States should set up appropriate mechanisms to implement policies and programmes in favour of families, the Ministry has set up a Family Welfare Unit since July 2003. The Family Welfare Unit has a network of 6 Regional Offices known as Family Support Bureaux (FSBx).

(ii) Police Family Protection Unit (PFPU)

131. 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.

132. PFPU 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 colorful table and chairs, toys, white board with markers, colored pencils, drawing books and so on.

(j) *Institutional support*

133. The 6 Family Support Bureaux across the island offer the following services free of charge to families and children in distress:

- (a) Psychological and legal counseling;
- (b) Assistance to adult victims of domestic violence;
- (c) Assistance to children victim of abuse; and
- (d) Individual, couple and mass counseling on all family related problems.

134. The above services are offered in a holistic manner within the same premises and in a decentralized manner with a view to minimizing further trauma to victims of violence and to enable the public to have easier access to the various services.

135. Family Counseling Officers and Psychologists provide counseling to clients in strict confidentiality. Legal assistance is also provided by Legal Resource Persons. Family Welfare & Protection Officers (FWPOs) provide assistance to victims of domestic violence in the filing of an application for a protection order at District Court. As for the Child Welfare Officers (CWOs) they extend assistance to children victims of abuse and provide advice to parents on problems relating to ill-treatment of children. Both the FWPO and CWO refer clients to psychologists for counseling purposes. Hotlines are also operational on a 24-hour basis to cater for family related problems and officers intervene promptly to assist victims who call on the Hotlines.

(k) *National policy paper on the family*

136. The Mauritian economy has undergone structural changes with unprecedented rapidity. Such changes have impacted upon the ways families earn their living and function thereby presenting tremendous challenges to families who have to adapt to new realities. Certain social realities and developments are also having a significant impact on the ability of families to fulfill their traditional roles, namely:

- (a) Ageing of the population;
- (b) Changes in the role and function of women;
- (c) Changes in the family structure from a traditional extended family to a nuclear family type;
- (d) Erosion of family values;
- (e) Consumerism and globalization; and
- (f) Unemployment and family poverty.

137. These various challenges have prompted the need for a policy paper that will address the problems faced by families and provide strategies to promote their well being. In May 2006, the Ministry launched the National Policy Paper on the Family which has the following objectives:

- Identify the problem areas and remedy the obstacles to proper family functioning
- Promote knowledge and understanding of family life including parenting responsibilities
- Render the family institution safe and secure for children and other vulnerable members
- Ensure families have the resources they require to meet the needs of its members
- Make families aware of their social responsibility to the community and for the protection of the environment

138. Further, to meet those objectives, the following core policy areas have been identified:

- (a) Creating a strong foundation and strengthening marriage relationships;
- (b) Balancing work-life and family life;
- (c) Promotion of values for family life;
- (d) Enabling families to nurture the young;
- (e) Support services for the family, in such areas as Health, Housing, social security and welfare etc.

139. An Action Plan has been prepared for the implementation of the National Policy Paper.

(l) *Study on domestic violence*

140. A first study was carried out with the financial assistance of the United Nations Children's Fund (UNICEF) in 1997. Based on its findings, a model framework for an integrated approach to combat violence against women was developed in 1999 with the assistance of Consultants from the Commonwealth Secretariat. The model framework took the form of an Action Plan for an integrated approach towards eliminating violence against women in Mauritius, decentralization of activities for more efficient service delivery, and development of a database on domestic violence through regular studies and surveys.

141. In 1999, the Ministry, decided to commission a 2<sup>nd</sup> study entitled "*Criminological Research on Domestic Violence*" which was entrusted to a Consultancy firm. The team consulted stakeholders and institutions dealing with domestic violence and submitted its report in March 2000.

142. The UNDP has commissioned the Centre for Applied Social Research (CASR), University of Mauritius to conduct "a detailed analysis of the nature and extent of Domestic Violence in Mauritius as well as generating data for future policy choices".

143. The study has the following specific objectives, namely:

- To determine the extent and nature of domestic violence in the country
- To estimate the cost of the provision of services and the loss of economic output and
- To assess the effects of Domestic Violence on survivors concerning:
  - Health (psychological and physical)
  - Housing
  - Poverty and
  - Child's education

(m) *National Action Plan to Combat Domestic Violence*

144. A National Action Plan to Combat Domestic Violence which will serve as a roadmap to both Government Institutions and Non-Governmental bodies in their combat to reduce domestic violence has been launched on 23 November 2007 in the context of the Commemoration of the International Day against Women. The National Action Plan spells out five strategic objectives that address mainly areas of concern to combat violence through a multi-partnership approach involving Ministries/Departments, NGOs and the Civil Society.

*(n) Partnership Against Domestic Violence Committee*

145. The Partnership Against Domestic Violence Committee has been set up in 2004 with a view to enlisting the collaboration of all stakeholders to combat domestic violence on a cost sharing basis. In this respect, three projects have been implemented. These are:

*(o) The setting up of Family Counseling Support Unit at the Prisons Department*

146. The objectives of the project are to carry out family therapy and arrange for additional visits to reinforce marital life, promote advocacy for strong family ties and societal values.

*(p) 'Back Home' by PILS*

147. The objectives of the project are to educate families of HIV Positive prisoners about the virus, prepare the families to welcome them back home on release and reduce family and sexual violence by creating climate of understanding within the family.

*(q) Imparting moral values and personality development for a better family life to avoid domestic violence*

148. The objectives of the project are to create awareness on how to tackle social ills, to eradicate domestic violence and bring social harmony. This project is being spearheaded by Mauritius Council of Social Services (MACOSS).

Table 2

**Number of reported cases registered at the Family Support Bureau 2007–2009**

<i>Nature of problem</i>	<i>Year 2007</i>			<i>Year 2008</i>			<i>Year 2009</i>		
	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>
<b>Total no. of cases registered</b>	<b>5 486</b>	<b>11 880</b>	<b>17 366</b>	<b>5 190</b>	<b>11 553</b>	<b>16 743</b>	<b>6 509</b>	<b>14 126</b>	<b>20 635</b>
Of which are:									
Follow up cases	3 588	7 261	10 849	3 289	6 993	10 282	4 281	8 789	13 070
New cases	1 898	4 619	6 517	1 901	4 560	6 461	2 228	5 337	7 565
New adult cases of which due to:									
Marital									
Abandonment	33	62	95	37	71	108	32	48	80
Alcoholism	47	314	361	37	294	331	35	426	461
Accommodation	6	14	20	2	29	31	1	44	45
Drug addiction	2	6	8	3	28	31	7	42	49
Extramarital affairs	65	259	324	45	294	339	68	320	388
Financial	12	92	104	29	166	195	30	253	283
Interference of in-laws	61	282	343	36	244	280	54	266	320
Conflict with partner	...	...	...	281	1 384	1 665	397	1 568	1 965
Other	...	...	...	18	47	65	1	8	9
<b>Subtotal</b>	<b>226</b>	<b>1 029</b>	<b>1 255</b>	<b>488</b>	<b>2 557</b>	<b>3 045</b>	<b>625</b>	<b>2 975</b>	<b>3 600</b>

<i>Nature of problem</i>	<i>Year 2007</i>			<i>Year 2008</i>			<i>Year 2009</i>		
	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>
Domestic violence									
Damage to property	5	27	32	6	31	37	12	52	64
Physical assault by spouse/partner	28	452	480	45	727	772	65	745	810
Physical assault by others living under the same roof	15	85	100	48	140	188	18	103	121
Psychological	78	163	241	72	138	210	67	170	237
Sexual (rape, sodomy, sexual harassment)	3	60	63	11	85	96	3	38	41
Verbal assault by spouse (ill-treat, harassment, abuse, humiliation)	67	734	801	79	690	769	130	815	945
Verbal assault by others living under the same roof	18	150	168	25	118	143	26	83	109
Other	13	50	63	1	30	31	4	21	25
<b>Subtotal</b>	<b>227</b>	<b>1 721</b>	<b>1 948</b>	<b>287</b>	<b>1 959</b>	<b>2 246</b>	<b>325</b>	<b>2 027</b>	<b>2 352</b>

Table 3  
Number of reported cases registered at the Family Support Bureau by nature of problem and sex, 2007–2009

	<i>Year 2007</i>			<i>Year 2008</i>			<i>Year 2009</i>		
	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>	<i>Male</i>	<i>Female</i>	<i>Both sexes</i>
Legal									
Alimony	5	37	42	26	83	109	9	76	85
Breach of promise of marriage	-	3	3	-	12	12	-	3	3
Custody of child, droit de visite/d'hebergement)	68	85	153	157	249	406	116	145	261
Conflict with neighbour	8	31	39	9	23	32	11	27	38
Divorce	36	134	170	26	119	145	40	150	190
Eviction	1	14	15	5	19	24	1	6	7
Immediate care and control	-	2	2	6	7	13	3	12	15
Property	26	109	135	36	129	165	45	133	178
Other	4	45	49	13	36	49	20	61	81
<b>Subtotal</b>	<b>148</b>	<b>460</b>	<b>0608</b>	<b>278</b>	<b>677</b>	<b>955</b>	<b>245</b>	<b>613</b>	<b>858</b>
Other									
Empty shell marriage	4	9	13	4	9	13	9	13	22
Sexual harassment	1	8	9	3	24	27	2	10	12
Sodomy	1	2	3	7	4	11	5	6	11
Separation	1	-	1	9	26	35	12	44	56
Conflict with children	41	109	150	59	162	221	85	159	244
Conflict with parent	37	105	142	32	110	142	71	89	160

	Year 2007			Year 2008			Year 2009		
	Male	Female	Both sexes	Male	Female	Both sexes	Male	Female	Both sexes
Family dispute	16	53	69	10	29	39	20	45	65
Gambling	-	19	19	-	8	8	7	26	33
Psychological/emotional	97	182	279	75	183	258	90	190	280
Suicidal tendencies	3	12	15	9	14	23	10	21	31
Psychiatric	1	-	1	-	4	4	-	1	1
Other	57	137	194	4	20	24	9	14	23
<b>Subtotal</b>	<b>259</b>	<b>636</b>	<b>895</b>	<b>212</b>	<b>593</b>	<b>805</b>	<b>320</b>	<b>618</b>	<b>938</b>

### Reply to the questions raised in paragraph 32

149. There is no specific offence of marital rape but section 249 of the Criminal Code criminalizes the offence of rape. It is arguable that it is possible to prosecute for the offence of marital rape under that section of the Criminal Code as it stands. It is intended to make express reference to this offence in the Sexual Offences Bill which is still under consideration. The matter was being considered by a Select Committee of the National Assembly under the previous Government and unfortunately, the Chairperson of the Select Committee passed away in December 2009 and the report could not be finalized.

### Reply to the questions raised in paragraph 33

150. Please see reply to questions raised in paragraph 31 of the list of issues. The Ministry of Gender Equality, Child Development and Family Welfare is in the process of preparing a consolidated Children's Bill to consolidate the various pieces of legislation on children's rights and to harmonize all laws in line with the Convention on the Rights of the Child.

### Reply to the questions raised in paragraph 34

151. Mauritius was placed in the TIER 2 Watch List category in the United States Trafficking in Persons Report 2005. The fact that Mauritius has progressed in the TIER placement in 2006 and to TIER 1 in 2009, is testimony of various actions taken by the Government to combat child prostitution. Moreover, the African Report on Child Well-being 2008 has made certain observations as regards Mauritius. The Government of Mauritius emerged out as the most child-friendly government in Africa as a result of appropriate legal provisions to protect children against abuse and exploitation, high commitment in allocating a relatively higher share of national budgets to provide for the basic needs of children, and the efforts and success in achieving favourable well-being outcomes. Mauritius ranked 11<sup>th</sup> for its effort to put in place appropriate legal and policy frameworks for children e.g free primary education and a National Plan of Action and a Government body for coordinating the national strategy for children. Mauritius ranked 3<sup>rd</sup> in the combined index for provision of basic services for children, e.g. infant mortality rate, immunization and enrolment rate in primary and secondary school.

152. The following measures are taken by the Government to deal with child prostitution.

(a) *Legislations*

153. Mauritius ratified on 12 February 2009 the Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict.

154. As regards the Optional Protocol on Sale, Child Prostitution and Child Pornography, the Government of Mauritius is making necessary arrangements to introduce new legislation and amending existing ones prior to ratifying same.

155. The Child Protection Act 1994 was amended in December 2005 to make provision for cases of child trafficking, abandonment and abduction to be dealt with by officers of the Ministry responsible for child welfare and development. Tougher penalties have also been 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. As for cases of mentally handicapped victims, offenders will be liable to a fine of Rs 100,000 and imprisonment not exceeding 15 years instead of Rs 75,000 and 8 years respectively.

156. The Child Protection Act was further amended in December 2008 to provide for a Child Mentoring Scheme. The Child Mentoring Scheme which is a well structured and well managed programme provides individual guidance and support to adolescents with behavioural problems who may also be prone to becoming victims of commercial sexual exploitation and child violence in general. The Child Mentoring Scheme aims at providing such children with a role model to look up to, especially when they are evolving in a precarious and unstable environment. The Scheme ensures that these children are appropriately screened and matched with trained adult mentors for a one to one relationship of emotional reconstruction.

157. The Combating of Trafficking in Persons Act was passed on 21 April 2009. The objectives of the Act are to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons; prevent and combat trafficking in persons; and protect and assist victims of trafficking. It provides for repatriation of victims of trafficking, and return of victims of trafficking to Mauritius, as well as compensation to victims of trafficking.

158. The Ministry responsible for tourism with the collaboration of Association of Inbound Operators of Mauritius (AHRIM), Police du Tourisme and the Office of the Ombudsperson for Children, worked out a brochure to help inform and advise tourists and stakeholders of the industry about the common repudiation of Commercial Sexual Exploitation of Children and on the need to combat it.

(b) *Institutional mechanism*

159. The Child Development Unit of the Ministry of Gender Equality, Child Development and Family Welfare 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, participation, protection and survival of children. This Unit works closely with other agencies such as the Police Department and hospitals, to provide 24-hour service through hot lines to children at risk as well as free legal assistance and psychological counseling to children. Adequate Social Support Systems are also in place to cater for the needs of children in distress.

160. A Child Protection Unit has been set up in collaboration with the Police Department to provide immediate assistance, as appropriate and protection to children, victims of abuse, especially sexual abuse.

161. A Day Care/Drop-in-Centre was launched in December 2003 in Bell Village. Its purpose is to assist those children victims of sexual abuse and exploitation, who can be or are indulged in Commercial Sexual Exploitation of Children activities and help them to re-integrate in society. A hotline (113) has also been made available to the public for the referral of cases of child prostitution.

162. The Construction of a Residential Drop-in Centre at Grand River North West is being envisaged with a view to removing victims from the environment they live in, where they are exposed to the risk of being engaged in prostitution by family members and peers. Care, psychological support and group therapy are already being provided for their successful rehabilitation and reinsertion in the society.

(c) *Information, education campaigns*

163. To create public awareness, sensitization and awareness campaigns targeted towards children are carried out on a regular basis through media by way of radio and television programmes. Talks are delivered to school children at primary and secondary levels and to parents, in regions at risks; and to the community at large with a view to sensitizing them on the protective needs of children against all forms of harm and abuse.

164. There is a standing arrangement between the Ministry of Gender Equality, Child Development and Family Welfare and the Mauritius Broadcasting Corporation for radio programmes on different issues including Commercial Sexual Exploitation of Children (CSEC) in Mauritius.

165. Information, Education and Communication Campaigns which are ongoing will be further enhanced in primary, secondary and tertiary educational institutions with a view to educating children about the problems associated with commercial sexual exploitation.

166. The National Parental Empowerment Programme, which was launched on 30 May 2007, provides guidance to parents regarding the sexual education of their children.

167. The Community Child Protection Programme was launched in August 2007 to ensure that local communities are also closely involved in the protection of children. Communities are being sensitized on the phenomenon of child abuse with a view to enabling them to initiate actions at their end when children are at risk. A surveillance mechanism has also been set up in high risk areas. A Capacity Building programme has been launched in May 2008.

168. Police Officers visit schools and deliver talks and lectures on a regular basis on child abuse and services available for the protection of children.

(d) *Capacity-building*

169. Professionals such as Family Welfare & Protection Officers, Child Welfare Officers, Police Officers, Probation Officers, Medical Social Workers and NGOs working with children have been trained by a local consultant with a view to providing better services to victims of CSEC. The training programmes are ongoing.

170. A Training Programme for Trainers and Community Leaders on CSEC has been carried and is ongoing.

171. So far, a total of 831 Police Officers (both male and female) have been trained in courses including trafficking in persons and sensitisation against sexual exploitation and abuse of minors.

(e) *Other measures*

172. The “Brigade pour la Protection des Mineurs” works with the Ministry of Gender Equality, Child Development and Family Welfare on the protection of the child from all forms of abuse including CSEC.

173. Since January 2008, crackdown operations have been conducted islandwise at regular intervals by Officers of this Ministry, National Children’s Council, Brigade des Mineurs (Police Department), in collaboration with NGOs to ensure that young persons and

students are attending schools during normal school hours. Such operations are seen to contribute in an efficient way to prevent young persons from playing truancy and loitering thereby getting involved in illicit activities.

174. Group Therapy for rehabilitative needs of CSEC victims is being carried out on a pilot basis for both CSEC and rape victims.

175. With a view to promoting Mauritius as a safe family destination, the Ministry of Tourism and Leisure has embarked on a sensitization campaign on the impact of CSEC.

176. The Police in collaboration with the Social Workers of the Ministry of Education and the Child Development Unit also redirect children who are cut off from schools to the education system.

177. Police Officers refer children who have been abused to the Child Development Unit for psychotherapy and placement to shelters, if required.

178. In addition, the Police provide the following services:

(a) A 24 hour hotline service;

(b) At divisional level, an Operations Room is open on a 24 hour basis;

(c) Likewise, at line barracks the Operations and Information Room is open on a 24 hour basis;

(d) A protocol of assistance to child victims ranging from protection to counselling exists, whereby all Police Officers serving in any part of the country know how to deal with reported cases of child abuse.

#### **Reply to the questions raised in paragraph 35**

179. At present, Mauritian prisons are facing a serious problem of overcrowding. One of the conditions prescribed in the UN Standard Minimum Rules for the Treatment of Prisoners is that there should be proper infrastructure for untried prisoners to sleep singly in separate cells. Unfortunately, due to the problem of overcrowding, this condition has not yet been fulfilled. In fact, in the Central Prison, remand prisoners are kept together with convicted detainees. This state of affairs particularly affects remand prisoners who are involved in drugs cases as accomplices and who have to wait for long periods before their own case reaches trial. Remand prisoners find themselves in a vulnerable situation where they might be intimidated, bullied, beaten up or even influenced by the convicted prisoners, especially habitual hardened criminals. Hence, there is a need for the Prison authorities to put into place proper infrastructural facilities to ensure that remand prisoners are segregated from convicted ones.

180. The statistics are given hereunder.

Table 4

#### **Prison population at Beau Bassin prisons for the period February 2009–August 2010**

<i>Months</i>	<i>Convicted</i>	<i>Remands</i>	<i>Total</i>
As at 28.02.2009	1 479	666	<b>2 145</b>
As at 31.03.2009	1 513	696	<b>2 209</b>
As at 30.04.2009	1 583	689	<b>2 272</b>
As at 31.05.2009	1 604	671	<b>2 275</b>
As at 30.06.2009	1 644	695	<b>2 339</b>
As at 31.07.2009	1 634	700	<b>2 334</b>

<i>Months</i>	<i>Convicted</i>	<i>Remands</i>	<i>Total</i>
As at 31.08.2009	1 578	752	2 330
As at 30.09.2009	1 549	777	2 326
As at 31.10.2009	1 613	775	2 388
As at 30.11.2009	1 575	785	2 360
As at 31.12.2009	1 473	732	2 205
As at 01.01.2010	1 479	736	2 215
As at 28.02.2010	1 512	787	2 299
As at 31.03.2010	1 552	789	2 341
As at 30.04.2010	1 567	808	2 375
As at 31.05.2010	1 540	811	2 351
As at 30.06.2010	1 583	831	2 414
As at 31.07.2010	1 601	803	2 404
As at 31.08.2010	1 554	858	2 412

Table 5  
Prison population as at 15 January 2009

<i>Name of the institution</i>	<i>Maximum capacity of institution</i>	<i>No. of convicted detainees in prisons</i>	<i>No. of detainees on remand in prisons</i>	<i>Total No. of detainees in prisons</i>
Beau Bassin prison	946	834	216	1 050
Petit Verger prison	228	276	-	276
GRNW prison	249	41	281	322
New wing prison	282	98	77	175
Richelieu open prison	166	90	-	90
Women prison	118	84	33	117
Correctional youth centre	43	2	16	18
Phoenix prison	26	3	4	7
RYC (boys)	42	05	06	11
RYC (girls)	44	19	04	23
Rodrigues prison	60	10	1	11
<b>Total</b>	<b>2 204</b>	<b>1 462</b>	<b>638</b>	<b>2 100</b>

Table 6  
Number of unconvicted (remand and trial) presently detained in prisons  
(as at 20 January 2009)

<i>Drug offences</i>	<i>Male</i>	<i>Female</i>	<i>CYC</i>	<i>Total</i>
Possession of heroin	4	2		6
Possession of gandia	5			5
Importation of heroin	3			3
Selling heroin	2			2
Selling gandia	1			1

<i>Drug offences</i>	<i>Male</i>	<i>Female</i>	<i>CYC</i>	<i>Total</i>
Administering heroin	1			<b>1</b>
Cultivating gandia	4			<b>4</b>
Drug dealing	67	21	2	<b>90</b>
Possession of dangerous drugs	67	3		<b>70</b>
Importation of gandia	2			<b>2</b>
Importation of cocaine	1			<b>1</b>
<b>Subtotal</b>	<b>157</b>	<b>26</b>	<b>2</b>	<b>185</b>
<i>Other cases</i>				
Murder	66	1	1	<b>68</b>
Manslaughter	12			<b>12</b>
Rape	11			<b>11</b>
Attempt upon chastity	7		1	<b>8</b>
Sodomy	5		1	<b>6</b>
Sexual intercourse with a minor	4		1	<b>5</b>
Assault	6			<b>6</b>
Attempt at murder	6			<b>6</b>
Larceny with violence	18	1		<b>19</b>
Larceny night breaking	15		2	<b>17</b>
Larceny breaking	29			<b>29</b>
Larceny armed with offensive weapon	9		2	<b>11</b>
Larceny and P.S.P.	4			<b>4</b>
Larceny	119	1	1	<b>121</b>
Larceny 2 in number/Larceny more than 2 in number	45	2	3	<b>50</b>
Attempt at larceny	16			<b>16</b>
Others (embezzlement, conspiracy, rogue and vagabond, possession of counterfeit bank note)	40	1	1	<b>42</b>
Arson	2			<b>2</b>
Possession of offensive weapon	1			<b>1</b>
Aiding and abetting in the commission of a crime	1	1		<b>2</b>
Escaping from legal custody	2		1	<b>3</b>
Sequestration	3			<b>3</b>
Perjury	1			<b>1</b>
<b>Subtotal</b>	<b>422</b>	<b>7</b>	<b>14</b>	<b>443</b>
<b>Grand total</b>	<b>579</b>	<b>33</b>	<b>16</b>	<b>628</b>

(a) *Infrastructure development*

181. On the average, 5.5 square metres are available for 3 detainees who are confined in the same cell. In dormitories, 3 to 4.2 square metres are provided to detainees whether they are convicted or on remand. Accommodation has been increased with the assistance of the Works section of the Prison department at Beau Bassin and Women's Prison. It is proposed to increase accommodation at La Bastille Prison as well.

182. 191 works like toilets, baths, association yards, cells, recreational facilities, barber saloons, laundry, kitchens, and visit room and visitors counter service, staff mess were taken up in last two years and all were completed except 11 which are in progress. All the works are carried out by the detainees themselves. In the financial year 2009, 77 infrastructure works were to be taken up.

183. Annually over 20 to 22 millions rupees are being spent for this infrastructure development by the Prison Works Section apart from the fund spent by the Ministry of Public Infrastructure for Prisons Development.

(b) *Accommodation*

184. There was an acute shortage of accommodation in prison, which was improved by creating extra accommodation to the tune of 514 in all, which includes 137 for Segregation and Protection Unit (SPU). 14 SPUs have been constructed within the existing prison as there has been a great need to protect detainees for their own safety as they were having threats from co-detainees because of strained relations the detainees had with co-detainees while they were outside. The following has also been done:

- Modern kitchen and modern bakery are put in place for better hygienic cooking
- New food serveries have been put in place for better serving of food
- 5 new buildings have been constructed for prayer places
- In two prisons, sewer connections have been put in place by connecting to the government sewer network
- All water problems in prison have been solved by putting up water tanks, improving the pipelines and supply arrangements
- Telephone facilities for detainees to communicate with relatives are put in place
- Access to newspaper and radios are also given to detainees at Government cost apart from personal transistors and detainees buy their own newspapers and magazines
- Contact visit with family is allowed to create good family ties
- New kitchen equipment is planned for purchase for better service

(c) *New prison*

185. In addition, with a view to attenuating the problem of overcrowding and to providing improved conditions to prisoners, Government has a project of constructing a new high security prison at Melrose to accommodate 750 detainees. This prison will provide infrastructure for the following:

- Segregating detainees who are of a dangerous and violent disposition
- Protecting vulnerable detainees
- Training detainees in vocational, educational, spiritual and recreational spheres
- Treatment of sick detainees with facilities for detoxification and counselling and
- Housing long term detainees

186. A total of 42 acres of land have been earmarked for putting up the new prison. The conceptual drawing for the new prison is in progress. It is expected that tenders will be launched by September 2009.

187. Good conditions of detention of prisoners are highly dependent on factors such as adequate medical attention, including psychiatric care, rights of visit, right to quality food

and right to live in a secure atmosphere. Concerning psychiatric care, the present arrangement is that different psychiatrists from Brown Sequard Hospital visit the prisons on a roster basis so that there is a proper follow up in the treatment of prisoners. A proper scheme of counselling by psychologists shall have to be introduced so that the prisoners are entitled to a proper follow up. In relation to the problem of security in the prisons, the existence of weapons on prison premises is a deep concern at the moment. There has been, in 2005, a case where a prisoner was attacked by fellow prisoners following an alleged dispute about drugs. The prisoner died as a result of the serious injuries he had suffered. Hence there is an urgent need to carry out more intensive checks in the prison premises so as to ensure that there are no offensive weapons in prisons.

188. As regards “La Bastille” Prison, it is a High Security prison in Phoenix. Allegations of torture were made against Prisons Officers of the Phoenix Prison following the visit of the Sub-Committee on the Prevention of Torture in October 2007. Police started an investigation and arrested five officers. The said five Prison Officers had been interdicted (in the designation of Superintendent of Prisons, Prisons Officer Grade I, and Chief Prisons Officer) and had been charged with the offence of “torture by public official” under section 78 of the Criminal Code. However, the cases were dismissed by the District Court of Curepipe on 26 February 2009. The 5 officers have been reinstated and have assumed duty in the service in December 2009. There has not been other allegations of brutality levelled against Prison Officers since then.

189. As already stated, “La Bastille” Prison is a High Security prison in Phoenix. During a temporary closure following the visit of the Sub-Committee on the Prevention of Torture in October 2007, works were carried out to provide for two association yards where detainees are able to mix and carry out activities instead of being locked up for 23 hours a day.

#### **Reply to the questions raised in paragraph 36**

190. No incident/unusual occurrence happened at Beau Bassin prison on 26 September 2003.

191. However, in a report in relation to prisons, the conditions of detention at Women prison in segregating 2 female detainees was pointed out. This was immediately remedied by creating a special accommodation with all facilities for them.

#### **Reply to the questions raised in paragraph 37**

192. It is intended to review the Juvenile Offenders Act to bring it in line with the UN Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

### **Other issues**

#### **Reply to the questions raised in paragraph 38**

193. Parliament passed the Prevention of Terrorism Act in 2002. This Act contains provisions for the prevention, suppression and combating of terrorism, as well as provisions to reinforce intelligence gathering and investigation into terrorist acts. Also, this law addresses the issue of co-operation with foreign jurisdictions in the matter of terrorism generally, and it implements the international commitments of Mauritius in respect of terrorism.

194. Under the Prevention of Terrorism Act 2002, there are reasonable safeguards available to the suspect under this law, so that if the accused did not know or had no

reasonable cause to suspect that his act was related with any terrorist activity, he can raise this as a defence. For instance, it is an offence under the said Act to disclose to another anything which is likely to prejudice a terrorist investigation. However, the law also provides that it is a defence for the person charged to prove that he did not know and had no reasonable cause to suspect that the disclosure was likely to affect a terrorist investigation.

195. It is to be noted that there has not been any prosecution yet under the Prevention of Terrorism Act. Please see also reply to question 17.

## **II. General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

### **Reply to the questions raised in paragraph 39**

196. The following changes in the Legal Framework have enhanced the promotion and protection of human rights.

197. The Criminal Procedure (Amendment) Act 2007 was passed by Parliament in order to abolish mandatory sentences in relation to offences under the Criminal Code and the Dangerous Drugs Act and to restore the sentencing discretion of the Court. Section 5(1) of the Criminal Procedure (Amendment) Act provides the following:

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

198. Hence an opportunity is given to this category of prisoners to have their sentences reviewed and they can hope to get out of prison earlier than the mandatory period for which they were sentenced.

199. 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. 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. 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. However, it is to be noted that the Judicial Provisions Act 2008 abolishes fixed sentences and other mandatory sentences and restores to the Courts their sentencing discretion in respect of all offences. In the recent case of *Abdool Rahim Joosub v. The State 2008 SCJ 318*, the Supreme Court allowed an appeal against the decision of the learned magistrate sentencing appellant to 30 years’ penal servitude in accordance with the mandatory sentence imposed by the now repealed Dangerous Drugs Act 1986 and to a fine of Rs 100000. The Supreme Court made reference to the pronouncement of the Court of Criminal Appeal in the case of *Philibert & Ors v. The State 2007* and held that the indiscriminate mandatory imposition of a term of 45 years penal servitude in all cases

contravenes the principle of proportionality and amounts to inhuman or degrading punishment or such other treatment contrary to section 7(1) of the Constitution.

200. In 2004, Parliament amended the Bail Act to provide that offences under section 34 of the Dangerous Drugs Act (Act 41 of 2000) not be considered as serious offences and consequently that persons suspected of having committed such offences may be released on bail. Offences under section 34 relate to unlawful use of drugs for personal consumption and possession of syringes or other articles for use in connection with smoking, inhaling, sniffing, consuming or the administration of any dangerous drug. Therefore, detainees who have committed these offences are no longer remanded to jail on a systematic basis, and there is now a more balanced approach to the granting of bail.

201. 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.

202. 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."

203. 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.

204. In the landmark case of *Police v. Khojraty 2004 SCJ 138*, the Supreme Court declared unconstitutional the fact that bail was not available in relation to these serious drug offences.

205. The Courts (Amendment) Act 2007 was passed to provide for the dispatch of criminal business by the Supreme Court throughout the year. This legislative measure came as a big relief to prisoners whose cases are to be heard before the Supreme Court. The latter can now expect to be tried more expeditiously as their cases can be fixed anytime during the year, and they will not have to wait for Assize Sessions for their trial as was the case previously.

206. The National Assembly enacted a Certificate of Morality Act in 2006 to enable the Director of Public Prosecutions to grant a certificate of morality to applicants. Employers require prospective employees to produce such a certificate before offering employment to them. Previously, the practice was not to grant Certificates of Morality to those who had served a prison sentence. Hence it was almost impossible for those persons to get proper jobs and they were thus compelled to opt for seasonal jobs or to work on construction sites

(where a small private contractor may not require a certificate of morality) or ultimately to go back to a life of crime. This made the rehabilitation of ex-prisoners and their reinsertion in society more difficult. With the coming into force of the Certificate of Morality Act 2006, ex-prisoners who have served sentences for offences dating more than ten years back can now obtain a Certificate of Morality. They can now aspire to obtain a proper job as any other citizen and are no longer condemned to a lifetime of prejudice. However, where a person has committed an offence listed in the Second Schedule to the Act (the more serious offences and in which case the DPP does not issue a Certificate of Morality), there has been a suggestion by the National Human Rights Commission in its annual report that consideration be given as to whether a document mentioning the type of offence that has been committed, the period during which sentence was served and any rehabilitation programme pointing to reinsertion in society, could instead be given to this category of prisoners.

207. The Imprisonment for Civil Debt (Abolition) Act 2006 restricts the situations where debtors may be imprisoned for failing to pay a civil debt. Members of the public are frequently given credit or leasing facilities without the lenders making sure that they have the ability to repay. When the debtors are subsequently taken to Court and cannot repay, they are sent to prison. The new law provides that debtors will be given the opportunity to repay. It is only when they fail to do so and dispose of their property in such a way as to defraud their creditors that they shall be imprisoned. This is a considerable advancement for the cause of human rights.

208. The HIV and AIDS Act which was passed in 2006 and proclaimed in 2007 provides for a rights- based approach to HIV and AIDS-related issues, and aims in particular at protecting persons living with HIV and AIDS from discrimination. One of the objects of the Act is to respond to the escalating HIV/AIDS epidemic being witnessed in Mauritius through enhanced HIV prevention programmes and scaled up national mechanisms for voluntary counselling & testing. Provision is made for the introduction of risk minimization interventions, namely the Needle Exchange Programme. The Civil Status Act was amended in order to allow marriages between a Mauritian citizen and a non-citizen who is HIV positive or has AIDS.

209. The Equal Opportunities Act (which is not yet in force) 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 Act also provides for the establishment of an Equal Opportunities Commission and an Equal Opportunities Tribunal.

210. The Criminal Code has been amended by the Criminal Code (Amendment) Act 2003 to insert section 78 relating to acts of torture by public officials.

211. The Mutual Assistance in Criminal and Related Matters Act 2003 makes provision for mutual assistance between the Republic of Mauritius and a foreign State or an International Criminal Tribunal in relation to serious matters. Mauritius may refuse to entertain requests in whole or in part upon reasonable belief that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that a person's position may be prejudiced for any of those reasons.

212. The year 2003 also witnessed the enactment of the Ombudsperson for Children Act, which sets up the office of the Ombudsperson for Children. The Ombudsperson for Children has inter alia the following powers:

- (a) To make proposals to the Minister on legislation, policies and practices regarding services to, or the rights of, children;
- (b) To advise the Minister on public and private residential placement facilities and shelters established for the benefit of children;
- (c) To advise public bodies and other institutions responsible for providing care and other services to children on the protection of the rights of children;
- (d) To take such steps, as he may deem necessary to ensure that children under the care of, or supervision of, a public body are treated fairly, properly and adequately;
- (e) To promote compliance with the Convention on the Rights of the Child.

213. The enactment of the Sex Discrimination Act 2002 created a Sex Discrimination Division within the National Human Rights Commission. The Division deals with allegations of gender discrimination within the public and the private sectors and also with complaints of sexual harassment. Discrimination against women on the ground of sex is most condemnable and in some instances, can amount to inhuman and degrading treatment. The Act also criminalizes the act of sexual harassment.

214. Under the Rodrigues (Regional Assembly) Act 2002, some degree of autonomy has been granted to the Island of Rodrigues to allow its inhabitants to participate more fully in decisions affecting the island.

215. The Community Service Order Act was passed in 2002, enabling Courts to make alternative orders to imprisonment.

216. The Transfer of Prisoners Act which was passed in 2001 allows for the transfer of prisoners to and from Mauritius in order to allow prisoners to serve the remainder of their sentences in the countries from which they come from. The designated countries to which the Act applies include countries which are parties to the Strasbourg Convention on the Transfer of Sentenced Persons and the Scheme for the Transfer of Convicted Offenders within the Commonwealth. Bilateral agreements on the transfer of prisoners have also been entered into with the Republic of Guinea (June 2003), the United Republic of Tanzania (June 2003), India (October 2005) and Madagascar (July 2008). Agreements are presently under consideration with Kenya, Uganda, Burundi and Sri Lanka.

217. Since 2002, 35 foreign detainees have been transferred to their own countries as follows.

Table 7

**Number of foreign detainees transferred to their own countries (2002–2008)**

<i>Year</i>	<i>Country</i>	<i>Number</i>
2002	U.K.	2
2003	Guinea	1
2005	U.K.	1
	France	6
	Holland	1
	Tanzania	8
	Zambia	1
2006	Tanzania	1
2007	France	1
2008	Germany	1

<i>Year</i>	<i>Country</i>	<i>Number</i>
	India	12
<b>Total</b>		<b>35</b>

218. Currently, there are 116 foreign nationals including 40 female detainees in the prisons. Of the 116 detainees, 58 are still on remand awaiting trial. Procedures are underway for the transfer of 11 Indian detainees and 4 Malagasy detainees.

219. The Truth and Justice Commission Act which was passed December 2009 provides for the setting up of the Truth and Justice Commission which conducts inquiries into slavery and indentured labour during the colonial period in Mauritius, determines appropriate measures to be extended to descendants of slaves and indentured labourers, enquires into complaints made by persons aggrieved by dispossession or prescription of any land in which they claim to have an interest and prepares a comprehensive report of its activities and findings based on factual and objective information and evidence.

220. 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.

221. 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 Organization before they were introduced in the National Assembly.

222. Mauritius signed the Convention on the Rights of Persons with Disabilities in September 2007 and is committed to upholding and applying its provisions. Government has come up with a Policy Paper and Plan of Action on Disability which contains a series of measures relating to health, education, training, employment, human rights, sports, leisure, transport, communication and accessibility. In this context, an Implementation and Monitoring Committee has been set up to work on the implementation of the recommendations of the Action Plan and early ratification of the Convention.

223. Mauritius has also signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict on 11 November 2001. Following the concluding observations of the Committee on the Rights of the Child on Mauritius, the State has withdrawn its reservation to Article 22 of the Convention on the Rights of the Child.

224. Mauritius which became a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005 was chosen, by a drawing of lots, as the first country to be reviewed under the Optional Protocol and 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 to 18 October 2007. During the course of their visit, the Subcommittee on Prevention visited the Police facilities, Police Detention Centres, prisons and other institutions such as the Rehabilitation Youth Centre at Beau Bassin and the Shelter for Children and Women in Need. 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, shall soon be set up. Amendments are to be brought to existing legislation setting up the legal framework under which the National Preventive Mechanism is to operate.

225. The Abolition of Death Penalty Act was passed in 1995. All death sentences imposed before that Act was passed were commuted to sentences of penal servitude for life.

226. 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 will be introduced in Parliament shortly.

227. The Child Protection Act was enacted in 1994 to ensure protection of children from all forms of abuse.

228. Mauritius is at present in the process of finalizing 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 programs 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.

229. The National Action Plan has been developed, in consultation with stakeholders, on the basis of realistic objectives and clear targets and covers a broad field of areas. It includes an overview of 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 action 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 term implementation of the measures. The provision of a time frame will ensure that those involved in realising the targets of the Action Plan have a deadline to structure their activities and should ultimately facilitate monitoring and final evaluation.

#### **Reply to the questions raised in paragraph 40**

230. The Mauritius Police Force has in February 2010 launched the national policing Strategic Framework with the collaboration of the UNDP/UNODC. This plan relies on 6 major pillars amongst which is "Achieving a Human Rights Compliant Organisation". Within this initiative, a Professional Standards Department will be set up to look into and deal internally with matters of complaint, learn from any mistake, upholding values of Human Rights concept in the Mauritius Police Force.

#### **Reply to the questions raised in paragraph 41**

231. Please see reply to questions raised in paragraph 39 of the list of issues.