

Accountability for Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Thematic Report of the Special Rapporteur on Torture to GA76

1. Challenges to accountability: What are the most important legal, practical and other challenges that are conducive to the current worldwide accountability gap for torture and ill-treatment?

- (i) The State of Mauritius is party to Optional Protocol to the Convention against Torture (OPCAT) and has fulfilled its obligation to establish National Preventive Mechanisms, which are independent national bodies for the prevention of torture and ill-treatment at domestic level. The National Preventive Mechanism (NPM) Division was set up under the National Human Rights Commission in 2014. Since June 2015, NPM Division investigates complaints which are made by a detainee and, where the detainee so requests, investigate the complaint privately.
- (ii) Capital punishment was abolished in 1995 and hence, it does not trade in goods for capital punishment.
- (iii) Section 7 (b) of the Police Act 1974 provides that every police officer shall be provided with the staves, arms, ammunition and other equipment necessary for the effective discharge of his duties. Police Officers are issued with Tonfa/Expandable batons, handcuffs/foot cuffs and federal streamers, among others in the performance of their duties. These weapons are exclusively meant to protect/defend themselves in the exercise of their duties or other persons.
- (iv) The Reform Institutions Act was amended in April 2018 and makes provision to toughen the law against officers of the Mauritius Prisons Service, detainees and persons working in reform institutions who are convicted under the Act. It also encourages prisoners to participate in an approved rehabilitation program in order to enjoy the earned remission system.

Legal challenges

- (v) The absence of the provisions in accordance with articles 2 and 4 respectively of the Convention so as to prohibit and criminalize acts of torture, or if there is such local provisions, they are not reflective of the definition of torture under article 1 of the Convention.
- (vi) The inadequate penalty applicable to offence of torture in some jurisdictions, which are not reflective of the severity and stigma, attached to such an act. For instance, section 78 of the Criminal Code, which criminalizes Torture in Mauritius, provides for a penalty of imprisonment for a term not exceeding 10 years and to a fine not exceeding 150,000 rupees, hence clearly not consistent with article 4(2) of the Convention in relation to the gravity of the offence.
- (vii) The absence of any provisions in domestic legislations prohibiting the use of any evidence obtained by torture and other cruel, inhuman, degrading treatment in accordance with article 15 of the Convention. As long as there is no such prohibition of the use of evidence obtained by such treatments, the Courts will admit such evidence, secured by the Police.

Practical and other challenges:

- (viii) A lack of awareness of the prohibition of torture and the contents of the Convention even though it has been acceded to.
- (ix) The investigating authorities continued quest to look for confessions by any means to resolve a criminal investigation.
- (x) The lack or scarcity of other means to solve criminal cases, such as use of scientific and technological means.
- (xi) Reluctance to report cases.

2. Functions, forms and levels of accountability: Please identify, explain, distinguish or compare the different functions (e.g. punitive / reparative, or proactive/preventative etc.), forms (e.g. legal, political, economic or social etc.) and levels (e.g. individual, collective, institutional, State etc.) of accountability for torture and ill-treatment.

(i) **Section 37, 38 and 78 of the Criminal Code :-**

“ 37. Accomplices

Except where otherwise provided in any enactment, the accomplices in a crime or misdemeanor shall be punished with the same kind of punishment, or one of the punishments applicable to the crime or misdemeanor, for the time that shall be fixed by the sentence.

38. Giving instructions and aiding and abetting

(1) Any person who, by gift, promise, abuse of authority or power, machination or culpable artifice instigates, or gives any instruction for, the commission of a crime or misdemeanour shall be punished as an accomplice in the crime or misdemeanour.

(2) Any person who procures arms, instruments, or any other means used in the commission of a crime or misdemeanour, knowing that they were to be so used, shall be deemed an accomplice.

(3) Any person who knowingly aids and abets the author of any crime or misdemeanour in the means of preparing, facilitating or perpetrating the crime or misdemeanour, shall be deemed an accomplice, without prejudice to the punishments specially provided by law against the authors of plots or of instigations to offences affecting the internal or external safety of the State, even in cases where the crime which was the object of the conspirators or instigators has not been committed.

Section 78 of the Criminal Code criminalizes the offence of torture by public official:

“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 150,000 rupees and to imprisonment for a term not exceeding 10 years.

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

(a) the victim is a citizen of Mauritius;

(b) the alleged offender is in Mauritius; or

(c) 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.” ”

(ii) **Chapter II of the Criminal Code (Book III)** caters for offences by public officers, and acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture may be prosecuted thereunder (excluding section 78)

(iii) **Section 7 and 10 of the Constitution**

“ 7. Protection from inhuman treatment

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11 March 1964.”

10. Provisions to secure protection of law

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

(2) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

- (b) shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;
- (e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any Court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that Court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the Court has ordered him to be removed and the trial to proceed in his absence.

...

- (4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
- (5) No person who shows that he has been tried by a competent Court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, except upon the order of a superior Court in the course of appeal or review proceedings relating to the conviction or acquittal.
- (6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.
- (7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (8) Any Court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a Court or other authority, the case shall be given a fair hearing within a reasonable time.
- (9) Except with the agreement of all the parties, all proceedings of every Court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the Court or other authority, shall be held in public.

...

(12) In this section, "criminal offence" means a crime, misdemeanour or contravention punishable under the law of Mauritius. "

(iv) **Sections 3, 4, 5, 6, 16 and 24 of the Independent Police Complaint Commission Act**

Section 3 of the Act provides for the establishment of the Independent Police Complaints Commission, whose functions are to:- (*Section 4 of the Act*):-

- (a) investigate into any complaint made by any person or on his behalf against any act, conduct or omission of a police officer in the discharge of his functions, other than a complaint of an act of corruption or a money laundering offence;
- (b) investigate into the cause of death of a person who died whilst the person was in police custody or as a result of police action;
- (c) advise on ways in which any police misconduct may be addressed and eliminated;
- (d) promote better relations between the public and the Police; and
- (e) perform such other functions as may be conferred to it by any other enactment.

In discharging its functions (Section 5 of the Act), the Commission is empowered to summon any person to appear before it, or require any person in writing –

- (a) to answer any question or provide any information which the Commission considers necessary in connection with any investigation;
- (b) to produce any article, or any book, record, accounts, report, data, stored electronically or otherwise, or any other document; and
- (c) to verify, or otherwise ascertain by oral examination of the person making the complaint, any fact, matter or document relating to a complaint.

The Commission is also empowered to visit any police station, prison or other place of detention for the purpose of an investigation under the Independent Police Complaints Commission Act.

Pursuant to Section 16 of the Act, on the completion of an investigation, the Commission must make an assessment and form an opinion as to whether or not the subject matter of a complaint has or may have occurred. The Commission may also, where appropriate, refer the matter to –

- (i) the Director of Public Prosecutions, with a recommendation that the police officer be prosecuted for a criminal offence;
- (ii) the Disciplined Forces Service Commission, with a recommendation that disciplinary proceedings, or such other action as the Commission considers desirable, be taken against the police officer;
- (iii) the Attorney-General, with a recommendation that the complainant or his representative be paid such compensation or granted such relief as the Attorney-General may deem appropriate;

Section 24 of the Act:-

“ 24. Offences

Any person who –

...

(d) *procures the false testimony of a witness, or interferes with a witness on account of his testimony, before the Commission;*

...

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years. ”

(v) Sections 3, 3A, 4, 11 and 13 of the Protection of Human Rights Act

“ Preamble

An Act

To provide for the setting up of a National Human Rights Commission, for the better protection of human rights, for the better investigation of complaints against members of the police force, and for matters connected therewith or incidental thereto.

3. Establishment of Commission and setting up of Divisions

(1) There is established for the purposes of this Act a National Human Rights Commission, which shall be a body corporate.

...

(3) There shall be within the Commission —

(a) a Human Rights Division;

(b) Repealed by [Act No. 14 of 2016];

(c) a National Preventive Mechanism Division.

3A. Functions of the Commission

The Commission shall —

(a) promote and protect human rights;

(b) review the safeguard provided by or under any enactment for the protection of human rights;

(c) review the factors or difficulties that inhibit the enjoyment of human rights;

(d) submit to the Minister any opinion, recommendation, proposal or report on any matter concerning the promotion and protection of human rights;

(e) prepare reports on the national situation with regard to human rights in general, and on more specific matters;

(f) inform the Minister of situations of violation of human rights and advise on ways in which such situations can be ended;

(g) promote and ensure the harmonisation of national legislation and practices with the international human rights instruments to which Mauritius is a party, and their effective implementation;

(h) encourage ratification or accession to the instruments referred to in paragraph (g), and ensure their implementation;

(i) contribute to the reports which Mauritius is required to submit to United Nations bodies and committees, and to regional institutions, pursuant to its treaty obligations and, where necessary, to express an opinion on the subject, with due respect for its independence;

(j) cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(k) assist in the formulation of programmes for the teaching of, and research into, human rights and take part in their execution in schools, universities and professional circles;

(l) publicise human rights and efforts to combat all forms of discrimination by increasing public awareness, especially through information and education and by making use of all press organs;

(m) exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.

4. Functions of the Human Rights Division

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

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

(b) Repealed by [Act No. 19 of 2012]

(c) where it has reason to believe that an act or omission such as is referred to in paragraph a) has occurred, is occurring or is likely to occur, of its own motion enquire into the matter.

(d) - (g) Repealed by [Act No. 19 of 2012]

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

(b) The Human Rights Division shall not exercise its functions and powers in relation to any of the officers and authorities specified in the proviso to section 97(2) of the Constitution.

(c) In the exercise of its functions under subsection (1) (a) or (c), the Human Rights Division may, where appropriate, refer the matter to the National Preventive Mechanism Division to enquire into the case.

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

(4) Where the Human Rights Division has not been able to resolve a matter through conciliation, it shall, on the completion of its enquiry —

(a) where the enquiry discloses a violation of human rights or negligence in the prevention of such violation, refer the matter to —

(i) the Director of Public Prosecutions where it appears that an offence may have been committed;

- (ii) *the appropriate Service Commission where it appears that disciplinary procedures may be warranted;*
- (iii) *to the chief executive officer of the appropriate public body where it appears that disciplinary action is warranted against an employee of a public body who is not within the jurisdiction of a Service Commission;*
- (b) *recommend the grant of such relief to the complainant or to such other person as the Human Rights Division thinks fit;*
- (c) *inform the complainant, if any, of any action taken under this subsection.*
- (5) *The Human Rights Division shall, on the completion of its enquiry, send a written communication setting out its conclusion and any recommendation to the Minister who shall, as soon as practicable, report to the Human Rights Division the action taken or proposed to be taken.*
- (6) – *Repealed by [Act No. 19 of 2012]*

11. Reports of the Commission

- (1) *The Commission shall, not later than 31 March in each year, submit a report on its activities and those of its Divisions during the preceding year to the President and may at any other time, submit a special report on any matter which, in its opinion, is of such urgency or importance that it should not be deferred until submission of the annual report.*
- (2) *The President shall cause every report of the Commission to be laid before the Assembly within one month of its submission.*

13. Offences

Any person who —

...

(e) procures the false testimony of a witness, or interferes with a witness on account of his testimony, before the Human Rights Division;

...

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years. ”

(vi) Sections 3, 4 and 5 of the National Preventative Mechanism Division Act

“ 3. National Preventive Mechanism Division

- (1) *There shall be for the purposes of this Act a National Preventive Mechanism Division, which shall be a Division of the Commission.*
- (2) *The National Preventive Mechanism Division shall for the purposes of Part IV of the Optional Protocol be the National Preventive Mechanism.*

...

4. Functions of Division

The functions of the Division shall be –

- (a) to visit places of detention on a regular basis so as to examine the treatment of persons deprived of their liberty with a view to ensuring their protection against torture and inhuman or degrading treatment or punishment;*
- (b) to investigate any complaint which may be made by a detainee and, where the detainee so requests, investigate the complaint privately;*
- (c) to make to the Minister recommendations regarding the improvement of the treatment and conditions of persons deprived of their liberty in places of detention, taking into consideration the relevant norms of the United Nations;*
- (d) to submit to the Minister and other relevant authorities proposals and observations concerning legislation relating to places of detention and the treatment of persons deprived of their liberty;*
- (e) to work, where appropriate, in co-operation or consultation with any person or body, whether public or private, in connection with the discharge of any of its functions under this Act and the Optional Protocol.*

5. Powers of Division

- (1) The Division shall have such powers as may be necessary to effectively discharge its functions under this Act and the Optional Protocol.*
- (2) Without prejudice to the generality of its powers under subsection (1), the Division shall, notwithstanding any other enactment, be given –*
 - (a) full access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;*
 - (b) access to all information referring to the treatment of those persons as well as their conditions of detention;*
 - (c) access to any place of detention and its installations and facilities;*
 - (d) the opportunity to have private interviews with persons deprived of their liberty, personally or with a translator where necessary, as well as with any other person whom they have reason to believe may supply relevant information;*
 - (e) the freedom to choose the places they want to visit and the persons they want to interview;*
 - (f) the freedom to determine its own procedures, including its programmes of visits;*
 - (g) the freedom for its members to be accompanied, if needed, by such expert with the relevant professional expertise, experience and knowledge as the Chairperson may determine, on visits to detention centres;*
 - (h) the right to have contacts with the Subcommittee and to exchange information with it. ”*

(vii) **Sections 2, 3, 4, 5, 6 and Schedule to the International Criminal Court Act**

“ 2. Interpretation

In this Act –

“ancillary offence” –

(a) *in relation to an offence under section 4(1), means an attempt, a conspiracy or an act of complicity;*

(b) *includes an offence under section 4(2);*

“crime against humanity” has the same meaning as in the Statute and in Part I of the Schedule;

...

“international crime” means the crime of genocide, a crime against humanity or a war crime, and includes an ancillary offence;

...

“Statute” means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court on 17 July 1998 and ratified by Mauritius on 5 March 2002;

...

“war crime” has the same meaning as in the Statute and in Part III of the Schedule.

3. Status of Statute and application of Act

(1) *Notwithstanding any other enactment, the Statute shall have force of law in Mauritius.*

(2) *This Act shall bind the State.*

4. International crimes

(1) *Notwithstanding any other enactment, any person who commits –*

(a) *a crime against humanity;*

(b) *genocide; or*

(c) *a war crime,*

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 45 years.

(2) *Any person who –*

(a) *directly and publicly incites others to commit genocide; or*

(b) *contributes to the commission of an international crime by a group of persons acting with a common purpose, where such contribution is intentional and is either –*

(i) *made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the International Criminal Court; or*

(ii) *made in the knowledge of the intention of the group to commit the crime,*

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 45 years.

(3) *Where a person commits an international crime outside Mauritius, he shall be deemed to have committed the crime in Mauritius if he –*

- (a) is a citizen of Mauritius;
- (b) is not a citizen of Mauritius but is ordinarily resident in Mauritius;
- (c) is present in Mauritius after the commission of the crime; or
- (d) has committed the crime against a citizen of Mauritius or against a person who is ordinarily resident in Mauritius.

5. Responsibility of commanders and superiors

(1) It shall not be a defence for a person charged with an international crime to plead that he had no responsibility for the crime if the crime was committed by forces under his effective command and control, or, as the case may be, his effective authority and control, as military commander, or a person effectively acting as a military commander, and there was a failure to exercise proper control over those forces where –

- (a) he knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit the offence; and
- (b) he failed to take all necessary and reasonable measures within his power to prevent or repress its commission or to submit the matter to the competent authorities for investigation and prosecution.

(2) It shall not be a defence for a person, other than a person referred to in subsection (1), to plead that he had no responsibility for the crime if the crime was committed by subordinates under his effective authority and control as a superior, and there was a failure to exercise proper control over those subordinates where –

- (a) he knew, or consciously disregarded information which clearly indicated, that his subordinates were committing or about to commit the offence;
- (b) the offence concerned activities that were within his effective responsibility and control; and
- (c) he failed to take all necessary and reasonable measures within his power to prevent or repress its commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) Nothing in this section shall be read as restricting or excluding any liability of the commander or superior under any other enactment or the liability of persons other than the commander or superior.

6. Official capacity and superior's orders

(1) It shall not be a defence to an offence under section 4 nor a ground for a reduction of sentence for a person convicted of an offence under that section to plead that he is or was Head of State, a member of a Government or Parliament, an elected representative or a government official of a foreign State.

(2) (a) It shall not be a defence to an offence under section 4 nor a ground for a reduction of sentence for a person convicted of an offence under that section to plead that he did the act constituting such offence in obedience to, or in conformity with, the law in force at the time, or pursuant to an order by a Government or a superior, whether military or civilian,

unless –

- (i) the person was under a legal obligation to obey the order of the Government or the superior in question;
- (ii) the person did not know that the order was unlawful; and
- (iii) the order was not manifestly unlawful.

(b) For the purposes of paragraph (a), orders to commit genocide or a crime against humanity shall be regarded as being manifestly unlawful. ”

“ SCHEDULE , [Section 2]

PART I, CRIME AGAINST HUMANITY

1. “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack –
- (a) deportation or forcible transfer of population;
 - (b) enforced disappearance of persons;
 - (c) enslavement;
 - (d) extermination;
 - (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) murder;
 - (g) persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law in connection with any act referred to in this paragraph or any crime within the jurisdiction of the International Criminal Court;
 - (h) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
 - (i) the crime of apartheid;
 - (j) torture;
 - (k) any other inhumane act of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1 –

“attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit the attack;

“deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

“enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time;

“enslavement” means the exercise of any power attaching to the right of ownership over a person and includes the exercise of that power in the course of trafficking in persons, in particular women and children;

“extermination” includes the intentional infliction of conditions of life, such as the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

“forced pregnancy” means, subject to the domestic law of a State relating to pregnancy, the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law;

“persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

“the crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

“torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in one’s custody or under one’s control but shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

3. For the purposes of paragraphs 1 and 2, “gender” refers to both sexes, male and female, within the context of society and does not indicate any different meaning.

PART III - WAR CRIME

“war crime” means –

(a) *grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention –*

(i) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(ii) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(iii) taking of hostages;

(iv) torture or inhuman treatment, including biological experiments;

(v) unlawful deportation or transfer or unlawful confinement;

(vi) wilful killing;

(vii) wilfully causing great suffering, or serious injury to body or health;

(viii) wilfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial;

(b) *other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts –*

(i) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

...

(c) *in the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause –*

(i) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

- (ii) *taking hostages;*
- (iii) *the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all judicial guarantees which are generally recognised as indispensable;*
- (iv) *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts –*
 - (i) *committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2(f) of the Statute, enforced sterilisation, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;*

...”

(viii) Section 5(1), 8, 25 and 26(a) of the Extradition Act

“ **5. *Offences punishable under laws of Mauritius***

- (1) (a) *An offence shall be an extraditable offence where –*
 - (i) *it is punishable under the laws of the requesting State by imprisonment or other deprivation of liberty for a term of not less than 2 years; and*
 - (ii) *the act which constitutes the offence would, if committed in Mauritius, constitute an offence which is punishable under the laws of Mauritius by imprisonment or any other deprivation of liberty for a term of not less than 2 years.*

Section 8 of the Act

A request for the extradition of a person by a foreign State shall not be favourably considered where, in the opinion of the Attorney-General, there are substantial grounds to believe that the person sought –

- (a) *is likely to be prosecuted or punished in that State on account of his race, religion, nationality, ethnic origin or political opinions;*
- (b) *is likely to be subjected in that State to torture or cruel, inhuman or degrading treatment or punishment;*
- (c) *is not likely to receive the minimum fair trial guaranteed in criminal proceedings in that State;*
- (d) *is liable to be tried or sentenced in that State by an extraordinary or ad hoc court or tribunal, unless that State gives assurances which, in the opinion of the Attorney-*

General, are sufficient to ensure that the judgment will be passed by a court, which is empowered under the rules of judicial administration of that State to try criminal offences.

25. *Prosecution of person sought*

Where an act committed outside Mauritius by a person sought constitutes an offence under the laws of Mauritius, the Director of Public Prosecutions may, where the person sought is not extradited, and notwithstanding any other enactment, institute proceedings against that person as if that act has been committed in Mauritius.

26. *Extradition or related request*

The Attorney-General may make a request to a foreign State –

(a) for the extradition of a person for the purpose of prosecuting an offence, or imposing or executing a sentence in respect of an offence, over which Mauritius has jurisdiction.

..... ”

(ix) Deportation Act

The existence of “substantial grounds for believing that he would be in danger of being subjected to torture” is not mentioned as being a ground or consideration for not deporting a person not belonging to Mauritius.

(x) Section 45 of the Interpretation and General Clauses Act

“45. Accomplices and attempts

Every accomplice and any person who attempts to commit an offence shall commit an offence and shall, on conviction, be liable to the penalty provided for the principal or completed offence, as the case may be. ”

(xi) Sections 80B, 112 and 162 of the Courts Act

“ 80B. Criminal Division of Intermediate Court

There shall be a Criminal Division of the Intermediate Court which shall have jurisdiction to try any criminal matter, which the Director of Public Prosecutions may refer to it pursuant to section 112.

112. Criminal jurisdiction of Intermediate Court

The Intermediate Court shall have jurisdiction to try any of the following criminal matters, which the Director of Public Prosecutions may refer to it -

(a) any offence which a District Magistrate has jurisdiction to try;

(b) any offence triable in Rodrigues or any island under the jurisdiction of the State of Mauritius other than the Island of Mauritius;

...

(e) any offence declared triable by the Intermediate Court under any other enactment.

162. English law of evidence

Except where it is otherwise provided by special laws now in force in Mauritius or hereafter to be enacted, the English law of evidence for the time being shall prevail and be applied in all Courts of Mauritius.

As per the law of evidence and jurisprudence in Mauritius, where an accused is threatened or induced or oppressed into making a confession, that confession will be excluded if it is shown that at the time of making it his free will had been nullified. This principle was enunciated by Honorable Judge Boolell before the Assizes Court, in the case of **R v Boyjoo and anor, 1991 MR 284** the defence objected to the admissibility of the statements of Accused No. 2 on the grounds of inducement, threats and oppression, and a ‘voir dire’

hearing was conducted. The Court impressed on the rights of an accused to be told of his right of silence and his access to a legal adviser, and the caution that should be given to a person suspected of having committed an offence or charged with having committed an offence, as provided for in the Constitution. The Court noted that the overriding principle on the voluntariness of a confession is to be found at paragraph 3(e) of the introductory notes to the Judges' Rules, which read as follows:

“It is a fundamental condition of the admissibility in evidence against any person equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear or prejudice or hope of advantage, exercised or held out by a person in authority or by oppression.” In light of the evidence adduced, the Court held that the statements taken was inadmissible as the accused had waived her constitutional right against self-incrimination, not willingly, but through unfair means used by the police.

In the case of **Jean Jacques v State [2012 SCJ 181]**, the admissibility of a statement was being challenged on the ground of inducement. While their Lordships indicated that the Court would not interfere with a finding of fact of a lower Court, unless such finding of fact is perverse, they found on the facts that the Learned Magistrate failed to properly appreciate those facts and that the appellant ought to have been given the benefit of the doubt. Thus, the Court of Appeal concluded that the decision of the learned Magistrate to rule the impugned statement admissible could not be upheld and it quashed the conviction.

(xii) Sections 6 and 3 of the Maritime Zones Act

“ (1) The sovereignty of Mauritius—

(a) extends and has always extended to—

(i) the territorial sea;

(ii) its internal waters;

(iii) its archipelagic waters;

(iv) its historic waters;

(b) also extends to the air space over the archipelagic waters, the historic waters, the internal waters and the territorial sea as well as to their beds and subsoil, and the resources contained in them.

” (2) Unless otherwise expressly provided, any law in force in Mauritius shall extend to its maritime zones.

(xiii) Article 94 UNCLOS

Duties of the flag State

“ 1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and

(b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

(a) the construction, equipment and seaworthiness of ships;

(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;

(c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag

State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation. ”

(xiv) Section 10 of the Civil Aviation Act

“ 10. Jurisdiction

(1) Any act or omission which takes place outside Mauritius in an aircraft registered in Mauritius shall be deemed, for the purposes of civil and criminal jurisdiction, to have taken place in the district of Port Louis and the law of Mauritius shall have effect in relation to that act or omission as if it had taken place in Mauritius.

(2) Notwithstanding the provisions of—

(a) section 114 of the Courts Act; and

(b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try all offences and to impose all penalties provided for under this Act. ”

(xv) The Mutual Assistance in Criminal and Related Matters Act provides as follows:

Preamble

To make provision for mutual assistance between the Republic of Mauritius and a foreign State or an international criminal tribunal in relation to serious offences and to provide for related matters.

“ **Section 2** defines ‘serious offence’:

“*serious offence*” -

(a) means –

(i) an offence against a law of Mauritius, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months; or

(ii) an offence against a law of a foreign State for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months;

(b) includes an international criminal tribunal offence.

Section 5(1):

“5. Request to Mauritius

(1) A foreign State may, in relation to a serious offence, and an international criminal tribunal may, in relation to an international criminal tribunal offence, make a request for assistance to the Central Authority in any proceedings commenced in the foreign State or before the international criminal tribunal, as the case may be. ”

Part III of the Act deals with Forms of Mutual Assistance:

6. Procedure for an evidence-gathering order or a search warrant

(1) Notwithstanding any other enactment, where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to obtain evidence or a search warrant in Mauritius, the Central Authority may apply to a Judge in Chambers for -

(a) an evidence-gathering order; or

(b) a search warrant for the search of a person or premises, and removal or seizure of any document or article.

7. Foreign request for a virtual evidence-gathering order

(1) Where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to order a person to give evidence by means of technology that permits the virtual presence of the person in the territory over which the foreign State has jurisdiction or in the International Criminal Tribunal, it may apply to a Judge in Chambers for an order for the taking of the virtual evidence of the person.

11. Foreign request for restraining order

(1) Where-

(a) a foreign State or an international criminal tribunal requests the Central Authority to obtain the issue of a restraining order against the proceeds of crime which are believed to be located in Mauritius; and

(b) proceedings relating to the proceeds of crime have commenced in the foreign State, or before the international criminal tribunal,

and there are reasonable grounds to believe that the proceeds of the crime are located in Mauritius, the Central Authority may apply to a Judge in Chambers for a restraining order under this section.

12. Foreign request for enforcement of foreign restraining order or confiscation

(1) Notwithstanding any other enactment, where a foreign State, or an international criminal tribunal, requests that necessary measures be taken for the enforcement of-

(a) a foreign restraining order; or

(b) a foreign confiscation order,

the Central Authority may apply to the Supreme Court for registration of the order.

15. Foreign request for the location of the proceeds of crime

(1) Where-

(a) a foreign State requests the Central Authority to assist in locating property believed to be the proceeds of a serious crime

committed in that State; or

(b) an international criminal tribunal requests the Central Authority to assist in locating property believed to be the proceeds of an international criminal tribunal offence,

the Central Authority may apply to a Judge in Chambers for an order -

(i) that any information relevant to -

(A) identifying, locating or quantifying any property; or

(B) identifying or locating any document necessary for the transfer of any property,

belonging to, or in the possession or under the control of that person be delivered forthwith to the Central Authority; or

(ii) that a bank or financial institution forthwith produces to the Central Authority all information obtained by it about any business transaction relating to the property for such period before or after the date of the order as the Judge may direct. ”

3.1 Reparative

(i) Provision of emergency accommodation

At present, 3 Non-Governmental Organisations, namely: Chrysalide, Passerelle and SOS Femmes are to providing emergency accommodation to the women victims of domestic and their children. Services such as legal and psychological advices are provided to women victims and their children amongst others.

(ii) Drop in Centre

The Drop-in-Center is specifically designed to cater and offer support services to those victims and potential victims of child trafficking and CSEC as well as who are willing to come out of the scourge of trafficking including child prostitution. The drop-in-center provides specialised services to the CSEC victims, notably therapeutic and rehabilitative activities, like group counselling and focus group discussions, monthly medical sessions/examinations; contraceptive counselling; and parental counselling.

The Center ensures better protection and assistance to children victims of Commercial Sexual Exploitation in a sustainable manner. It provides adequate, appropriate and a safe shelter to children victims of exploitation, opportunities for education as well as family mediation, and medical and psychological care in coordination with national health and social services

3.2 Proactive

(i) Integrated Support Centre

An Integrated Support Centre launched on 08 March 2019 to ensure prompt intervention in cases of domestic violence through hotline 139 for domestic violence is now being attended to through four parallel digital phone lines. The system is also connected to the Domestic Violence Information System (DOVIS), which is a computerised platform for monitoring cases of domestic violence as well as a repository for all data pertaining to cases of domestic violence.

It assists in faster retrieval of answers to queries regarding violence issues and provides better coordination among the Family Support Bureaux (FSBx).

(ii) Economic Empowerment of Survivors of Domestic Violence

Empowering survivors of domestic violence economically is crucial in breaking the cycle of violence. Their perpetrator from sustaining employment at meaningful wages has often prevented them and as a result, they have always been financially dependent.

Conducting an Empowerment Programme for survivors of domestic violence would help them join an institution for gainful employment, greater financial stability and independence. The Empowerment Programme would also build the self-esteem and self-confidence of the survivors.

(iii) Enhancement of Service Delivery To Reinforce Protective And Support Services To Victims Of Domestic Violence

The Family Welfare and Protection Unit has enhanced its protective and support services to better cater to victims of domestic violence and prevent further incidences of same.

- (iv) A concerted, coordinated and integrated approach with the key stakeholders such as Health, Social Services, Police, and Justice sectors to ensure that targeted support is available to all. The Police department through the Police Family Protection Unit is also fully involved in the assistance of victims of Domestic violence.
- (v) A High Level Committee on Gender-based violence chaired by the Hon. Prime Minister has launched a National Strategy and Action Plan 2020-2024 for the International Day for the Elimination of Violence Against Women's commemoration last year. The High Level Committee is geared towards the elimination of GBV wherein a strategic and a multi-sectoral approach has been adopted. A mobile application known as "LESPWAR", embedded with a panic button, was launched on the occasion to encourage reporting of cases of violence.
- (vi) As regard other forms of violence against women and girls, perpetrators may commit an offence under the Criminal Code and the Child Protection Act that define the other forms of violence against women and girls.
- (vii) The Community Child Watch Committees, which have been set up in risk areas, act as a surveillance mechanism to identify children, vulnerable to violence and those mostly at risk to report any suspected case related to children to the Ministry of Gender Equality and Family Welfare for appropriate action. It covers some 50 regions throughout the island.
- (viii) **Child Protection Services (CPS)**
Currently, there are 6 CPS providing immediate assistance, protection and follow-up to children victims of violence and abuse (including) sexual abuse.

3.3 Preventive

(i) Awareness Campaigns

As part of its ongoing public awareness campaigns aiming at the promotion of family welfare and sensitization on gender-based violence including domestic violence in Mauritius, the Family Welfare and Protection Unit makes use of Information Education Communication strategies comprising amongst others, regular talks and activities organized in different regions of the country.

(ii) Sensitization Campaigns cover the following topics :-

- a. Definition of Gender Based Violence and Domestic Violence;
- b. Services offered by the Family Support Bureaux;
- c. The Protection from Domestic Violence Act;
- d. Effects and consequences of domestic violence;
- e. Impact of substance abuse in the family;
- f. The Hotline 139 and 119 services; and
- g. Reporting cases of domestic violence through smart phone application.

(iii) Commercial Sexual Exploitation of Children (CSEC)

Regular Information, Education and Communication (IEC) campaigns to address the issue of Commercial Sexual Exploitation of Children (CSEC), inclusive of Child Trafficking and Prostitution are carried-out. The campaigns are conducted through the School Child Protection Club, Children's Club, Atelier Partage Parents, Community Child Protection Programme (CCPC), 'Caravan de Proximite' and through the varied awareness talks carried-out by the Child Development Unit (CDU) and upon requests from the various stakeholders such as Non-Governmental Organisations, the civil society, Ministry of Health and Quality of Life, the Probation Service, the Ministry of Human Rights and Justice and the Police, amongst Others.

3.4 Punitive

- (i) Since 15 December 2020, the Children's Act, Children's Court Act and the Child Sex Offender Register Act have been passed at the National Assembly.

The Children's Act aims to provide for a more comprehensive and modern legislative framework with a view to addressing the shortcomings of the existing Child Protection Act and to give better effect to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

- (ii) The object of the Children's Court Act, is to provide for the establishment of a Children's Court which will have jurisdiction to hear and determine cases involving children. The establishment of this dedicated and specialized court has rendered necessary with a view to ensuring that the best interests of children during Court proceedings are safeguarded in a child-friendly environment.

- (iii) In addition, a Child Sex Offender Register Act aims to establish a Child Sex Offender Register, to be known in short as the CSO Register, which would monitor and keep track of persons in the community who have been found guilty of committing sexual offences against our children. It would also help in detecting and investigating sexual offences against children.

As regard to ill-treatment or alleged cases of ill-treatment section 33 stipulates that there would no longer be a need for a specific Court Order to initiate an assessment. However, as a last resort, if the need arises, for cases where a child has to be removed from a site of violence, an Emergency Protection Order would be resorted to.

- (iv) Furthermore, in order to explicitly prohibit corporal punishment in all settings, including in the home, in alternative and day-care and in penal institutions. The new legislation, the Children's Act highlights at:

“ Section 2. Interpretation

“harm” includes physical, sexual, psychological, emotional or moral abuse, injury, neglect, ill-treatment, degradation, discrimination, exploitation or impairment of health or development;

Section 14. Corporal or humiliating punishment on child

(1) No person shall inflict corporal or humiliating punishment on a child as a measure to correct or discipline the child. (2) Any person who contravenes subsection (1) shall commit an offence and shall,

on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) In this section – “corporal or humiliating punishment” means any form of punishment, which causes pain or suffering to a child through, but not limited to, the use of force or use of substances.
”

- (v) Other measures were also implemented to provide psychosocial support to children victims of abuse as well as to sensitise children on child abuse.

3. Rights of victims: Who should be recognised as a victim of torture and ill-treatment, and what are – or ought to be – victims’ procedural and substantive rights within accountability processes? Who else, if anyone, should be entitled to have access to and/or participate in accountability processes and mechanisms?

The survivor of such atrocious act should be recognized as a victim of torture. Such a victim should be able to seek redress by the simple means of complaint procedure and obtain adequate compensation, including financial, medical, psychological but not restricted to these only.

The redress procedure should be simple and victim friendly as well as supportive, bearing the trauma she must have gone through, both physically and mentally.

Such a victim should also be given the adequate protection the more so the perpetrators might be public officials.

Who else, if anyone, should be entitled to have access to and/or participate in accountability processes and mechanisms?

The next of kin of a torture deceased victim.

4. Recommendations: Based on your experience and/or analysis of accountability in (2) and (3) above, what are the most effective mechanisms / measures and/or good practices that can or should be taken to respond to the challenges you identified in (1) so as to ensure accountability for torture and ill-treatment worldwide?"

- (i) Adequate training and awareness raising campaigns amongst law enforcement agencies, the judicial officers as well as the prosecution officers as regards the contents and implications of the Convention;
- (ii) Implementation into the domestic provisions such laws prohibiting the use of torture evidence in criminal proceedings;
- (iii) Prompt and honest enquiry into any allegations of torture practices followed by diligent prosecution before appropriate courts;
- (iv) More reliance on scientific and technological means to resolve crimes;
- (v) Zero tolerance against any type of stereotyping, discrimination of any kind.