**Questionnaire on *Bioethics and Disability* for preparation of a thematic report from the Special Rapporteur on the rights of persons with disabilities to be presented at the 43rd session of the Human Rights Council (HRC)**

**Prenatal diagnosis**

1. The Ministry of Health and Wellness has made provisions in the public sector, to conduct routine ultrasound examination both in normal and disabled pregnant patients. Second trimester morphological ultrasound examination is performed routinely to diagnose any malformation such as:

* Spina bifida
* Anencephaly
* Hydrocephalus
* Cardiac Malformations
* Another Organ Pathology

In addition, serum Triple Marker Test is carried out routinely at 18 week’s gestation, in all pregnant women above 35 years to detect Down’s Syndrome.

**Disability related abortion**

1. Section 235A (1) to (10) of the Criminal Code which provides for termination of pregnancy reads as follows-

*“(1) No person shall provide treatment to terminate a pregnancy unless he*

1. *Is a specialist in obstetrics and gynaecology who is registered as such under the Medical Council Act?*
2. *Provides the treatment in a prescribed institution and*
3. *Complies with all the requirements of this section.*

*(2) The specialist referred to in subsection (1) (a) may only provide treatment to terminate a pregnancy where another specialist in obstetrics and gynaecology and other specialist in the relevant field share his opinion, formed in good faith, that-*

*(a) the continued pregnancy will endanger the pregnant person’s life;*

*(b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person;*

*(c) there is a substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus which will affect its viability and compatibility with life;*

*(d) the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with female under the age of 16 or sexual intercourse with a specified person which has been reported to the police.*

*(3) notwithstanding sections 297 and 298 of the Criminal Code, any person who, for the purpose of procuring treatment to terminate pregnancy, knowingly makes a false declaration of rape, sexual intercourse with a female under 16 or sexual intercourse with a specified person to the police shall commit an offence and shall on conviction, be liable to penal servitude for a term not exceeding 10 years.*

*(4) (a) subject to subsections (5) and (6), the specialist referred to in subsection (1) (a) shall carry out a termination of pregnancy under this section except with the informed consent of the pregnant person.*

*(b) (i) subject to subparagraph (ii), consent under paragraph(a) shall be given in writing.*

*(ii) where the pregnant person is unable to read or write, she may give her consent by affixing her thumbprint to a written statement which is read out to her.*

*(5) Where a request for treatment to terminate a pregnancy under this section is made by pregnant person who is under the age of 18, no treatment shall be provided to terminate the pregnancy except with the written informed consent of one of her parents or her legal guardian, as the case may be.*

*(6) Where a woman is, in the opinion of the specialists referred to in subsection (2)*

*(a) severely mentally disabled to such an extent that she is incapable of understanding the nature of or the consequences of undergoing, the treatment to terminate her pregnancy; or*

*(b) in a state of continuous unconsciousness and there is no reasonable prospect that she will regain consciousness in time to request, and to consent to, treatment to terminate her pregnancy, the specialist referred to in subsection (1) (a) may terminate her pregnancy upon the request and with the written informed consent of her partner, spouse, parents or legal guardian, as the case may be.*

*(7) Where counselling shall be provided to a pregnant person before and after a termination of pregnancy.*

*(8) No person shall, by means of coercion or intimidation, compel or induce a pregnant person to undergo treatment to terminate a pregnancy against her will.*

*(9) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.*

*(10) In this section-*

*“informed consent” means consent, obtained freely and without threat or improper inducement, to receive treatment to terminate a pregnancy after the risks, benefits and alternatives have been adequately explained to the person concerned;”*

1. Termination of Pregnancy are performed only under the following conditions:

* the continued pregnancy will endanger the pregnant person’s life;
* the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant;
* there is substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus which will affect its viability and compatibility with life; or;
* the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with a female under the age of 16, or sexual intercourse with a specified person which has been reported to the police.

1. Only a specialist in Obstetrics and Gynaecology registered under the Medical Council Act is authorised to for termination of pregnancy in a prescribed institution.
2. Moreover, patients authorised to terminate their pregnancy are required to sign a consent form clearly indicating the reasons for the termination of pregnancy and the risks involved if the pregnancy is allowed to progress.

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|  | **CAUSES** | | | |  |
| **Year** | **Severe Foetal Malformation** | **Endangering life of patient** | **Rape** | **Others** | **Total** |
| **2017** | 4 | 1 | 0 | 1 (cancer) | 6 |
| **2018** | 7 | 3 | 0 | 0 | 10 |
| **2019 (as at 28th October 2019)** | 3 | 2 | 2 | 1 | 8 |

1. According to records of the Ministry of Health and Wellness 24 cases of Medical Termination of Pregnancy were recorded for the period 2017 to October 2019 as follows:

**Informed Consent to medical treatment and scientific research**

1. The legislative framework with regard to protect individuals in Medical Treatment and Scientific Research are as follows:
2. ***Mental Health Care Act***

* *Section 2 of the Mental Health Care Act defines “informed consent” as follows*

*“informed consent means consent obtained freely, without threat or improper inducement, after disclosure to the patient or his next of kin of adequate and understandable information in a form and language understood by the patient or his next of kin on—*

*(a)      the diagnostic assessment;*

*(b)      the purpose, method, likely duration and expected benefit of the proposed treatment;*

*(c)      alternative modes of treatment, including those less intrusive; and*

*(d)      possible pain or discomfort, risks and side-effects of the proposed treatment;*

* *Section 2 of the Mental Health Care Act defines “security patient” as follows-*

*“security patient” means a patient who—*

*(a)  is unfit to stand trial by reason of mental disorder;*

*(b)      has been found not to be guilty by reason of mental disorder;*

*(c)      is suspected of having committed a criminal offence; or*

*(d)      is in the custody of the police or is a detainee in a reform institution referred to in the Reform Institutions Act;*

* *Section 7 of the Mental Health Act provides as follows-*

*(1)  A medical officer or a psychiatrist shall examine a person where—  
              (a) he appears to be suffering from a mental disorder;  
             (b)  his case necessitates an examination; and  
             (c)   he or his next of kin consents to an examination.  
       (2)  Where the medical officer or the psychiatrist is informed, or has sufficient reason to believe, that a     person has been brought to a centre coercively or against his will, he shall not admit or treat the person in a     centre unless he has reasonable ground to believe that the person constitutes a danger for the safety of     himself or other persons as a consequence of a mental disorder.*

* *Section 8 of the Mental Care Act reads as follows-*

*No person shall be admitted in a centre unless—  
                (a) he suffers from a mental disorder requiring admission; and  
                (b) he or his next of kin consents to the admission.*

* *Section 13 (4) of the Mental Care Act defines “voluntary patient” –*
  1. *means a patient who, in the opinion of the medical officer or psychiatrist examining him at a centre –   
       (i) requires treatment in a centre;*

*(ii) is capable of consenting to, and consents to, his admission and treatment; and*

*(b)     includes a minor patient whose legal guardian may consent to his admission.*

* *Section 16 of the Mental Care Act reads as follows-*

*(1)  No person shall be administered treatment at a centre unless—  
                (a) he suffers from a mental disorder; and  
                (b) he or his next of kin consents to treatment.  
            (2)  Where a person is unable to give his consent and his next of kin cannot be traced or refuses to give the consent, the treating psychiatrist shall submit the treatment plan specified in section 18 forthwith to the Commission for approval before any treatment is given.*

* *Section 17 of the Mental Health Act reads as follows-*

1. *A security patient may be administered treatment with his consent or the consent of his next of kin.*

*(2)  Where the security patient is unable to give his consent and his next of kin cannot be traced or refuses to give consent, a treatment plan shall be submitted to the Commission or the Managerial Committee, as the case may be, for approval before any treatment is given.*

* *Section 18 of the Mental Health Act reads as follows-  
  (1)  The Superintendent shall assign responsibility for a patient or security patient to a psychiatrist.  
  (2)  The psychiatrist shall draw up an individual treatment plan in respect of every patient or security patient, as soon as practicable after his admission, for submission to the Commission or the Managerial Committee, as the case may be, for approval.  
   (3)  The patient or security patient or his next of kin may participate in the formulation of the treatment plan.  
  (4)  The plan shall include—  
            (a)     the nature, side effects and expected duration of the treatment proposed and any alternative treatment;  
            (b)     the nature and duration of any other non-psychiatric treatment that may be required.  
  (5)  Where a treating psychiatrist considers that it is urgently necessary to administer treatment to a patient under section 16 (2) or a security patient under section 17 (2) in order to prevent immediate or imminent harm to the person or patient or any other person, as the case may be, he may administer such treatment prior to the submission of a treatment plan under this section.*
* *Section 19 of the Mental Health Care Act reads as follows-*

*(1)  No treatment by way of psychosurgery or electroconvulsive therapy or any non- psychiatric treatment shall be administered to any person without—  
                (a) the informed consent of the person and the consent of his next of kin; and  
       (b)the advice of the treating psychiatrist.  
        (2)  Where a person is under the age of 18, the informed consent of his next of kin shall be sufficient for the purpose of the treatment specified in subsection (1).*

*(3)  Where the person is unable to give informed consent and his next of kin cannot be traced or refuses to give informed consent, the treatment plan shall be submitted to the Commission for approval before any   treatment is administered.*

*(4)  Any treatment administered under this section and the details of any informed consent shall be explicitly recorded in the record of the person receiving the treatment.*

***(b) Mauritius Blood Service Act***

* *Section 4 of the Mauritius Blood Service Act (“the MBA”) provides for inter alia, the promotion of research and training in the field of transfusion medicine.*
* *Section 5 of the MBA provides that the service shall have such functions as are necessary to attain its objects most effectively and shall, inter alia, approve research projects in relation to transfusion medicine and its practice.*

***(c) Clinical Trials Act***

* *Section 2 of the Clinical Trials Act defines “clinical trials” as-*

*(a)     an investigation in a subject intended –*

*(i)  to discover or verify the clinical or pharmaceutical effect of an investigational medicinal product;*

*(ii) to identify any adverse reaction to an investigational medical product; or*

*(iii)   or to study the absorption, distribution, metabolism and excretion of such a product for the purpose of ascertaining the safety or efficacy of the product, after its administration to the   subject;*

*(b)     the testing of a medical device on a subject;*

* *Section 20 of the Clinical Trials Act provides for the protection of subjects, which reads as follows-*

*(1)     No sponsor or investigator shall use a human being as a subject unless –*

*(a)      where the subject is of the age of 18 or over, he gives his written consent thereto;*

*(b)      where the subject is of the age of 18 or over but incapable of giving his consent –*

*(i)  his spouse, parent or guardian gives written consent thereto;*

*(ii)  his participation in the clinical trial is essential; and*

*(iii) the clinical trial relates directly to the condition from which he is suffering;*

*(c)      where the subject is under the age of 18 –*

*(i)  his responsible party gives written consent thereto; and*

*(ii)  in case he is capable of forming an opinion, the sponsor and investigator are satisfied of his willingness to participate in the clinical trial.*

*(2)     For the purposes of subsection (1), an investigator shall, before a clinical trial is conducted, give a full and reasonable explanation of the nature and object of the clinical trial and the risks involved, if any –*

*(a)      where the subject is of the age of 18 or over, to the subject;*

*(b)      where the subject is of the age of 18 or over but incapable of giving his consent, to hisn spouse, parent or guardian;*

*(c)      where the subject is under the age of 18 –*

*(i)      to his responsible party; and*

*(ii)      to the subject himself according to his capacity of understanding.*

*(3)     A subject may, at any time, withdraw from a clinical trial without incurring any liability.*

*(4) No medical practitioner shall induce –   
  
        (a) a patient whom he is treating to consent to be a subject; or*

*(b) the responsible party of a patient whom he is treating to consent to the patient being a subject.  
   (5)     Subject to subsection (6), no person shall, by means of any threat or coercion or reward, compel or induce another person to be a subject.  
  
    (6)     Subsection (5) shall not apply to a sponsor who compensates a subject for his participation in a clinical trial.*

*(7)     The Council shall publish guidelines on informed consent requirements which every sponsor and   investigator shall comply with.  
    (8)     In this section –  “responsible party” means the person who exercises parental authority over a subject under the Code Civil Mauricien.*

**Consent Forms**

1. Public Hospitals have been using a generic multi-purpose Consent Form for years to record for admission, care and treatment and surgery. The system has been reviewed and currently there are five new consent forms which individually cover consent for admission, care and treatment and surgery, acceptance and refusal of blood transfusion and release of health data. These forms will be available for use as from February 2020 and are enclosed at ***Annexes I-V***.
2. Moreover, a patient information pamphlet is being produced and distributed to sensitise the patients on the new consent forms and the various aspects of consents based on international best practices to ensure the safety of the patients and hospital staff. The documents would also be uploaded on the website of Health and Wellness.
3. The new consent forms and Patient Information Pamphlet have now made provision for researchers to seek patient consent to enable them to conduct surveys and studies. Previously, it was not possible to undertake scientific research as patient consent was not available for the use of personal health data other than for care and treatment. It is believed that once the new forms are implemented, it would be easier to conduct surveys and research. Specific Consent Forms may hereafter be implemented on a need’s basis.

**National Ethics Committee**

1. The Ministry of Health and Wellness has set National Ethics Committee (NEC) in the early 2000’s to provide, *inter alia*, an oversight on medical research. Any Body undergoing Scientific Research involving human subject has an obligation towards the NEC to:

* Submit a progress report on the approved research on a monthly basis.
* Notify the Committee of any amendment of recruitment or of consent form or of information to be submitted to research participants.
* Report serious, unexpected, unforeseen circumstances.
* Report any termination of the research project.
* Provide relevant information for ongoing review.
* Submit the Final Summary of the Final Report.
* Respect confidentiality issues throughout the project.

1. Moreover, the NEC has an Ethics Sub-Committee whereby all research projects are examined, on a regular basis. (As per composition at ***Annex A***)
2. The Ethics Sub-Committee reviews all Bio-medical Research involving human subjects in a hospital setting. It considers the research proposal, looks at the justifications for the study, the objectives of the research, the methodology and sampling of the study. It considers the methodology and sampling of the study. It considers the methodological soundness of the research as well as ethical issue such as whether privacy of research subjects is protected as well as the confidentiality of their personal information.

**Initiatives taken at National Level to promote and ensure the rights of persons with disabilities and bioethical issues**

1. The Constitution of Mauritius provides an equivocal right for every citizen to be treated equally and to live a life free from discrimination. The Disabled Persons Act has been amended in 2012 to make better provision for the promotion of the access of persons with disabilities to employment. The definition of “disabled person” has been under the said Act and now encompasses a person who is certified by the Training and Employment of Disabled Persons Board to have a long term physical disfigurement or physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to barriers or prejudices impeding his participation at an equal with other members of society in major life activities, undertakings or fields of employment that are open to other members of society and, of course, who is willing and able to work.
2. To enable access to healthcare facilities and improve the quality of life of the disabled, services of Social Worker are provided to assist the Ministry of Health and Wellness and patients with disabilities as follows:
3. The Medical Social Worker assist patients with disabilities as follows

* Arrangement of where possible, for the conduct of social enquiry/ casework
* Social/ Family/ financial support (Case is discussed with relatives concerning the issue of concern)- Who is providing care to the patient at home.
* Counselling
* Liaise on with other agencies for further help (Social Security Office- Disability Unit, NGO, specialised school)
* Assistance to have benefits under National Pensions Fund Act whereby the patient is referred to Social Security Office concerning benefits such as Basis Invalidity Pension, Carer’s allowance, disablement pension Wheelchair, hearing aid, spectacles, dentures, travelling pass etc.

**Specialised Schools**

1. Association de Parents D’Enfants Inadaptés de l’Île Maurice (APEIM), Society for the welfare of the deaf, Autism Maurice, International Council for Physically and Mentally Challenged Student Quality, Special Education Needs Society (SENS), Muscular Dystrophy Association, Lupus Alert, Down Syndrome Association etc
2. Government is proposing to introduce in the National Assembly the Disability Bill which aims at incorporating the provisions of the UN convention on the rights of persons with disabilities.

**Euthanasia**

1. There is no specific legislative framework regarding euthanasia and assisted suicide. However, Section 4 of the Constitution provides for protection of right to life, which reads as follows-

*“(1) No person shall be deprived of his life intentionally save in execution of the sentence of a Court in respect of a criminal offence of which he has been convicted.*

*(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable-*

*(a) for the defence of any person from violence or a defence of property;*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained*

*(c) for the purpose of suppressing a riot, insurrection or mutiny; or*

*(d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.”*

**18 February 2020.**