



**LEGAL ENVIRONMENT
ASSESSMENT REPORT ON
VIOLENCE AGAINST
WOMEN, CHILDREN AND
LGBT PERSONS**

This study has been conducted by Roopanand Mahadew (University of Mauritius) as consultant under the sponsorship of Koletif Drwa Imin (KDI). The Kolektif Drwa Imin (KDI) is a group of NGOs and collectives, comprising of PILS, Gender Links, Kolektif Drwa Zanfan Morisien, the Young Queer Alliance and Collectif Arc-En-Ciel, advocating for the rights of children, women and Lesbian, Gay, Bisexual, Transgender and Queer persons (LGBTQ) in Mauritius. Created in 2019, it aims at uniting our forces to make equality a reality for every Mauritian citizen.

The inputs of the Law Reform Commission is also acknowledged.

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Executive Summary

This report provides a detailed analysis of the situations of violence against women, children and Lesbian, Gay, Bisexual and Trans (LGBT) people in Mauritius with regard to the protection conferred to them by laws, policies and programmes. The research draws attention to the alarming situation of violence against the three groups through the support of recent newspaper articles. The reader is then introduced to the Mauritian legal framework- highlighting a very important element that is, our hybrid legal system. We have the Constitution 1968 which is our supreme law and our independent judiciary exercising its interpretative role. Besides having recourse to the formal legal forum, women, children and sexual minorities can submit their disputes to the quasi-judicial organs which are mandated to protect them against violence. There is also the National Human Rights Commission, the Equal Opportunities Commission, the Mauritius Police Force, and the Independent Police Complaints Commission which have established complaint mechanisms.

Further, with the help of referenced definitions the term ‘violence’ was dissected- highlighting the nature and types of violence which women, children and LGBT people are victims of violence is a very complex notion and requires much reflection and analysis to decipher the types of violence that the three groups are confronted to in our society. Very often due to lack of interpretation, some forms of violence may tend to be blatantly ignored. The live issue of domestic violence is expatiated, illustrating women as direct victims and equally important children also suffer as a result of same. The types of violence suffered by children which include child maltreatment and emotional psychological violence, Bullying and peer pressure, cyber-crime, sexual abuse and teenage pregnancy among others. Violence suffered by LGBT people are, inter alia, in the form of verbal abuse, discrimination, HIV and AIDS Social Stigma.

The international and legal normative framework act as a benchmark for Mauritius to align its law within internationally accepted standards. Having ratified a panoply of international treaties at the level of the United Nations, Mauritius is bound by the provisions that it has signed. Furthermore, at the regional level Mauritius being a member of the African Union having signed the African Charter on Human and People’s Rights, it is equally bound to implement rights provided in this charter. The African Charter (1981) guarantees all the three generations of human rights in a single binding instrument- making it the most progressive human rights text in the world. Besides ratifying the African Charter (1981),

Mauritius has also signed and ratified other human rights treaties of the African Union on matters of protection of women's rights, the rights and welfare of the child and much more. Having signed these instruments, there is a duty incumbent on Mauritius to implement them at the domestic level.

For proper analysis of the situation of violence in Mauritius, Periodic Reports and Concluding Observations from the Human Rights Committee have been used. Through these periodic reports the situations of violence in Mauritius has been depicted and several recommendations have been proposed to remedy the situation. Further, at the level of the United Nations, there are complaint mechanisms which are established by their respective Optional Protocols. Like the complaint mechanisms which are available at the global level, there is the African Commission which is mandated to hear disputes after complainants have exhausted all the available local remedies.

In Mauritius there are various provisions of the law catering for the prohibition of discrimination as well as sanctioning different types of violence. The Constitution (1968) protects the civil and political rights of citizens. Coming to sanctioning of the situations of violence, generally it is through provisions of Criminal Code or in some circumstances the sanction is already provided for in the specific legislation itself. However, under which provision to prosecute the wrongdoer, this rests with the prosecution. The penalties for offences of violence include fine, imprisonment or penal servitude. Reference to a series of Mauritian case laws has revealed how the situations of violence faced by women and children are alarming.

Equally important, existing domestic legislations have been reviewed to spot the lacunas and how better protection can be afforded to women, children and LGBT people. Given the high prevalence of violence against the three groups in Mauritius, the recommendations hammered out are to be implemented for their better protection.

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1. Introduction and background to the study

1. The Republic of Mauritius is often hailed as one of the most successful African countries on the economic, social and political fronts.¹ It is a country where principles such as democracy, the rule of law and constitutional supremacy have been enshrined- thus guiding the country in its developmental projects. Multiple indices, both at the global and regional level, have highly ranked the country, be it the Human Development Index of the United Nations or the Mo Ibrahim Index on corruption at the African level.² Thus to some extent it can be said that Mauritius has known years of relative advancements. However, the Mauritian society is still plagued by social ills which arguably are preventing the country from achieving more success, equality, and a sense of justice and an all-inclusive mode of development.³ One of such societal issues the country is currently facing is violence against women, children and LGBT people.
2. Violence, in its multiple forms, is a real issue that many countries around the world are facing. It may be due to terrorism, dictatorship, financial melt-down of countries, economic crisis and so on and so forth.⁴ While the aforementioned reasons may not be completely relevant to the Mauritian context, poverty, patriarchy, lack of education or traditional practices arguably can be the underlying causes of violence against the three groups under study.⁵ The reasons of violence are not under the purview of the current legal environment assessment.
3. A look at the media, written or spoken, paints a rather worrying picture of violence against women, children and LGBT people in Mauritius. Recently, a son was charged for the murder of his mother and allegedly he had put the body in a suitcase and threw same in the sea at Le Souffleur.⁶ At Bel-Air, following a dispute a husband was charged for the

¹ Frankel, Jeffrey A. 2010. Mauritius: African Success Story. HKS Faculty Research Working Paper Series RWP10-036, John F. Kennedy School of Government, Harvard University.

² Mauritius Chamber of Commerce and Industry, Available from: <https://www.mcci.org/en/media-news-events/business-updates/mauritus-remains-1st-in-the-mo-ibrahim-governance-index/> [Accessed 5th December 2019].

³ InterPress Service, Available from: <http://www.ipsnews.net/2010/10/mauritus-social-ills-prevail-despite-meeting-mdgs/> [Accessed 5th December 2019].

⁴ United Nations Global Issues Overview, Available from: <https://www.un.org/en/sections/issues-depth/global-issues-overview/> [Accessed 5th December 2019].

⁵ Security and Violence in Paradise Island, Available from: <https://www.lemauricien.com/article/security-and-violence-paradise-island/> [Accessed 5th December 2019].

⁶ DEFIMEDIA. 2019a. Matricide : deuxième jour de recherche infructueuse à Le Souffleur. Defimedia, 21 October. Available from: <https://defimedia.info/matricide-deuxieme-jour-de-recherche-infructueuse-le-souffleur/> [Accessed 28th October 2019].

murder of his wife by strangling her.⁷ In addition, a woman was assaulted by her husband while she had a protection order in force and the police has started an enquiry on the matter.⁸ Coming to violence against children, a child of 11 months was burnt and the father is suspected of ill-treatment.⁹ (Defimedia, 2019b). Following this the child has been hospitalised and the CDU has made a visit to the domicile of the child to know about the living conditions of his family. Moreover, recently a father was arrested for allegedly attempting to slit the throat of his son aged 6 years.¹⁰ In the same breath, a fisherman was sentenced to six month imprisonment for having sexually abused a girl child aged 9 years.¹¹ On the basis of statistics, from January 2018 to August 2019, 55 children have been abandoned.¹² LGBT people are often subject to discrimination and verbal abuse.¹³ They have been victims of verbal abuse during the Pride March of 2018 and recently two members of local Collectif Arc-en-Ciel have reported being assaulted when rescuing two women, whom their families do not accept their sexual orientation.¹⁴

4. Concerning statistics with regard to cases of child sexual abuse, excluding commercial sexual exploitation and child prostitution, the overall number of child abuse cases reported in 2015 it was 6035 cases, in 2016 it was 5904 cases, in 2017 it was 5140 cases and lastly in 2018 from January to April 1789 cases have been reported- as per the

⁷ LEMAURICIEN. 2019. Drame conjugal à Bel-Air Rivière-Sèche : l'indifférence des policiers dénoncée. Lemauricien, 15 September. Available from:

<https://www.lemauricien.com/article/drame-conjugal-a-bel-air-riviere-seche-lindifference-des-policiers-denoncee/> [Accessed 28th October 2019].

⁸ L'EXPRESS. 2019. Violence conjugale : elle est agressée par son époux alors qu'elle détient une Protection Order. L'express, 24 September. Available from <https://www.lexpress.mu/article/361422/violence-conjugale-elle-est-agressee-son-epoux-alors-quelle-detient-une-protection> [Accessed 28th October 2019].

⁹ DEFIMEDIA. 2019. Un enfant de 11 mois brûlé : le père soupçonné de maltraitance. Defimedia, 2 October. Available from: <https://defimedia.info/un-enfant-de-11-mois-brule-le-pere-soupconne-de-maltraitance> [Accessed 28th October 2019].

¹⁰ DEFIMEDIA. 2019. Dans L'est : un père arrêté pour avoir tenté d'égorger son fils de six ans. Defimedia, 4 October. Available from: <https://defimedia.info/dans-lest-un-pere-arrete-pour-avoir-tente-degorger-son-fils-de-six-ans> [Accessed 28th October 2019].

¹¹ DEFIMEDIA. 2019. Abus sexuels sur une enfant de neuf ans : un pêcheur écope de six mois de prison. Defimedia, 30 September. Available from: <https://defimedia.info/abus-sexuels-sur-une-enfant-de-neuf-ans-un-pecheur-ecope-de-six-mois-de-prison> [Accessed 28th October 2019].

¹² DEFIMEDIA. 2019. À Rose-Belle : trois enfants en bas âge arrachés à leur mère suspectée de maltraitance. Defimedia, 19 September. Available from: <https://defimedia.info/rose-belle-trois-enfants-en-bas-age-arraches-leur-mere-suspectee-de-maltraitance> [Accessed 28th October 2019].

¹³ Report to CEDAW from Mauritius 'Gender Links, Young Queer Alliance, Media Watch Organisation and SOS Femmes' p 14 available from: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MUS/INT_CEDAW_CSS_MUS_32569_E.pdf [accessed 10 February 2020].

¹⁴ DEFIMEDIA. 2019f. Deux membres du Collectif Arc-en-Ciel allèguent avoir été agressés en portant secours à deux femmes. Defimedia, 18 April. Available from : <https://defimedia.info/deux-membres-du-collectif-arc-en-ciel-alleguent-avoir-ete-agressees-en-portant-secours-deux-femmes> [Accessed 28th October 2019].

Annual Report of the Ombudsperson for Children (2017-2018)¹⁵. In furtherance, on an annual basis, the CDU refers about 300-400 CSA cases to the Office of the Director of Public Prosecutions (ODPP) for further investigation and it has been observed that many cases remain unresolved for long periods of time (Annual Report of the Ombudsperson for Children (2017-2018)). The repercussion of such problems is that there is detrimental impact on the mental health, relationships, social life and access to educational and career opportunities of the victims (Annual Report of the Ombudsperson for Children (2017-2018)).¹⁶

5. While one single case of violence would have been enough to justify the conduct of the current legal environment assessment, the previous paragraph with its multiple unfortunate examples of violence, sometimes extreme, indicates how pressing and compulsory such a study has become today. In addition, there is a dearth of documentation, both of a legal nature and in terms of statistics, on the normative framework regulating the issue of violence in Mauritius. It becomes challenging for various stakeholders to work in the area of violence against women, children and LGBT people in the absence of critical information generally. As such, the main research question of this study is geared towards the existence of the domestic and international legal and normative framework on violence against the three groups in Mauritius and how effective the laws are.

1.1 Road map to the study

6. The present legal environment assessment on the subject matter starts with a general overview of the legal framework in Mauritius. This is essential to provide the reader with a deep insight with the history and the judicial architecture of the country. The hybrid nature of Mauritian law is underlined with its mixed sources of law, drawn from both the common law system and the civil law one. An insight of the judiciary, judicial and non-judicial and quasi-judicial institutions is also provided.
7. The following section deals with an overview of violence in the Mauritius context. An attempt is made to provide a categorisation of the different forms of violence existing in Mauritius from a sociological perspective despite the fact that the aim of the study is

¹⁵ Annual Report of the Ombudsperson for Children, 2017-2018.

¹⁶ See in general the report which discusses the repercussions throughout.

restricted to a legal assessment of the normative and legislative framework on violence against the three groups. This step is necessary as it indicates the types and categories of laws to be assessed. For the purpose of illustration, unless psychological violence caused by information technology is accepted as a category or sub-category of violence, the importance of assessing the Computer Misuse and Cybercrime Act 2003 cannot be properly grasped. This is therefore the reason as to why a section has been dedicated to forms, categories and types of violence against the three groups, albeit in a raw manner.

8. The study continues with an assessment of the legal obligations of Mauritius vis-a-vis the United Nations normative framework on violence against women, children and LGBT people. It is noted here that the country has not respected all the obligations arising from international treaties and conventions on the three groups despite these obligations being of a legal nature.¹⁷ It is mandatory to bear in mind that the signature and ratification (or accession to) of legal instruments from the UN is one of the primary ~~source~~ sources of legal obligations that the state has in the combat against violence against the three groups. There is a rather skewed view of state obligations in Mauritius understood as merely obligations from acts of Parliament or regulations that form the domestic legal framework. It should also be noted that the international normative framework also consists of the African human rights system and treaties and conventions signed and ratified by Mauritius. Consequently, a significant part of the report is based on legal instalments providing for legal obligations on protection from violence against the three groups under the aegis of the African Union.
9. The ensuing part of the report is based on the assessment of the domestic legal framework on violence in Mauritius. This is where acts of Parliament, regulations, policies, programmes, action plans and other soft laws are critically assessed. The report is finally concluded with a list of recommendations provided.

1.2 Definitions

10. The scope of the exercise is violence on children, women and LGBT people. It is apposite at this point to provide for a degree of definitional direction to the groups under the purview of the study. The biological definition of a child is a human being between the

¹⁷ This is highlighted in various concluding observations issued to Mauritius by various treaty-based bodies of the UN.

stages of birth and puberty or between the developmental period of infancy and puberty.¹⁸ The legal definition of a child is “*any unmarried person under the age of 18*” as per Section 2 of the Child Protection Act 1994. The UN Convention on the Rights of the Child defines a child as a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. This study adopts the above definition.

11. As for the definition of woman, the concept of women’s rights has been given a great importance by virtue of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). This Covenant has lengthily defined the term ‘discrimination against women’ at its very first Article. The study focuses mainly on cisgender as transgender women are not legally recognised and therefore all laws made for the protection of women against violence is based on cisgender.
12. The study looks at Lesbian, Gay, Bisexual and Trans (LGBT) people. The focus is also extended to persons who simply identify themselves as non-heterosexual or non-cisgender.

1.3 Methodology

13. The legal assessment reviews domestic and international laws pertaining to the subject matter with the view of analysing how provisions of the law on violence have been provided for. In a sense, the doctrinal methodology has been applied to this study. Doctrinal (or “black letter”) methodology refers to a way of conducting research which is usually thought of as “typical legal research”. A doctrinal approach to research will focus on case-law, statutes and other legal sources. It differs from other methodologies in that it looks at the law within itself; a pure doctrinal approach makes no attempt to look at the effect of the law or how it is applied, but instead examines law as a written body of principles which can be discerned and analysed using only legal sources.¹⁹
14. The choice of this methodology is motivated by the terms of reference of the study which is premised on the basic idea of what is the current status of the laws and resulting legal obligations of Mauritius on the theme of violence against the three groups. The conservative nature of the judiciary and judicial interpretation in Mauritius (See in

¹⁸ Rathus SA (2013). *Childhood and Adolescence: Voyages in Development*. Engage Learning p. 48; Mosby, Inc (2013). *Mosby's Dictionary of Medicine, Nursing & Health Professions*. Elsevier Health Sciences. p. 345.

¹⁹ <https://uweasclmsupport.wordpress.com/2017/01/18/research-methods-doctrinal-methodology/> [Accessed 5th December 2019].

general *Madhewoo v the State*)²⁰ also suggests that laws on violence tend to be given its strict literal meaning. It is therefore apposite to adopt the doctrinal methodology by reason that in first place the legal assessment is carried out in line with how the laws have been interpreted by our Courts and secondly in this way we will be able to decipher the existing lacunas in the respective statutes. Hence, this will help at the end of this study for the ironing out of recommendations that need to be implemented in our legislative texts.

15. In terms of approach, the laws are accessed from the official database of Revised Laws to ensure that the updated versions are being utilised. Statistics and data on violence against the three groups are obtained as secondary data from the official website of Statistics Mauritius. Relevant case laws are used to explain how the provisions have been interpreted by courts. A dose of comparative approach has also been used while interpreting the law with other jurisdictions having comparably similar legal provisions.

²⁰ Privy Council Appeal No 0006 of 2016. JUDGMENT. *Madhewoo (Appellant) v The State of Mauritius and another (Respondents)* (Mauritius).

2. Overview of the legal and institutional framework in Mauritius

16. Mauritius has a hybrid legal system which it inherited from its colonial powers- the British and the French. Moreover, it has a Constitution- enshrining civil and political rights of its citizens, provisions in relation to the parliament, the executive, the judiciary inter alia. Mauritius has retained the French “Code Napoleon” which today exists as the Code Civil Mauricien- providing in its articles the rights of individuals, matrimonial regimes, contract law, property law amongst others. Concerning our criminal law, same is derived from the French “Code Penal”, the British Criminal Procedure and the British law of evidence. Thus, this explains the unique feature of the Mauritius Law which is a hybrid of both French and British law.
17. Mauritius retained many of its previously inherited laws however, over time as the need for new legal provisions crop up- this gives rise to arguments regarding the obsolescence of these statutes. However, in some areas, the law has not remained entirely French or British. An example to substantiate this is the law on divorce where there are the provisions of the Code Civil Mauricien (inspired from French Civil Code) and the Judicial Separation Act which is of English origin which came to supplement the provisions of the former. Moreover, in Mauritius the principle of separation of powers among the three arms of government- the executive, the legislature and the judiciary are embodied in the Constitution 1968.

2.1 The Constitution

18. Section 2 of the Constitution 1968 provides that *“This Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void”*. To this effect, any law which is inconsistent with the Constitution will be declared null and void. The Supreme Court in **Noordally vs. Attorney-General & Director of Public Prosecutions [1986 MR 204]** has held that, *“The whole of our Constitution clearly rests on two fundamental tenets, the rule of law and the juxtaposition (or separation as it is more often called) of powers”*. Moreover, the purpose of the rule of law has been explained by the Court in **Mahboob v Government of Mauritius [1982 MR 13]** in the following words, *“The rule of law is the citadel which guards the people against despotism. It is equally the citadel which guards Government against anarchy”*.

19. In the Constitution 1968, at Chapter II, there is our Bill of Rights which provides for civil and political rights of citizens, these include: fundamental rights and freedom of the individual (section 3), protection of right to life (Section 4), protection of right to personal liberty (Section 5), protection from slavery and forced labour (Section 6), protection of privacy of home and other property (Section 9), protection of freedom of conscience (Section 11), protection of freedom of expression (Section 12), protection of freedom of assembly and association (Section 13) and much more. There is also section 3 and 16 of the Constitution that confer protection against discrimination. By virtue of Section 17 an aggrieved party has the possibility to seek redress before the Supreme Court, where his or her rights as provided in the Bill of Rights have been infringed.

2.2 The Judiciary

20. Our Judicial system consists of two-tier jurisdictions; there are subordinate Courts and the Supreme Court²¹. As to subordinate Courts, they include- the District Courts, the Intermediate Court, the Industrial Court, the Bail and Remand Court. In Mauritius, there are 10 District Courts. The Supreme Court sitting in its original jurisdiction has six divisions namely- the Master's Court, the Civil Division, the Criminal Division which is also known as the Court of Assizes, the Family Division, the Commercial Division and the Mediation Division. Concerning the Appellate Courts, the Supreme Court sits in its appellate jurisdiction when hearing appeals from subordinate Courts (Section 69 of the Courts Act 1945). The Court of Civil appeal hears appeals from decisions of the Supreme Court sitting in its original jurisdiction (Section 3 of the Court of Civil Appeal Act 1963). Decisions rendered by the Court of Assizes are appealed to the Court of Criminal Appeal. Our legal forum of final resort is the Judicial Committee of the Privy Council which Mauritius has maintained as its highest Court of Appeal even aftermath its independence in 1968 and its becoming a Republic in the year 1992²².

21. The judicial arm of the State has an interpretative role whereby it interprets the law that parliament has made. Mauritius has a well-defined hierarchy of Courts and the highest Court is the Judicial Committee of the Privy Council. Thus, this allows citizens to litigate their disputes through the appropriate forum depending on the nature of their dispute and

²¹ <https://supremecourt.govmu.org/Pages/History.aspx> [Accessed 5th December 2019].

²² <http://supremecourt.govmu.org/Pages/Judicial%20committee%20of%20the%20Privy%20Council.aspx> [Accessed 5th December 2019].

most importantly their claims. Our Courts adhere to the principle of *stare decisis* which implies that decisions of higher Courts are binding on lower Courts. Further, very often in judicial pronouncements our Courts refer to both the French and the British case law.

2.3 Judicial and quasi-judicial organs mandated to protect women and children against violence

22. It has to be noted that there is no specific court that deals strictly or exclusively with the issue of violence against women, children or LGBT people. Any act of violence amounting to a criminal offence is dealt with by the criminal division of the District Court, the Intermediate Court or the Assizes Court of the Supreme Court under relevant criminal offences depending on seriousness of the offence and court's jurisdiction. The same rule applies for civil cases. For example, there is no Children's Court in Mauritius as is the case in other jurisdictions such as South Africa.
23. The Office of the Ombudsperson for Children which is established as per Section 3 of the Ombudsperson For Children Act 2003 (OCA 2003) is an example of a quasi-judicial institution. In short, its mandate consists of making proposals to the Minister on matter of legislation and policies regarding children, advising the minister on shelters for the benefit of children, take steps which are necessary to ensure adequate care and supervision of children, among others (Section 6 of the OCA 2003). Moreover, the Office of the Ombudsperson for Children has a free and open complaint service in place. Equally important there are also quasi-judicial bodies such as the Child Development Unit (CDU) which concerns child victim of violence and the Family Welfare and Protection Unit (FWPU) which addresses issues in relation to Gender-Based violence and Intimate Partner violence.
24. The CDU ensures that the protection of the Mauritian child is in line with the Convention on the Rights of the Child 1989 and whenever parents have failed in their role, the CDU takes over and ensures this role. In line with one of the UN 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 and Protection Unit since July 2003. The objectives of the Family Welfare and Protection Unit are to implement policies and

strategies to promote family welfare and to adopt relevant strategies and implement actions to address the problem of Gender-Based Violence²³.

2.4 National Human Rights Commission

25. The National Human Rights Commission (NHRC) was established in 2001 under the Protection of Human Rights Act 1998 to deal with violations of human rights, mainly civil and political rights, entrenched in Chapter II of the Constitution.²⁴ It enquires into written complaints made (i) by any person who feels that any of the human rights enshrined in Chapter II of the Constitution has been violated or is likely to be violated by the act or omission of a public officer or employee of a public body (ii) by any person against an act or omission of a member of the police. Public body means (a) a Ministry or Government department (b) a Local Authority (c) a Parastatal Body (d) a Company where Government by holding shares or otherwise is able to influence that company's policy or decisions. The NHRC is also engaged in the promotion of human rights through education. By virtue of Section 3A of the Protection of Human Rights Act 1998, some of the functions of the NHRC include to submit to the Minister any opinion, recommendation, proposal or report on any matter concerning the promotion and protection of human rights, to 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 and much more. The NHRC is mandated to visit police stations, prisons and other places of detention under the control of the state in order to study the living conditions of the inmates and the treatment afforded to them²⁵.

26. The Human Rights Division is set up under Section 3B of the Protection of Human Rights Act 1998. Concerning its functions, Section 4 (a) of the same Act provides that it has the duty to 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.

²³<http://gender.govmu.org/English/Pages/Units/Family-Welfare-and-Protection-Unit.aspx> [Accessed 5th December 2019].

²⁴ <http://nhrc.govmu.org/English/Pages/default.aspx> [Accessed 5th December 2019].

²⁵ Government of Mauritius. National Human Rights Commission [Online], Available from: <http://nhrc.govmu.org/English/Faqs/Pages/default.aspx> [Accessed 9th December 2019].

Moreover, the Human Rights Division shall, in the first place, attempt to resolve any complaint as per Section 4(3) of the same Act.

2.5 Equal Opportunities Commission

27. The Commission is a body corporate, established under the Section 27 (1) of the Equal Opportunities Act 2008, and became operational in April 2012. The Commission consists of a Chairperson and 3 other members appointed by the President of the Republic. The work of the Commission is to work towards the elimination of discrimination and the promotion of equality of opportunity and good relations between persons of different status. As per Section 27(3) of the Equal Opportunities Act 2008, the duties of the Commission are as follows: work towards the elimination of discrimination, and the promotion of equality of opportunity and good relations between persons of different status; keep under review the working of the Equal Opportunities Act and any relevant law and submit to the Attorney-General proposals for amending them, if required; of its own motion or following a complaint, carry out an investigation; attempt to reconcile the parties to whom and against whom a complaint relates; conduct and foster research and educational and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status; and prepare appropriate guidelines and codes for the avoidance of discrimination and take all necessary measures to ensure that the guidelines and codes are brought to the attention of employers and the public at large.
28. The Equal Opportunities Tribunal is set up under Section 34 of the Equal Opportunities Act. It has as jurisdiction to hear and determine complaints referred to it by the Commission; to issue an interim order as a matter of urgency for the purpose of – preventing serious and irreparable damage to a person or category of persons, protecting the public interest or preventing a person from taking any step that would hinder or impede a hearing before the Tribunal; to make an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates, inter alia (Section 35 of the Equal Opportunities Act).
29. A distinctive feature of the Equal Opportunities Act is that it also includes within its ambit sexual harassment. As such, a person may lodge a complaint with the Commission if he/she feels humiliated, offended or intimidated by (a) An unwelcome sexual advance;

(b) An unwelcome request for a sexual favour; or (c) Any other unwelcome conduct of a sexual nature.

2.6 The Mauritius Police Force

30. The Mauritius Police Force (MPF) is the national law enforcement agency for the Republic of Mauritius. It is governed by the Police Act 1974 and responsible for policing on mainland Mauritius, Rodrigues and other outer islands. It is headed by the Commissioner of Police and operates under the aegis of the Home Affairs Division of the Prime Minister's Office. The Commissioner of Police is supported by Deputy Commissioners, Assistant Commissioners and Police Officers in various grades and is empowered to set rules and regulations, through standing orders, for an effective and sound management and functioning of the MPF and for a better delivery of service.

31. On basis of the procedural aspects of how a complaint is recorded, first the complainant will need to go to the nearest Police Station and give a written or oral complaint to the Officer-In-Charge²⁶. Moreover, an oral complaint is then made in writing and then signed by the complainant²⁷. There is the Criminal Procedure Act 1853 which is the guiding legislation with regard to procedural aspects of prosecution. Section 3 of this Act provides that *“The Director of Public Prosecutions is empowered to prosecute all offenders in the name and on behalf of the State, by himself, or, under his directions, by his deputy, provided that, except in the Intermediate Courts and in the District Courts, no person shall be so deputed to act on the trial of any party charged with crime or misdemeanour, unless he is a barrister of 3 years standing at the Bar”*.

2.7 The Independent Police Complaints Commission (IPCC)

32. The objective of the IPCC is to investigate into complaints made against police officers in the discharge of their functions, other than complaints of acts of corruption or money laundering offences. Prior to its establishment, complaints against the Police were handled at the level of the Police Complaints Division of the National Human Rights Commission. The main functions of the Commission are; (a) to investigate into any complaint made by any person or on his behalf against any act, conduct or omission of a

²⁶ <http://police.govmu.org/English/FAQs/Pages/default.aspx> [Accessed 5th December 2019].

²⁷ See No. 23 above.

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 and (d) promote better relations between the public and the Police.

3. An overview of violence in the context of Mauritius

33. Violence in Mauritius has mostly been viewed from the perspective of criminal activity, pertaining to physical harm or assault on the integrity or life of an individual²⁸. Violence is viewed as the breakdown of law and order.²⁹ Violence has been defined as ‘the use of physical force so as to injure, abuse, damage, or destroy’.³⁰ According to the World Health Organisation, the definition of violence expands to the ‘intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation’³¹. Violence has been defined from various perspectives, notably, legal, social, sociological, philosophical, psychological and much more. It is of paramount importance to analyse the definition of violence from each perspective in order to know whether there is the existence of a consensus among them. As seen above the WHO legal definition of violence is a comprehensive one³². Blume’s (1996) social perspective of violence is such that it is a social phenomenon and long ago ‘the violent male was seen as enforcing a natural rule that men should direct the activities of their wives and children’³³. Kaufman (2014) argues that ‘violence connects to all social institutions and all social processes’ and thus leading to both micro-level and macro-level interactions³⁴. Jhingran (2016) has expatiated on the philosophical definition of violence whereby he stated that violence is the ‘counterpoise’ of peace and it can be of different forms, intensity and extension³⁵. Borghini (2019) has defined psychological violence as a sort of violence involving psychological damage on the victim³⁶. We have seen violence from different perspectives, above all this leads to the understanding that violence is

²⁸ DEFIMEDIA. 2017. Paradise island marred by soaring crimes [Online], Defimedia, 14 July. Available from: <https://defimedia.info/paradise-island-marred-soaring-crimes> [Accessed 5th December 2019].

²⁹ LEMAURICIEN. 2017. The breakdown of law and order [Online], Lemauricien, 19 August. Available from: <https://www.lemauricien.com/article/breakdown-law-and-order/> [Accessed 5th December 2019].

³⁰ Merriam Webster Definition of Violence.

³¹ WHO. 2019. Definition and typology of violence – WHO [Online], Available from: <https://www.who.int/violenceprevention/approach/definition/en/> [Accessed 5th December 2019].

³² No. 28 above.

³³ BLUME, T., 1996. Social Perspectives on Violence [Online], Volume 02, Issue 1, Spring 1996, pp. 9-23, Available from: <https://quod.lib.umich.edu/m/mfr/4919087.0002.102/--social-perspectives-on-violence?rgn=main;view=fulltext> [Accessed 5th December 2019].

³⁴ KAUFMAN, P., 2014. Understanding Violence Sociologically [Online], Available from: <https://www.everydaysociologyblog.com/2014/10/understanding-violence-sociologically.html> [Accessed 5th December 2019].

³⁵ JHINGRAN, S., 2016. Violence, Peace, Self and Others : A Philosophical Perspective [Online], Available from: <https://www.mkgandhi.org/articles/violence-peace-a-philosophical-perspective.html> [Accessed 5th December 2019].

³⁶ BORGHINI, A., 2019. Psychological Violence [Online], Available from : <https://www.thoughtco.com/what-is-psychological-violence-2670714> [Accessed 24th December 2019].

undoubtedly a harm to our society. Coming to the three groups namely women, children and LGBT persons, different forms of violence have been observed.

34. In Mauritius, the most prominent form of abuse against women has been in the form of domestic violence and intimate partner violence. To support this statement, The Crime and Justice Statistics of 2018 indicate 16% of the number of civil cases lodged in Court pertains to the Protection from the Domestic Violence Act 1997.³⁷ It was also noted that the majority of victims of sexual assault have been young females³⁸- from 2017 to 2018, the female victimisation rate for sexual violence and sexual exploitation jumped from 80.1 to 89.6 per 100,000 female population . Moreover, among the 617 victims of these sexual offences, 92.9% were female, 66.9% were aged below 16 years, 60.1% were students, 22.9% had family relationship with their offenders and 62.6% occurred in private households.
35. However, the above-mentioned statistics cover only the number of reported and registered cases at the different institutions.³⁹ The other side of the issue is the glaring and alarming rate of non-reported cases. Gender Links, in their Sixteen Days of Activism 2015 Report, stated that almost one in four (24%) of women in Mauritius have experienced some form of gender violence in their lifetime including partner and non-partner violence⁴⁰. In the same realm, the President of SOS Femmes, Ambal Jeanne also revealed that the intensity of violence perpetrated within the couple has increased over the years and there are many cases which go unreported, almost of a ratio of one to eight. Many women have remained silent instead of seeking for help and redress.⁴¹ However, domestic violence or intimate partner violence is not the only form of violence which affects women in Mauritius. The other forms of violence will be explored in subsequent sections.
36. Regarding children, the most prominent form of violence is child abuse mostly in the form of corporal punishment, neglect both within the household and the institutions such

³⁷Crime and Justice Statistics 2018. http://statsmauritius.govmu.org/English/StatsbySubj/Documents/Digest/Crime_Justice_Security/Digest_CJS_Yr_18.pdf [Accessed 5th December 2019].

³⁸ No 34 as above.

³⁹ No 34 as above.

⁴⁰Gender Links. Mauritius- VAW Baseline Research [Online], Available from: <https://genderlinks.org.za/what-we-do/justice/research/violence-against-women-baseline-research/mauritius-vaw-baseline-research/> [Accessed 5th December 2019].

⁴¹ DEFIMEDIA. 2016. 'Domestic Violence: The Silent Epidemic' [Online]. Defimedia, 5 June. Available from: <https://defimedia.info/domestic-violence-silent-epidemic> [Accessed 5th December 2019]

as schools⁴². The Child Development Unit provided the statistics that 1,175 children have suffered sexual violence in the last 5 years, and nine times out of 10, the author of abuse was a relative of the child, and one time out of two, a member of the family.⁴³ The ‘Alternative Report for Mauritius’ submitted to the UN Committee on the Rights of the Child indicated that the sexual exploitation of children remains a major unaddressed issue.⁴⁴ The Movement also explained that existing risk factors leading to the sexual exploitation of children are poverty, the high number of children living on the streets, low birth registration⁴⁵, a high rate of substance use and abuse, family breakdowns, a lack of information regarding sexual exploitation of children, societal norms, perceptions and stigma. According to information obtained from the Annual Report of the Ombudsperson for Children (2017-2018), the CDU representative reported receiving on average 6,000 new child abuse cases annually with approximately 15,000 open cases running throughout the year. They operate a hotline number (113) through which anonymous referrals on alleged abuse cases against children are received.

37. The education of children seems to have failed and disruptive behaviour and improper discipline seem to be on the rise⁴⁶. Cevasco et al. (2019) argues that students who have been exposed to traumatic experience they demonstrate behavioural difficulties, and this interfere with their ability to engage in their learning process at school⁴⁷. Whether it is a lack of parental skills or the abdication of responsibilities by other stakeholders such as teachers, or elements of peer pressure and the advent of technology will be discussed below. The root cause of failure on the educational clout should be analysed in order to better understand the prevalence of violence among children as violence has a negative impact on their educational performance.⁴⁸

⁴² Humanium. Children of Mauritius: Realizing Children’s Rights in Mauritius [Online]. Available from: <https://www.humanium.org/en/mauritius/> [Accessed 5th December 2019]

⁴³ ‘Sexual Exploitation of Children in Mauritius Submission for the Universal Periodic Review’ March 2018. Available from : <https://www.ecpat.org/wp-content/uploads/2018/07/Universal-Periodical-Review-Sexual-Exploitation-of-Children-Mauritius.pdf>

⁴⁴ Alternative Report for Mauritius (March 2014) p 16 https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MUS/INT_CRC_NGO_MUS_18011_E.pdf (accessed 31 March 2020).

⁴⁵ See UN Convention on the Rights of the Child ‘Concluding observations on the combined third to fifth periodic reports of Mauritius’ UN Doc CRC/C/MUS/CO/3-5 (27 February 2015) para 33.

⁴⁶ LEMAURICIEN. 2019. Indiscipline and Violence at School [Online], Lemauricien, 4 June. Available from: <https://www.lemauricien.com/article/indiscipline-and-violence-at-school/> [Accessed 5th December 2019].

⁴⁷ Cevasco et al. 2019. Best Practices for supporting and educating students who have experienced domestic violence or sexual violence or sexual victimisation [online], Available from: <http://www.nea.org/home/62845.htm> [Accessed 24th December 2019].

⁴⁸ No. 42 as above.

38. In Mauritius up to now we neither have a specific legislation which caters only for their rights nor any case law which has been adjudicated on violence against them. However, there are general provisions of law such as our Bill of Rights as enshrined in our Constitution 1968 [GN 54/1968] are applicable to all citizens in general. To substantiate, at Section 3 of The Constitution 1968, it is stipulated that all fundamental rights and freedoms are available to all individuals irrespective of *‘their race, place of origin, political opinions, colour, creed or sex...’*. According to information gleaned from the Annual Report (2017) of the National Human Rights Commission Mauritius⁴⁹, when LGBT people are victims of violence and verbal abuse by their family, in some instances they report the matter to their local Non-Governmental Institutions (NGOs) which are the Collectif Arc-en-Ciel and the Young Queer Alliance. On an important note in the same Annual Report (2017) it is further provided that in April 2017 a transgender woman was arbitrarily arrested by police officers, threatened and was later released. The victim then caused a complaint to be filed to the National Human Rights Commission against the police officers; however, there was no further development on this matter. Violence targeted towards the sexual minority group has been through ostracization by the family members, by the community or religious entities, criminalization of same-sex sexual activity (sodomy), lack of recognition of same-sex relationships, unequal access to employment opportunities and inadequate health care systems. The systemic violence against the LGBT people community will be further discussed.

3.1 General overview

39. Andrea Borghini (2019) describes violence as a central concept for describing social relationships among humans, a concept loaded with ethical and political significance⁵⁰. Furthermore, violence often has lifelong consequences for physical and mental health and social functioning and can slow economic and social development. In a small island like Mauritius, the prevalence of violence may cause a severe hindrance to law and order in the country. Not only does violence hinder the smooth functioning of the country, but it

⁴⁹ NATIONAL HUMAN RIGHTS COMMISSION. 2017. Annual Report 2017 [online]. Available from: <http://nhrc.govmu.org/English/Documents/Annual%20Report/Annual%20Report%202017.pdf> [Accessed 28th October 2019].

⁵⁰ BORGHINI, A., 2019. Psychological Violence [Online], Available from : <https://www.thoughtco.com/what-is-psychological-violence-2670714> [Accessed 5th December 2019].

also causes prejudice and extreme harm to the victims⁵¹, thus weakening the social harmony which generally characterizes the atmosphere in Mauritius.

40. Understanding Violence requires a multi-level analysis from the personal to the interpersonal perspective. It demands an in-depth comprehensive perspective to understand the structural and systemic violence that pervades which makes it difficult to combat the different forms of private and public violence. While physical violence may be observed externally, psychological violence is often internalised. The areas, both from the micro and the macro perspective which have been considered for the situation of prevention of violence against the three groups, women, children and LGBT people in Mauritius are: Homes/Households, Schools, Hospitals, Community Health Centres, Police Stations, Prisons, Borstals, Workplace, Public Transport systems. Regarding the three categories (women, children and LGBT people) the following has been observed in the public and private sphere: domestic violence, intimate partner violence, sexual violence, violence on the elderly and the differently abled, psychological Abuse, bullying, Economic violence, lack of opportunities, institutionalised discrimination at the workplace on the basis of gender, ethnic and racial discrimination, torture, systemic violence by lack of opportunities⁵².

41. It can also be gleaned that the Theory of the culture of violence⁵³ can be used to understand why the phenomenon of violence continues to amplify in Mauritius by reason that the prevalence of violence is more and also victims are breaking their silence⁵⁴. The culture of violence theory related to the pervasiveness of specific violent patterns within a societal dimension. In other words, the culture of violence theory is about the continuous observable violent acts. For example, in Mauritius, the specific violent patterns which have been reported by media and other organisations are the wife/partner battering, physical assault, corporal punishment, sexual assault. Even though these actions warrant

⁵¹Science Direct. Victims of violence [Online], Available from: <https://www.sciencedirect.com/topics/psychology/victims-of-violence> [Accessed 5th December 2019].

⁵²OWH. Other types of violence and abuse against women [Online], Available from: <https://www.womenshealth.gov/relationships-and-safety/other-types> [Accessed 5th December 2019].

WHO. 2019. Violence against children [Online], Available from: <https://www.who.int/news-room/fact-sheets/detail/violence-against-children> [Accessed 5th December 2019].

Human Dignity Trust. Types of criminalisation Criminalises sex between men [Online], Available from: <https://www.humandignitytrust.org/country-profile/mauritius/> [Accessed 5th December 2019].

⁵³ Galtung, Johan (2016-07-01). "Cultural Violence". Journal of Peace Research. 27 (3): 291–305.

⁵⁴OSAC. 2019. Mauritius 2019 Crime & Safety Report [Online], Available from: <https://www.osac.gov/Country/Mauritius/Content/Detail/Report/e248beb4-219e-4708-a774-15f4aed12f9e> [Accessed 5th December 2019].

sanctions, it is very often not the case. In many instances, the culture legitimizes the violence: For instance in rape cases and victim blaming⁵⁵ - in the case of corporal punishment, it is the indiscipline of the child⁵⁶, in the case of domestic violence, it is the victim who 'must have looked for it'⁵⁷. It is noteworthy that the Culture of violence theory also states that childhood exposure to violence in the household may later lead to similar patterns in marital relations⁵⁸. The other issue in question in understanding the culture of violence theory is the role of women in perpetuating the relational cycles of violence.⁵⁹

42. The FWPU has enumerated the different forms of violence namely: (i) **Physical violence:** Pushing, hitting, choking, pulling hair, punching, kicking, grabbing, using a weapon against the partner, beating, throwing the partner down, twisting arms, tripping, biting. (ii) **Sexual Violence:** Rape (including marital) and sexual assault, forcing the partner to have sex with others, or in front of the children, forcing the partner to watch and participate in the making of pornography, putting such images on the internet, revenge porn, cyber crime, control over the sexual and reproductive rights of the partner (iii) **Psychological and Emotional violence:** Characterized by a person subjecting or exposing another to behaviour that may result in psychological trauma, including anxiety, chronic depression, or post-traumatic stress disorder. Such violence is often associated with situations of power imbalance, such as abusive relationships, bullying, and abuse in the workplace, Psychological abuse, mind games, making the partner feel responsible/guilty for the violence, constant criticism, name calling, humiliating her/him in front of the children, in the presence of friends (iv) **Economic Violence:** Preventing a partner from getting and keeping a job or accessing education, using her/his money,

⁵⁵ Suarez, Eliana; Gadalla, Tahany M. (2010-01-11). "Stop Blaming the Victim: A Meta-Analysis on Rape Myths". *Journal of Interpersonal Violence*. 25 (11): 2010–2035

⁵⁶ GERSHOFF, E.T., 2002. Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review [Online], Available from: <https://www.apa.org/pubs/journals/releases/bul-1284539.pdf> [Accessed 5th December 2019].

⁵⁷ Amy Pan et al. 2006. Understanding the Role of Culture in Domestic Violence: The Ahimsa Project for Safe Families [Online], Available from: <https://www.ecald.com/assets/Resources/Understanding-Role-Culture-Domestic-Violence.pdf> [Accessed 5th December 2019].

⁵⁸ PINGLEY, T., 2017. The Impact of Witnessing Domestic Violence on Children: A Systematic Review [Online], Available from: https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1779&context=msw_papers [Accessed 5th December 2019].

⁵⁹ Stith, Sandra M.; Rosen, Karen H.; Middleton, Kimberly A.; Busch, Amy L.; Lundeberg, Kirsten; Carlton, Russell P. (2000-08-01). "The Intergenerational Transmission of Spouse Abuse: A Meta-Analysis". *Journal of Marriage and Family*. 62 (3): 640–654.

controlling/denying him/her access to money, running up debts.⁶⁰ Concerning sexual violence against children the WHO (2019) has stated that sexual violence includes non-consensual completed or attempted sexual contact and acts of a sexual nature not involving contact, acts of sexual trafficking and online exploitation⁶¹. It is important to note that, these forms of violence are experienced by children and the LGBT community as well.

3.2 Violence against Women

3.2.1 Domestic Violence

43. The most prominent form of violence against women is Domestic Violence. From a global viewpoint, each country has its own statutory definition of domestic violence⁶². Domestic Violence includes any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof through wilfully causing or attempting to cause physical injury; wilfully or knowingly placing or attempting to place the spouse or the other person in fear of physical injury to himself or to one of his children; intimidation, harassment, ill-treatment, brutality or cruelty; compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain; confining or detaining the spouse or the other person, against his will; harming a child of the spouse; and causing or attempting to cause damage to the spouse's or the other person's property⁶³.

44. Domestic Violence is a major challenge and the victims of domestic violence are vulnerable members of our society. Based on the Annual Report of the Judiciary 2016 (Mauritius), the number of cases lodged under the Protection from Domestic Violence Act at the District Courts between 2013-2016 was 7,758⁶⁴. The cases of domestic

⁶⁰ Ministry of Gender Equality and Family Welfare 'Family Protection and Welfare Unit' <http://gender.govmu.org/English/Pages/Units/Family-Welfare-and-Protection-Unit.aspx> (accessed 10 March 2020).

⁶¹ WHO. 2019. Violence against children [Online], Available from: <https://www.who.int/news-room/fact-sheets/detail/violence-against-children> [Accessed 5th December 2019].

⁶² FAWCETT, B., 2019. Domestic Violence: A Global Perspective [Online], Available from: <https://www.worldscientific.com/doi/abs/10.1142/S0219246207000046> [Accessed 5th December 2019].

⁶³ Section 2 of The Protection from Domestic Violence Act 1997.

⁶⁴ Report of the Judiciary 2016 (Mauritius) [Online], Available from: <https://supremecourt.govmu.org/pubabout/Annual%20Report%20Of%20The%20Judiciary%202016.pdf> [Accessed 5th December 2019].

violence remain highly prevalent which need to be given adequate attention. Moreover, as per the Annual Report of the Judiciary 2018 (Mauritius), 2008 cases under the Protection from Domestic Violence Act 1997 has been lodged at the District Courts⁶⁵.

3.2.2 Sexual Violence

3.2.2.1 Marital Rape

45. Marital rape refers to rape committed by a husband on his wife.⁶⁶ The way marital rape is sanctioned differs from country to country⁶⁷. Marital rape has for long been present as an issue due to a non-explicit, clear legal clause criminalising Marital rape in Mauritius. In Mauritius the only type of rape which is criminalized by our law is stipulated at section 249 of the Criminal Code. At the said section 249(1) of the Criminal code it is stipulated that “Any person who is guilty of the crime of rape, shall be liable to penal servitude for a term which shall not be less than 10 years”. Mention is only made in the Sexual Offences Bill. The object of the Sexual Offences Bill was ‘to provide for further and better provisions for sexual offences⁶⁸’. However, the Sexual Offences Bill has not become an Act of Parliament up to now. Marital rape questions the independence, free will, agency of choice of the woman as rape is considered to be a violation of the fundamental right of a person.

3.2.2.2 Sexual Harassment

46. Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of any sexual nature⁶⁹. Sexual Harassment occurs mostly in employment settings. This phenomenon was partly redressed by the enactment of the Equal Opportunities Act that prevent discrimination on the basis of one’s sex. However, sexual harassment is not only limited to the workplace. Several print and online media sources indicate that public acts of sexual violence in public places and transport occur,

⁶⁵Annual Report of the Judiciary 2018 (Mauritius) [Online], Available from: [https://supremecourt.govmu.org/pubabout/Annual%20Report%20of%20the%20Judiciary%202018%20\(1\).pdf](https://supremecourt.govmu.org/pubabout/Annual%20Report%20of%20the%20Judiciary%202018%20(1).pdf) [Accessed 5th December 2019].

⁶⁶US Legal. Marital Rape Law and Legal Definition [Online], Available from: <https://definitions.uslegal.com/m/marital-rape/> [Accessed 6th December 2019].

⁶⁷YLLÖ., K. 2017. Marital rape in the global context: from 17th Century to today [Online], Available from: <https://blog.oup.com/2017/11/marital-rape-global-context/> [Accessed 6th December 2019].

⁶⁸The Sexual Offences Bill (No. VI of 2007)- Explanatory Memorandum.

⁶⁹US EEOC. Facts about Sexual Harassment [Online], Available from: <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm> [Accessed 6th December 2019].

but no action is taken even after the victims report to the authorities. In many cases, victims are unable to muster the courage to report because of the trauma. The indifference, by stander effect of other members present, the refusal to act towards women being victims to unwelcome sexual advances and exposure further add to the suffering of these victims⁷⁰.

3.2.3 Economic Violence

47. Another aspect of domestic violence is the economic violence that women are subjected to. Economic violence is related to the inability of the woman to purchase basic necessities such as food items and medications. It is also related to the element of control where a partner controls the victim by not allowing her to work or taking her wages, and other forms of social security aid and social safety nets. Intimate partner violence has a direct correlation with economic hardship as the breadwinner (usually, the man may refuse to contribute financially in the running of the household).⁷¹ However, the definition of domestic violence in our law does not include the offence of economic and psychological violence.⁷²

3.2.4 Abortion

48. Sexual and Reproductive Rights in relation to the prevention of violence concerns the issue of abortion. Abortion in Mauritius has been permitted on only 4 grounds after the amendment of section 235 of the Criminal Code in 2012: risk to the life of the mother; risk to the physical and mental health; fetal anomaly on the advice of medical specialists; and as a result of rape or sexual relations with minor, where the case is reported to the police or a doctor. Moreover, the taboo and stigma surrounding the issue of abortion have led to several cases of illegal and unsafe abortion, putting women and young girls at risk.⁷³

49. According to Section 235 A of the Criminal Code 1838 the four circumstances where termination of pregnancy is legal in Mauritius are where- *the continued pregnancy will*

⁷⁰ No. 66 as above.

⁷¹ Intimate partner violence against women creates economic hardship, Megan Schuman, Rutgers University available at <https://phys.org/news/2019-10-intimate-partner-violence-women-economic.html> .

⁷² LEXPRESS. 2019. Violence against Women: We have had it [Online]. Lexpress, 18 September. Available from: <https://www.lexpress.mu/node/361123> [Accessed 6th December 2019].

⁷³ Mahadew, R.A., 2015. Mauritius decriminalizes abortion in certain circumstances—lessons from the travaux préparatoires. *Statute Law Review*, 36(2), pp.160-174.

endanger the pregnant person's life; the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person; 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; 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.

3.3 Violence against Children

50. Remaining in the realm of domestic violence, whereby violence occurs within the household, children are also victims. The general definition of a child in Mauritius is any unmarried minor under the age of 18 (The Child Protection Act 1994). The other forms of violence children also suffer from are discrimination in school or lack of schooling, sexual exploitation, child marriage, teenage pregnancy. The issue of Corporal punishment which is still inflicted on children in families, schools, penal institutions and support institutions is being currently discussed in the Children's Bill. Regarding corporal punishment at school, it should be noted that section 13(4) of the Education Regulations of 1957 prohibits such an act. According to the Committee on the Rights of the Child (2018) Angola was called upon to explicitly prohibit corporal punishment in law in all settings⁷⁴. It is noteworthy that similar recommendations have been made to Mauritius by the same Committee, urging the State of Mauritius to explicitly prohibit corporal punishment in all settings.⁷⁵

3.3.1 Domestic Violence

51. The impact of domestic violence is felt and seen equally on children within the domestic sphere. The cases become more pronounced when it involves a blended family where one has to stay with a stepmother or a stepfather⁷⁶. Domestic violence also negatively affects children when parents separate or divorce and continuously live under toxic conditions

⁷⁴ <https://endcorporalpunishment.org/human-rights-law/crc/session-078-2018/> [Accessed 24th December 2019].

⁷⁵ The Committee urges the State party to ensure that its legislation including the Children's Act explicitly prohibit corporal punishment in all settings. The Committee also urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline - paragraph 38 of the Concluding Observations to Mauritius of 2015.

⁷⁶ Modern Blended Family Law [Online], Available from: <https://louisaghevaertassociates.co.uk/family-law/modern-blended-family-law/> [Accessed 6th December 2019].

which are not conducive for their growth⁷⁷. Witnessing violence can involve forcing a child to observe an act of violence, or the incidental witnessing of violence between two or more other persons.

3.3.2 Child Maltreatment/Emotional Psychological Violence

52. Domestic violence also brings in its trail, child maltreatment and child neglect. It involves restricting a child's movements, denigration, ridicule, threats and intimidation, discrimination, rejection and other non-physical forms of hostile treatment. Neglect of infants, children and adolescents often occurs at the hands of parents and caregivers, but also occurs in settings such as schools and orphanages⁷⁸.

3.3.3 Bullying and Peer Pressure

53. Bullying which occurs mostly in schools⁷⁹ and other settings where children gather, and online includes unwanted aggressive behaviour by another child or group of children (neither siblings nor in a romantic relationship with victim); Repeated physical, psychological or social harm. Peer pressure is often related to youth violence including drug usage and assault on teachers or parents.

3.3.4 Cyber Crime

54. As at 2005, across the world an estimated one million child sexual abuse images were online⁸⁰. Statistics demonstrate that 50.000 new child abuse images are added each year. More than 70% of reported images feature children below 10 years of age⁸¹. And these images never disappear. Children that have been identified and rescued years ago still have to face the fact that their abuse remains freely available for anyone to view online and are re-victimized over and over. The vulnerability and exposure of children becomes

⁷⁷OWH. Effects of domestic violence on children [Online], Available from: <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children> [Accessed 6th December 2019].

⁷⁸WHO. 2019. Violence against children [Online], Available from: <https://www.who.int/news-room/fact-sheets/detail/violence-against-children> [Accessed 24th December 2019].

⁷⁹Facts About Bullying [Online], Available from: <https://www.stopbullying.gov/media/facts/index.html> [Accessed 6th December 2019].

⁸⁰European Commission. We Protect Global Alliance to End Child Sexual Exploitation Online [Online], Available from: https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse_en [Accessed 6th December 2019].

⁸¹European Commission. We Protect Global Alliance to End Child Sexual Exploitation Online [Online], Available from: https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse_en [Accessed 6th December 2019].

a breeding ground for child pornography and pedophilia. Modern technology allows criminals to move images, videos and contacts quickly between jurisdictions, exploiting legal loopholes and the anonymity the Internet provides. It is worrying to note the number of Mauritian who access to websites related to child pornography.⁸²

3.3.5 Sexual Abuse

55. The Global Alliance against Prevention of Violence states that girls are particularly vulnerable to sexual violence. For example, the lifetime prevalence of childhood sexual abuse is 18% for girls, compared to 8% for boys⁸³. Perpetrators of sexual violence against girls are predominantly males⁸⁴. Girls are also more likely to experience intimate partner violence (sexual and/or physical); rape by acquaintances or strangers; child or early/forced marriage; trafficking for the purposes of sexual exploitation and child labour, and genital mutilation/cutting. Such violence occurs in many settings, including those where girls should be safe and nurtured — at home; travelling to, from and within school; in their communities. Sexual Violence includes non-consensual completed or attempted sexual contact; non-consensual acts of a sexual nature not involving contact (such as voyeurism or sexual harassment), acts of sexual trafficking committed against someone who is unable to consent or refuse and online exploitation⁸⁵.

3.3.6 Child Marriage

56. The definition given to child marriage by the UNICEF is ‘a marriage of a girl or boy before the age of 18⁸⁶’. Moreover, child marriage violates children’s rights, while placing them at high risk of violence, exploitation, and abuse⁸⁷. Whether Child marriage is conducted out of economic reasons, or the child’s wants and desires, it remains a major form of violence for the child is not psychologically ready to understand the implications of a marriage and the physical impact it has.⁸⁸ There is a lack of awareness among women

⁸² See <https://www.lexpress.mu/article/330173/pedopornographie-25-000-mauriciens-accros> .

⁸³UNODC. Seven Strategies for Ending Violence Against Children [Online], Available from: https://www.unodc.org/documents/justice-and-prison-reform/who---inspire_-seven-strategies-for-ending-violence-against-children.pdf [Accessed 6th December 2019].

⁸⁴No.79 as above.

⁸⁵No.79 as above.

⁸⁶UNICEF. Child marriage [Online], Available from: <https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage> [Accessed 6th December 2019].

⁸⁷No. 78 as above.

⁸⁸See in general John N, Edmeades J & Murithi L ‘Child marriage and psychological well-being in Niger and Ethiopia’ (2019) 19 BMC Public Health.

and girls and their families about the criminal nature and harmful effects of all forms of violence on their health, including the underlying cultural justifications for such violence and practices. In Mauritius, discussions surrounding child marriage pertain directly to what cultural religious practices allow, often putting the best interest of the child at stake. Official statistics note that 705 girls, aged 15 to 19 years, were married between the years 2015 to 2017.⁸⁹ From January 2019 to August 2019, 101 persons below 18 years of age got married.⁹⁰

3.3.7 Poverty and Street Children

57. SAFIRE NGO report entitled ‘Study on street children in Mauritius’ and published in 2012 indicated that there are 6,780 children who live on the streets in Mauritius, while the authorities continue to deny the importance or even the existence of this problem. Most of them are aged 11 to 16 years old, do not go to school and have worked since the age of 13.⁹¹ They add that children are on the street for various reasons, such as a lack of parents or a difficult socioeconomic status. These children are left to fend for themselves and become easy prey for those of ill intentions (for example sexual abuse). Another key problem specifically affecting homeless children is drug addiction⁹². Among the young living on the streets, drug abuse plays an important role, and it is usually caused by the influence of poverty.⁹³ This consumption can have disastrous consequences on the lives and health of children.

3.4 Violence against LGBT people

58. Violence against LGBT people ~~groups~~ has been through both in the form of psychological and physical violence⁹⁴. Ostracization, rejection, discrimination within the

⁸⁹ <https://www.lexpress.mu/node/361994>.

⁹⁰ ‘Mariages’ L’Express 11 January 2020.

⁹¹ Realising children’s Rights in Mauritius, available at <https://www.humanium.org/en/mauritius/> [Accessed 6th December 2019].

⁹² GOMEZ, R., 2010. Factors associated with substance use among homeless young adults [Online], Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2856116/> [Accessed 6th December 2019].

⁹³ Sharma N & Joshi S ‘Preventing -substance abuse among street children in india: a literature review’ Health Science Journal available at <http://www.hsj.gr/medicine/preventing-8208substance-abuse-among-street-children-in-india-a-literature-review.php?aid=3042> (accessed 10 February 2020).

⁹⁴ WHO. Violence motivated by perception of sexual orientation and gender identity: a systematic review [Online], Available from: <https://www.who.int/bulletin/volumes/96/1/17-197251/en/> [Accessed 6th December 2019].

personal and professional sphere, physical assault and battering are some of the forms of the violence they face.⁹⁵

3.4.1 Criminalisation of consensual same sex sexual activity

59. The law does not specifically criminalize homosexuality. It criminalizes sodomy, however, among both same-sex and heterosexual couples. Authorities rarely use the sodomy statute against same-sex couples, unless one of the partners cited sodomy in the context of sexual assault. At section 250 of the Criminal Code the following is provided with regard to the offence of sodomy, “any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years”.

3.4.2 Verbal abuse and violence

60. LGBT people are often victims of verbal abuse or violence, but they generally do not file complaints with police for fear of ostracism or, in some cases, fear of reprisal from family members. LGBT people are also faced with community violence which very often results into hate crimes being committed upon their person⁹⁶. Moreover, according to information gleaned, in the year 2017 in Mauritius, 30% of female transgenders have been physically abused by reason of their transgender identity while 25% have reported that they have been abused physically for other reasons⁹⁷.

3.4.3 Politics of discrimination

61. The politics of discrimination that LGBT people often face occur within workplace in terms of equal access to opportunities, in medical sector they are not given adequate help due to the HIV status or in the civil status arena where there is no recognition of a same sex civil partnership or marriage. Prevention Information Lutte contre le Sida reported authorities denied HIV/AIDS patients social aid due to the absence of appropriate referral doctors on the medical board of the Ministry of Health and Quality of Life, thus forcing

⁹⁵ BLONDEEL, K.,2017. Violence motivated by perception of sexual orientation and gender identity: a systematic review [Online], Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5791869/> [Accessed 6th December 2019].

⁹⁶ Gun violence against sexual and gender minorities in the US [Online], Available from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gun-Violence-SGM-April-2019.pdf> [Accessed 6th December 2019].

⁹⁷ Integrated biological behavioural surveillance survey and population size estimation among transgender persons in Mauritius (2017).

them to live with uncertainty.⁹⁸ On 2 June 2018, the annual Pride march a group of conservative religious extremists staged an illegal counter protest to stop the pride celebrations.⁹⁹ A police investigation was pending at year's end.

3.4.4 HIV and AIDS Social Stigma

62. LGBT people are particularly vulnerable to HIV/AIDS. This is due to the continued criminalisation of same-sex sexual intimacy under section 250 of the Criminal Code 1838, which acts as a barrier for LGBT persons seeking access to effective healthcare services and perpetuates a social stigma that persons who engage in same-sex intimacy are criminals. The law provides that persons with HIV/AIDS should be free from stigmatization and discrimination. However, there were reports of discrimination against LGBT people and their relatives, on the basis of their actual (or perceived) HIV status ."

⁹⁸ US State Report on Human Rights 2018

⁹⁹ Collison C 'Mauritius: Paradise for who? Mail and Guardian 15 June 2018.

4. International legal and normative framework on violence on women, children and LGBT people

63. The international and legal normative framework provides a yardstick for Mauritius to align its law within internationally accepted standards. The international system also acts as a watchdog when it comes to the performance of Mauritius regarding the prevention of violence through the submission of state reports and issuance of concluding observations by international treaty-based bodies. However, at the outset, it must be noted that international laws do not find its application directly before domestic courts unless these laws are domesticated. The reason is because Mauritius is a dualist state and an act of Parliament has to give force of law to the international laws in Mauritius. Only then the provisions of the international laws can be used and adjudicated upon by a court of law. Nevertheless, Mauritius does have legal obligations to respect the legal provisions pertaining to violence against the three groups having ratified those international laws and based on the principle of good faith or *pacta sunt servanda*.

4.1 International treaties and conventions signed and ratified by Mauritius

64. Mauritius is signatory party to the major United Nations instruments, amongst which are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

65. Mauritius is a party to the Optional Protocol to the International Covenant on Civil and Political Rights. 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. 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. Mauritius is also a party to the Optional

Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4.1.1 The UN System

The table below indicates the date of the treaties ratified by Mauritius within the UN System.

Treaty	Ratification
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	09 Dec 1992 (a)
Optional Protocol of the Convention against Torture	21 Jun 2005 (a)
International Covenant on Civil and Political Rights	12 Dec 1973 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	
Convention for the Protection of All Persons from Enforced Disappearance	
Convention on the Elimination of All Forms of Discrimination against Women	09 Jul 1984 (a)
International Convention on the Elimination of All Forms of Racial Discrimination	30 May 1972 (a)
International Covenant on Economic, Social and Cultural Rights	12 Dec 1973 (a)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	
Convention on the Rights of the Child	26 Jul 1990 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	12 Feb 2009
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	14 Jun 2011
Convention on the Rights of Persons with Disabilities	08 Jan 2010

4.1.2 The African Human Rights System

66. Mauritius is also a party to regional human rights instruments, such as the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Mauritius has ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Mauritius is a party to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and has acceded to the Convention on the Civil Aspects of International Child Abduction.

Treaty	Ratification
Convention on African Charter on the Rights & Welfare of the Child	Ratified on 14.02.92
Convention on Africa Court on Human & P. Rights	Signed on 09.06.98
Convention on African Charter for Human and People's Rights	Ratified on 19.06.02
OAU Convention on the Prevention and Combating of Terrorism	Acceded on 27.01.03
Protocol to the African Charter on Human and People's Rights on Establishment of an African Court on Human and People's Rights	Ratified on 03.03.03
Protocol relating to the Establishment of the Peace and Security Council of the African Union	Ratified on 16.06.03
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	Ratified in 07.17

4.2 International human rights instruments providing for women's rights

67. The UDHR in 1948, besides providing for human rights in general, it has also stipulated about women rights in both its preamble and article. At paragraph 5 of its preamble, in line with the fundamental human rights, the equal rights of men and women has been underlined. Moreover, on matter of the right to marriage, Article 16(1) of the UDHR (1948) states that both men and women having attained the full age, have the right to marry and found a family without any limitation due to race, nationality or religion. It is further provided at the same subsection both spouses “*are entitled to equal rights as to marriage, during marriage and at its dissolution*”. Coming to the provisions on women in the ICCPR (1966), at Article 3, there is a duty on States Parties in ensuring that all civil and political rights set forth in the ICCPR are equally enjoyed by men and women.

In line with the right to life which is inherent to every human being, Article 6(5) of the same covenant states that death sentence shall not be carried out on pregnant women. Moreover, Article 23 of the ICCPR (1966) reiterates the right of men and women of marriageable age which was initially stated at Article 16(1) of the UDHR (1948).

68. On matter of socio economic rights, the ICESCR (1966) has also provided for the right of women, for instance at its Article 3 it is stipulated that States Parties should ensure that all economic, social and cultural rights in the ICESCR are equally enjoyed by men and women. In line with the right to work, Article 7 (ICESCR, 1966) provides for the enjoyment of just and favourable conditions of work by both men and women. Subsection a(i) of the same Article sets out that the practice of fair wage and equal remuneration of work of equal value, and most importantly women should be guaranteed working conditions which are not inferior to those enjoyed by men and they should be paid equally for equal work done. Besides these provisions on women in the UDHR (1948), ICCPR (1966) and ICESCR (1966), there is the CEDAW (1979) which is a specific covenant on the elimination of all forms of discrimination against women. As such this treaty addresses provisions to help member states to remove gender-based discriminations.
69. The CEDAW (1979) starts with an extensive preamble recalling the duties of member states on matter of equal treatment of men and women. At Article 1 of the treaty, the term “discrimination against women” is given a blanket definition covering all possible situations constituting discrimination on basis of sex. Articles 2 to 6 provide in detail the measures- including legislative and policy decisions that member states should take to eliminate discrimination against women. The CEDAW (1979) reaffirms women’s right to vote (Article 7), right to participate in the work of international organizations (Article 8), right to education (Article 10), right to work (Article 11), right to health and most importantly access to health care services, including those related to family planning (Article 12), equality with men before the law including the identical legal capacity to that of men (Article 15), inter alia. Besides the CEDAW (1979) catering for non-discriminatory practices against women, the CRPD (2006) do have some provision on women and girls with disabilities. As such at paragraph (q) of its preamble it recognises the very fact women and girls with disabilities are often at greater risk of violence, abuse, negligent treatment and much more- both inside and outside the home.

70. Article 3 (CRPD, 2006) emphasises on the respect and acceptance of persons with disabilities as part of human diversity and both men and women should be equally treated. Article 6 (CRPD, 2006) deals provisions on women with disabilities- as such where women and girls with disabilities are subject to multiple discrimination, that state party should the appropriate measures to remedy the situation. In the same vein, appropriate measures on matter of full development, advancement and empowerment of women, should be taken by state parties (Article 6(2), CRPD 2006). Furthermore, concerning freedom from exploitation, violence and abuse, at Article 16(5) CRPD (2006), there is a duty on state parties to in place effective legislation and policies including women and child-focused provisions in order to ensure that cases of exploitation, violence and abuse against persons with disabilities are identified, investigated and dealt with properly. Adequate standard of living and social protection is an important matter when it comes to persons with disabilities and Article 28(5) CRPD (2006) stipulates that state parties should ensure that persons with disabilities, particularly women and girls should have access to social protection programmes and poverty reduction programmes.

4.2.1 Analysis of periodic reports submitted by Mauritius to treaty bodies on matter of violence against women

71. Likewise, under each human right treaty there is a monitoring body which is established, and each member state has a duty to submit periodic reports on the national implementation of the respective treaty. The Human Rights Committee (HRC) is the treaty body to the ICCPR (1966). Aftermath, Mauritius has submitted its ***Fifth Periodic Report to the HRC (CCPR/C/MUS/5)*** and the HRC has ironed out a ***Concluding Observation (2017)*** and has made some comments with regard to discrimination against women. Firstly, it was analysed by the HRC that the presence of a very low number of women in decision-making positions and they occupy mostly low-skilled jobs and receive low wages.

72. It was also noted that very few complaints are lodged before the Equal Opportunities Commission or referred to the Equal Opportunity Tribunal by women victims of discrimination. As such the HRC recommended that Mauritius should facilitate complaints from women who are victims of discrimination at work. It was further asserted by the HRC that Mauritius should further strengthen its effort to combat

domestic violence against women with appropriate legislations to sanction perpetrators, conducting awareness campaigns and most importantly to continue the training of police officers, judges and prosecutors when it comes to handling gender-based violence cases. The HRC has made a remark on the fact that Mauritius has still no legislative provision which criminalises marital rape.

73. Coming to the *Concluding Observation (2018)* on the *Eighth Periodic Report of Mauritius (CEDAW/C/MUS/8)*, on ground of protecting women the committee highlighted the legislative reforms taken by Mauritius for instance amendments to The Protection from Domestic Violence Act (1997), the Criminal Code Act (1838) and much more. However, the prevalence of gender-based violence still remains a matter of great concern for the island. As such more all-encompassing legislative provisions are needed for example to criminalise economic violence against women. Correspondingly the committee has also taken note of the lack of safeguards with respect to section 75 of the Constitution (1968) to prevent pardon being granted to convicted offenders of violence against women. In addition, with regard to domestic protection orders, Mauritius should ensure that victims are effectively protected when they have been granted a protection order and that they have access to government-funded shelters as well as support services. It should be noted that there has been cases where women who were recipient of a protection order have still lost their lives in acts of violence perpetrated on them by their partners or former partners.¹⁰⁰

4.2.2 Analysis of communications from treaty bodies with regard to the issue of violence against women

74. After a communication, or in simpler terms a complaint, has been submitted to a treaty body, it will be considered and heard on the merits by the latter. Then the committee will iron out a decision, whereby it will make recommendations for both the victim and the state party. For aggrieved citizens to submit a dispute to a treaty body, the state party in question needs to first ratify the Optional Protocol establishing the communication mechanism. Since the dispute will be dealt with at the global level, victims need to first exhaust all their available domestic remedies prior to submitting a written communication to the concerned treaty body.

¹⁰⁰ Violence envers les femmes: La récidive pas sanctionnée malgré un protection order' <https://www.lexpress.mu/article/370894/violence-envers-femmes-rcidive-pas-sanctionnee-malgre-un-protection-order> (accessed 10 March 2020).

75. On matter of violence against women, the decision of the *Communication [CCPR /C/124/D/2020/2010]* from the Human Rights Committee (HRC) can be considered. It is where a mother together with her son brought their dispute before the HRC against Canada- claiming that the Indian Act 1985 violated their rights under Articles 2(1), 2(3)(a), 3, 26, 27 of the ICCPR. The lady in question was ineligible for a full Indian status, while in contrast his brother was eligible for full registration of his Indian status and can transmit same to his grandchildren. The HRC found that the author (that is the complainant) should be provided with an effective remedy including the amendment of the Indian Act 1985 and in addition Canada should to take steps to address residual discrimination which exists within First Nations communities arising from the legal discrimination on basis of sex in the Indian Act.
76. Furthermore, in the decision concerning the *Communication [E /C.12/63/D/10/2015]* from the Committee on Economic, Social and Cultural Rights (ESC Committee), the issue of denial of special reduced retirement pension to a woman was dealt with. The author one Marcia Cecilia Trujillo Calero who was a domestic worker, having made in all 305 contributions to retirement pension schemes over 29 years claimed that her right to social security under Article 9 of the ICESCR (1966) was violated. She was not able to make her contributions for six consecutive months and as a result the Ecuadorian Social Security Institute cancelled more than five years of her contributions. Thus, she was left without retirement pension; the ESC Committee reiterated **General Comments 16 and 19 to the ICESCR** and highlighted that the Covenant prohibits both direct and indirect discrimination impairing and/or nullifying the equal enjoyment of the right to social security. In brief, **General Comments 16 to ICESCR** expatiates on the equal right of men and women to the enjoyment of socio-economic rights which are stipulated at Article 3 of the ICESCR (1966) and **General Comment 19 to the ICESCR** analyses in depth the right to social security as provided at Article 9 of the same covenant. The ESC Committee gave a decision in favour of the author and held that she is entitled to effective remedies with regard to her right to pension, compensation for the violations suffered and the costs of legal representatives incurred in line with the communication.
77. It is equally important to consider decisions from Committee on the Elimination of Discrimination against Women (EDW Committee). The decision concerning the *Communication [CEDAW /C/69/D/103/2016]* can be analysed where the author a Finnish national submitted her complaint to the EDW Committee on behalf of herself

and her minor son. On basis of factual information, she has suffered massive domestic violence and humiliation by her husband. The latter even attempted to force her to abort their child. Despite all these sufferings, she did not inform the authorities and as a result the violence escalated. The EDW Committee recommended firstly the reopening of judicial proceedings with regard to the custody of her child and secondly the payment of a comprehensive compensation to the author.

78. Likewise, the decision of the Committee for the *Communication [CEDAW /C/46/D/18/2008]* can be considered where a lady claimed that she has been victim of discrimination and her right at Article 1 of the CEDAW (1979) has been violated. The lady is a Filipino national she was raped by a person occupying a senior position in her workplace. Despite various efforts to get the offender punished before the local Courts, the latter was acquitted. Before the EDW Committee she claimed that the acquittal of the defendant is discriminatory. After thorough analysis of the arguments the EDW Committee held that the State party has failed to fulfil its treaty obligations, thus there have been violations the rights of the author under Articles 1, 2 (c) and (f), and 5 of the covenant. Thus, it was recommended that the since author has suffered great prejudice, she should be compensated proportionate to the gravity of the violations of her rights.

4.3 The international legal obligations of Mauritius on violence against Children

79. Article 25 of the UDHR (1948) provides for the right to a standard of living which is adequate for the health and well-being. At subsection 2 of the same Article it is stipulated that “*All children, whether born in or out of wedlock, shall enjoy the same social protection*”. Moreover, with regard to the right to education, parents have “*a prior right to choose the kind of education that shall be given to their children*” (Article 26(3), UDHR 1948). In line with the right to life at Article 6(5) of the ICCPR (1966) it is stated that death sentence should not be imposed on persons aged less than 18 years. The right to freedom of thought, conscience and religion should be enjoyed by every person and parents or legal guardians have to ensure the religious and moral education of their children (Article 18(4), ICCPR 1966). As per Article 24 of the same covenant after birth, every child should be immediately registered and has the right to acquire a nationality. Under the ICESCR (1966) at Article 10(3), children and young persons should be protected from economic and social exploitation and the State should set an

age limit for employment and prohibit child labour. Further, at Article 16(1)(d) of the CEDAW (1979), parents share the same rights and responsibilities irrespective of their marital status and the interest of the child should be treated first.

80. The CRC (1989) is a specific convention catering for the rights of children. It has a preamble and in all 54 articles. Article 1 defines a child as “*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*”. As such state parties are called upon to take appropriate legislative measures to better protect the child and the best interests of the child should be a primary considered. The rights as guaranteed to children under the CRC (1989) are as follows, the right to freedom of expression (Article 13), right to freedom of thought (Article 14), right to freedom of association (Article 15), protection from all forms of violence (Article 19), right to health (Article 24), inter alia.
81. Moreover, a mentally or physically disabled child should enjoy a full and decent life as per Article 23 (CRC, 1989). Since children are very often victims of violence, state parties have a duty to ensure that the physical and psychological recovery and social reintegration of a child victim are promoted by appropriate measures (Article 39, CRC 1989). Equally important there are the provisions of the CRPD (2006) on the right of children with disabilities. They should fully enjoy of all human rights and fundamental freedoms on an equal basis like other children (Paragraph r, Preamble CRPD 2006). State parties should take all measures to ensure that the rights of children with disabilities are equally protected (Article 7, CRPD 2006) and should have in place effective legislations and policies including child-focused ones so that instances of exploitation and violence against them are identified and dealt with (Article 16, CRPD 2006).

4.3.1 Analysis of periodic reports submitted by Mauritius to treaty bodies on matter of violence against children

82. Mauritius has submitted its *Fifth Periodic Report to the HRC (CCPR/C/MUS/5)* and the HRC has through a *Concluding Observation (2017)* made some comments with regard to discrimination against children. The HRC is very much concerned with the issue of child trafficking and highlighted that only few cases have been dealt with up to now. In the *Concluding Observation (2018)* on the *Eighth Periodic Report of*

Mauritius (CEDAW/C/MUS/8), it was recommended that pregnant girls should be encouraged to pursue their education, the cultural stigma should be combated through awareness campaigns and they should be provided with affordable care for their children. Indeed, very often when girls have been victim of sexual abuse their educational career is brought to an end. This is because child sexual abuse has a range of outcomes which are associated and they include the mental health is affected, behavioural problem, interpersonal and social outcome among others¹⁰¹.

4.3.2 Analysis of communications from treaty bodies with regard to the issue of violence against children

83. On matter of violence against children, the decision of the *Communication [CCPR/C/125/D/2498/2014]* from the Human Rights Committee (HRC) can be considered where a lady one Ekaterina Abdoellaevna who was born in Uzbekistan and having lost her Uzbek nationality at the age of 17, she is now stateless. She claimed violation of her rights under Article 23 and 26 and the rights of her child under Article 24 (1) of the covenant. The author made several applications to the local authorities for social assistance and shelter, but she was denied same. Since the author is stateless her child could not benefit from the child budget scheme which is paid to parents earning a low income. The HRC held that the right of child rights under Article 24 (ICCPR, 1966) was violated, thus he should be provided an effective remedy by the state and is also entitled to full reparation. In this decision the HRC underlined **General Comment 17 to (Article 24) CRC** and observed that the lack of social protection for children may in certain circumstances have a negative impact on their physical and psychological well-being.
84. In addition, it is important to consider communications from Committee on the Rights of the Child. The decision of the *Communication [CRC /C/79/D/12/2017]* concerns denial of humanitarian visa to child taken under a fostering arrangement. Due to the fact the fostering arrangement does not entail a parent-child relationship; the complainants were unable to apply for a visa on grounds of family reunification. Moreover, their application for a visa was rejected by Immigration Office on the grounds that the fostering arrangement in first place did not amount to an adoption and secondly it did

¹⁰¹ <https://aifs.gov.au/cfa/publications/long-term-effects-child-sexual-abuse/export> [Accessed 24th December 2019].

not confer any right of residence. The committee concluded that there have been violations of Articles 3, 10 and 12 of the Convention (CRC 1989). Thus, the State party was under an obligation to urgently reconsider the application for a visa for victims. From these two above communications it can be analysed that despite the rights of these children have been violated, they managed to obtain remedy after a very long battle. According to statistics from the UNICEF (2018), 720 million of school aged children live in countries where they are not fully protected by law from corporal punishment in schools, moreover half of world's teens experience violence in schools¹⁰². In furtherance, in 29 countries in Europe and North America, 17 million young adolescents admitted that they have been victim of bullying by peers at school¹⁰³. On the global sphere, the cost of violence against children costs up to US \$ 7 trillion annually- this sum represents investment in health programmes, early childhood development and education (UNICEF, 2018)¹⁰⁴.

4.4 The international legal obligations of Mauritius on violence against LGBT people

85. The UDHR (1948), ICESCR (1966), ICCPR (1966), CEDAW (1979), CRC (1989) and the CRPD (2006) do not provide for specific sections with regard to the rights of LGBT people. However, there are general provisions in these international instruments which for instance prohibit discrimination on basis of sex. These general provisions can be used by member states to protect and promote the rights of LGBT people. Article 2 of the UDHR (1948) provides that “*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex...*”. Moreover, in the ICCPR (1966), discrimination on basis of sex is prohibited with regard to the protection and promotion of all rights under the covenant (Article 2), at time of public emergency (Article 4), with regard to every child (24) and on matter of equal protection before the law (Article 26). The ICCPR (1966) protects civil and political rights which comprise of the right to liberty, the right to freedom of expression, the right to privacy, the right not to be subjected to inhuman treatment, freedom of assembly inter alia.

86. Further, state parties to the ICESCR (1966) should protect and promote socio-economic rights stipulated in the covenant without any kind of discrimination including on basis of

¹⁰²<https://www.unicef.org/stories/13-reasons-why-we-need-end-violence-schools> [Accessed 25th December 2019].

¹⁰³ No. 95 as above.

¹⁰⁴ No. 95 as above.

sex. At Article 2 of the CRC (1989), member states should protect the rights of every child irrespective of “*his or her parent's or legal guardian's race, colour, sex,..*”. The above provisions from the international legal instruments prohibit discrimination on basis of sexual orientation and are applicable in general to every citizen whose state has ratified these covenants. It is important to underline that, the term "sex" should be understood expansively to be akin to "sexual orientation". In the US, arguments have been submitted before the Supreme Court contemplating that discrimination on the basis of sex as being inclusive of discrimination on the basis of sexual orientation.¹⁰⁵

87. Toonen v Australia is also considered as a landmark complaint brought before the UN HRC in 1994 which serves as a tool of interpretation of our own laws and as an important judicial precedent.¹⁰⁶ Toonen complained to the HRC that Tasmanian laws criminalising consensual sex between adult males in private were a violation of his right to privacy under Article 17 of ICCPR; distinguished between people on the basis of sexual activity, sexual orientation and identity in violation of Article 26 inferring that gay men in Tasmania were unequal before the law. The HRC deliberated that adult consensual sexual activity in private is covered by the concept of privacy and that Toonen was prejudiced by the continuous presence of the Tasmanian laws, which interfered with his privacy, notwithstanding their absence of recent application.

88. States’ international obligations to respect the human rights of all persons, regardless of sexual orientation and gender identity, were recently enunciated in the “Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity”. The Principles were developed and unanimously adopted by an eminent group of human rights experts, from diverse regions and backgrounds, including Africa. These experts included judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, members of civil society and others. In furtherance, in the year 2017 the Yogyakarta Principles plus 10 has been adopted with additional principles and State obligations on the application of International Human Rights Law in relation to sexual

¹⁰⁵ The cases concerning gay rights are *Bostock v. Clayton County, Ga.*, No. 17-1618, and *Altitude Express Inc. v. Zarda*, No. 17-1623. The case on transgender rights is *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, No. 18-107.

¹⁰⁶ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

orientation, gender identity, gender expression and sex characteristics to complement the existing Yogyakarta Principles¹⁰⁷.

89. Principle 2 of the Yogyakarta Principles upholds the right of all persons to equality before the law without discrimination on the basis of sexual orientation or gender identity, and specifically endorses the responsibility of States to “repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.”
90. Principle 6 of the Yogyakarta Principles upholds the right of all persons, irrespective of sexual orientation or gender identity, to the enjoyment of privacy without arbitrary or unlawful interference, and confirms States’ obligation to “repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.” The Yogyakarta Principles plus 10 has introduced 9 Additional principles along with 111 additional State obligations¹⁰⁸. The additional principles include the Right to legal recognition (Principle 31), the Right to Freedom from criminalisation and sanction on the basis of sexual orientation, gender integrity, gender expressions or sex characteristics (Principle 33), inter alia¹⁰⁹.
91. The former UN High Commissioner for Human Rights had welcomed the Yogyakarta Principles as a “timely reminder” of the basic pillars of universality and non-discrimination, and noted that “respect for cultural diversity is insufficient to justify the existence of laws that violate the fundamental rights to life, security and privacy by criminalizing harmless private relations between consenting adults”.¹¹⁰

4.4.1 Analysis of periodic reports submitted by Mauritius to treaty bodies on matter of violence against LGBT

92. In the *Concluding Observation (2017)* on the *Fifth Periodic Report of Mauritius (CCPR /C/MUS/CO/5)*, the HRC has raised concern with regard to the reported cases of hate

¹⁰⁷Yogyakarta Principles plus 10 [Online], Available from : <https://yogyakartaprinciples.org/principles-en/yp10/> [Accessed 9th December 2019].

¹⁰⁸ No.100 as above.

¹⁰⁹ No.100 as above.

¹¹⁰ Statement of UN High Commissioner for Human Rights, Launch of the Yogyakarta Principles, 7 November, 2007, United Nations, New York.

speech, violence, threats, brutality and humiliation against LGBT people in Mauritius. Moreover, the HRC has also made a remark with regard to the offence of sodomy still provided in our Criminal Code Act 1838 (Section 250) and same has not yet been repealed. As such it was recommended that appropriate legislative measures be taken to protect LGBT persons from discrimination. Also, the state should ensure that the police register complaints from LGBT people and a proper investigation is followed. In the *Concluding Observation (2018)* on the *Eighth Periodic Report of Mauritius (CEDAW/C/MUS/8)*, the EDW Committee has taken note of the discriminatory practices faced by LGBT people, their problem of societal exclusion and they are very often victims of hate speech. Therefore, it was recommended that there should be proper law enforcement and complaint mechanisms in place to protect this small group of the population who are treated differently due to their sexual orientation.

4.5 An overview of the regional legal obligations of Mauritius on violence against women, children and LGBT people - the African human rights architecture

93. At the level of the African Continent, there is the African Union with 55 member states. Prior to the coming into existence of the African Union (AU) in 2002, there was the Organisation of African Unity (OAU, 1963-1999). Moreover, the constitutive act of the AU is African Charter on Human and People's Rights (ACHPR, 1981) and it is the most progressive human rights text in the world. The African Commission on Human and People's Rights (African Commission) is a quasi-judicial body established by Article 30 of the ACHPR (1981). Moreover, at the level of the AU there is the African Court on Human and People's Rights (African Court) which is established by an Optional Protocol (1998).
94. Mauritius is a member of the AU and has ratified several regional instruments with regard to human rights in general and specific rights such as women rights, children rights inter alia. For the purpose of this analysis reference will be made to the provisions of the ACHPR (1981), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol, 2003), the African Charter on the Rights and Welfare of the Child (ARCWC, 1990), the Solemn Declaration on Gender Equality in African (SDGEA 2004) and the AU Gender Policy (AUGP, 2009)- catering

for the protection of the rights of women, children and LGBT people. Moreover, this study will be supported by decisions from the African Commission.

95. Mauritius has ratified the African Charter on the Rights and Welfare of the Child in 1992, the Optional Protocol on Establishment of an African Court on Human and People's Rights in 2003, the Maputo Protocol in 2005 among others. The African Commission as a quasi-judicial body has as functions- to promote and protect human and peoples' rights in Africa, to interpret rights as enshrined in the ACHPR (1981), to formulate rules and principles with a view to solve human rights problems in African states and to cooperate with other African and international organisations for the advancement of human rights (Article 45, ACHPR 1981). On the other hand, there is the African Court which is a purely judicial organ to deal with cases of infringements of rights which are provided in the ACHPR (1981). When countries have ratified the Optional Protocol to the Court, this does not entail automatic acceptance of its jurisdiction. A further declaration under Article 34(6) of the said Optional Protocol should be made to give effect to the competence of the African Court. It is worth noting that up to now Mauritius has not made a declaration as to this effect.

4.5.1 The regional legal obligations of Mauritius on violence against women

96. Considering provisions of the ACHPR (1981) first, Article 18(3), state parties are called upon to ensure that discrimination against women is eliminated. As the need to protect women against violence and discrimination was felt, in the year 2003 the Assembly of the Union came up with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol, 2003). Prior to the existence of this legal framework, there were massive violations of rights of women in Africa and they were denied their rights and culture was used as an excuse. This document has indeed marked history in the field of women rights, with a detailed preamble and 32 articles compared to the ACHPR (1981) which had only one Article catering for discrimination against women. Analysing the preamble first, it takes cognizance of the very fact that women's rights have been duly recognised in a series of international instruments as discussed previously with regard to international legal obligations. Article 1 (Maputo Protocol, 2003) defines discrimination against women in a detailed way and Article 2 provides a battery of legislative, institutional and other measures which shall be taken by member states to combat all forms of discrimination against women.

97. Rights guaranteed to women under the Maputo Protocol (2003) include, the right to dignity (Article 3), right to life, integrity and security (Article 4), right to peace (Article 10), right to education and training (Article 12) inter alia. Moreover, the rights to elderly women and those with disabilities are also catered for in the Maputo Protocol (2003) at Articles 22 and 23 respectively. It is to be noted that the term violence against women has been defined in a very broad way in the Maputo Protocol (2003)- as such it covers all the forms of violence which women may be victim of; sexual, psychological, physical and even economic harm. When considering the issue of violence against women, Article 4 (Maputo Protocol, 2003) deals with the right to life and provides a plethora of situations which constitutes violence against women. As such women should be protected from trafficking and scientific experiments without their informed consent. The same Article also emphasises on the rehabilitation of women who have been victims of violence. In addition, women should be protected from harmful practices for instance “*all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices*” (Article 5, Maputo Protocol 2003). With this provision in place, the Maputo Protocol is the first human rights covenant to call upon its member states to eliminate the practice of female genital mutilation.
98. Besides the Maputo Protocol women’s rights, there is the Solemn Declaration on Gender Equality in Africa (SDGEA, 2004) which has been adopted by the African Union (AU) Assembly which is mainly focussed on state’s responsibility to eliminate gender-based discrimination and violence against women. In brief, the AU Assembly is the highest decision-making organ of the AU. It has as function to determine AU policies and monitor their implementation accordingly. This declaration despite being a soft law it an important instrument for the promotion of gender equality and empowerment of women. Moreover, on matter of violence against women, the SDGEA (2004) encompasses measures such as the reinforcement of legal measures to protect women, launching of campaigns against gender-based violence and women trafficking and much more (Paragraph 4, SDGEA 2004). Likewise, there is also the AU Gender Policy (AUGP) 2009, which has as vision to empower women, the achievement of gender equality and justice, among others. It can be analysed that provisions of the SDGEA (2004) help member states to address their legal obligations to both international and regional treaties ratified- on matter promotion and protection of women’s rights.

4.5.2 Analysis of communication from the African Commission with regard to the issue of violence against women

99. To reiterate the African Commission has the mandate to hear disputes at continental level from Non-Governmental Organisations (NGOs) and individuals, and then at the end it issues recommendations. Before submitting any dispute to the African Commission, aggrieved citizens or those being represented by NGOs need to satisfy the admissibility criteria as laid down at Article 56 of the ACHPR (1981). Among the admissibility criteria there is a very important element which is, complainants need to exhaust all available local remedies before going to the African Commission. In line with violence against women, *Egyptian Initiative for Personal Rights (EIPR) and Interights v Arab Republic of Egypt [Communication 334/06]* is the first decision on women's rights issued by the African Commission. In this case, four female journalists were victims of violence and were sexually abused during a political demonstration. Moreover, these women faced injustice- they were threatened to withdraw their complaints and investigator did not take statements of eyewitness. With the help of EIPR they managed to bring their dispute to the African Commission- claiming violation of several rights under the ACHPR (1981) including Article 18(3) with regard to discrimination against women.

100. The Commission found that Egypt has failed in discharging its legal obligations under the Charter (1981) and recommended that the victims be compensated, and the respondent should take appropriate legal measures to remedy the existing discriminatory provisions. Scrutinising the above decision, it can be noted that the complaint was based violations of rights under the ACHPR (1981) and not the Maputo Protocol (2003). However, it did send a strong signal on the issue of member state legal obligations to abide by provisions of the Charter (1981) - more precisely with regard to women victims of sexual harassment and violence in public places. On an important note, recommendations from the African Commission are not of binding nature to this effect member states may not always comply.

4.5.3 Special Rapporteur on the Rights of Women in African

101. Besides the existence of covenants, declarations and policies protecting and promoting women rights in AU member states, there is also a mechanism called Special Rapporteur on the Rights of Women in Africa. In short, it was created by the Resolution

on the Designation of the Special Rapporteur on the Rights of Women in African (1999). It guides the African Commission, undertake country visits, evaluate legislative measures of member states and make recommendations on matter of legal obligations under the Charter (1981) and the Maputo Protocol (2003). In line with situations violence against women, African Commission is notified about same by the Special Rapporteur. Moreover, on an annual basis Intersession Activity Reports are submitted by the Special Rapporteur to the African Commission, which ultimately prepares an annual Activity Report which is submitted to the AU Assembly. Therefore, this explains the whole process how women rights in member states are monitored with particular emphasis on identifying cases of violence against women. Thus, the AU Assembly becomes knowledgeable of the situation and takes legal steps accordingly- which include the formulation of declarations and policies.

4.6 The regional legal obligations of Mauritius on violence against children

102. Article 18(3) of the ACHPR (1981) provides ~~for~~ that state parties have the duty to protect the rights of the child as provided in international instruments. In the year 1990 the African Charter on the Rights and Welfare of the Child (ARCWC, 1990) paved its way with a view to better protect the child. To give an illustration, it sets out a series of rights which children have, as well as provisions protecting them against various forms of violence. Article 4 (ARCWC, 1990) deals with “*the best interest of the child*” which in all instances should be primarily considered. Rights enjoyed by children under the ARCWC (1990) are- freedom of association (Article 8), right to education (Article 11), right to health and health Services (Article 14) among others. Moreover, there is a duty binding on state parties under the ARCWC (1990) to protect the child- against abuse and torture (Article 16), sexual exploitation (Article 27), drug abuse (Article 28), sale, trafficking and abduction (Article 29) and much more.

103. Further, under the ARCWC (1990) there is the African Committee of Experts on the Rights of the Child (ACERWC) which is set up within the African Union (then OAU) with the mission of promoting and protecting the rights and welfare of the child (Article 32). Through the state reporting mechanism to the ACERWC, member states are accountable to their commitments taken under the ARCWC. Likewise, the ACERWC has the power to receive complaints from “*any person, group or non-governmental*

organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter” (Article 44, ARCWC 1990). Equally important, complainants need to first exhaust all their available local remedies before going to the ACERWC. The latter is also mandated to carry out investigations on matters falling within the scope of the ARCWC (1990) and on a biannual basis it reports these activities to Ordinary Session of the Assembly of Heads of State and Government. On an analytical note, the ACERWC is a very important organ to help member states to tackle the problem of violence against children as well as giving victims a special avenue at the continental level to adjudicate their disputes.

4.6.1 Analysis of communication from the African Committee of Experts on the Rights of the Child (ACERWC) with regard to the issue of violence against children

104. There are three communications which need to be scrutinised in line with violence against children. Firstly in the decision, *The Centre for Human Rights (University of Pretoria) And La Rencontre Africaine pour la défense des droits de l’homme (Sénégal) v The Government of Senegal [Decision No. 003/Com/001/2012]*, 100,000 children attending religious boarding schools in Senegal lived in a very deplorable state and they were forced to beg. The matter was brought before the ACERWC and Senegal was found accountable of violence against these children. Moreover, a series of recommendations were ironed out by the ACERWC including- Senegal should ensure that children are prohibited from begging, hygiene norms should be put in place in these religious boarding schools, to ensure that children rights to education is fully respected and much more.

105. Moreover, another important decision is *The Institute for Human Right and Development in Africa And Finders Group Initiative on Behalf of TFA (A minor) v The Government of the Republic of Cameroon [Communication No: 006/Com/002/2015, Decision No: 001/2018]*, where a child aged 10 years old was raped and her aunt filed a case before the local police. The examining magistrate dismissed the evidence as same disclosed no case. In furtherance, the complainant wanted to go for appeal, however she could not do so because was refused a copy of the ruling. The ACERWC heard the disputed and found that there have been violations of Articles 1, 3 and 16 of the ARCWC (1990). Also, it was asserted that there was not requirement for TFA to exhaust all available local remedies because the victim was prevented to appeal to

the decision of first instance. The ACERWC recommended Cameroon to pay compensation to the victim in the sum of 50 million CFA, to ensure that the offender is prosecuted and punished, to put in place proper legislative frameworks catering for the protection of children among others.

106. The third communication is Minority Rights Group International and *SOS Esclaves on Behalf of Sais Ould Salem & Anor v Government of the Republic of Mauritania [Communication No. 007/Com/003/2015, Decision No. 003/2017]* and it is with regard to child slavery in Mauritania. Due to the fact that their mother belonged to the slave class, these two children automatically became slaves of the El Hassine family. They worked 7 days a week and were deprived of leisure activities. Moreover, they faced corporal punishment and were not allocated time for education purposes. The ACERWC gave a decision in favour of these children and recommended in first place that Mauritania's government should ensure that the EL Hassine family is prosecuted for slavery of these two children and violations of their rights. In addition, there are other recommendations such as the provision of psychological support to the victims, legislative measure and much more. From the above decisions we have seen how the ACERWC deals with cases of violence against children when the state has itself failed to litigate their disputes and punish their offenders accordingly.

4.7 The regional legal obligations of Mauritius on violence against LGBT people

107. In regional instruments at the level of the African Union there is no covenant specifically on the rights of LGBT people. However, there is a general provision which prohibits discrimination on basis of sexual orientation. At Article 2 of the ACHPR (1981), every individual is entitled to enjoy the rights under the Charter without any discrimination with regard to "race, ethnic group, colour, sex, language,...". The ACHPR (1981) also protects the respect for life and the integrity of the person (Article 3), the right to dignity (Article 5), the right to liberty (Article 6), the right to enjoy the best state of physical and mental health (Article 16) inter alia. It is to be noted that up to now there are no decisions from the African Commission on violations of rights of LGBT people. To reiterate, the term "sex" should be understood expansively to be akin to "sexual orientation" and several human rights instruments as expatiated above prohibit discrimination on several grounds including, prohibition of discrimination on the ground

of sex. Article 2 of the Charter prohibits discrimination not only on the enumerated grounds, but also on the basis of "any status", although the absence of the reference to "any status" would not mean that discrimination on the basis of sexual orientation would not be caught.

108. In view of elucidating the meaning of the African Charter in the context of violence against persons based on their real or imputed sexual orientation or gender identity, the African Commission on Human and Peoples' Rights (African Commission) adopted Resolution 275 in May 2014. This Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity was adopted to interpret the rights in the Charter.

109. Resolution 275 expresses severe concern about increasing violence and other human rights violations, including murder, rape, and assault, in respect of persons based on their real or perceived sexual orientation or gender identity. It stresses the worrying nature of such violence whether committed by states or non-state actors. The resolution calls upon states to take action for stopping such violence to ensure that human rights defenders working on the human rights of LGBT people are free from reprisals and take appropriate measures to ensure adequate remedies are ensured to victims of such violence.¹¹¹ Mauritius being a member state of the African Union and also a state party to the African Charter is meant to be legally guided by the Resolution 275 and to take necessary actions in accordance with its provisions.

¹¹¹See Resolution 275 What is means for state and non state actors in Africa http://cfnhri.org/uploads/files/resolution_275_eng.pdf.

5. Assessment of the legislative framework on violence against women, children and LGBT people in Mauritius

110. The following section reviews and assesses the legislative and normative framework at the domestic level on violence against women, children and LGBT persons in Mauritius. The Constitution, being the supreme law of the land, is reviewed first followed by relevant acts of Parliament. It is noted that some acts of Parliament are specifically related to one of the three groups under study here. Others are more general and applicable to all three groups. Therefore, to avoid duplication and repetition, the review does not adopt a group-wise approach but a ‘act-wise’ approach.

5.1 The Constitution

111. The Constitution (1968) enshrines a list of civil and political rights in its Bills of rights. These rights belong to the first generation of human rights and being afforded Constitutional protection, this makes them justiciable in case of infringements suffered by any Mauritian citizen. This part of the analysis will be focussed on how women, children and LGBT people can be protected from violence through civil and political rights they enjoy under the Constitution (1968). Further, to substantiate the arguments, reference will be made to case laws where these rights have been lengthily discussed by our Courts.

112. The Fundamental rights and freedoms of the individual provided at Section 3 of the Constitution (1968), provides that all the rights as firmly established in the on coming sections should be enjoyed by all Mauritian citizens without any discrimination “*by reason of race, place of origin, political opinions, colour, creed or sex,..*”. Therefore, at the very start of the Bill of Rights it has been clearly mentioned that our Constitution (1968) prohibits discrimination on basis of sex. Equally important the Constitution also prohibits discrimination on the basis of sexual orientation, not just sex. Like all citizens, women, children, and LGBT people should enjoy these rights without any discrimination. Some of the rights as stipulated in the Constitution (1968) include, the Fundamental rights and freedoms of the individual (Section 3), Protection of right to life (Section 4), Protection of right to personal liberty (Section 5), Protection from slavery and forced labour (Section 6), Protection from inhuman treatment (Section 7), Protection from deprivation of property (Section 8), Protection of privacy of home and other property

(Section 9), Protection of freedom of conscience (Section 11), Protection of freedom of assembly and association (Section 13) among others.

113. The right to life (Section 4) is such that *“No person shall be deprived of his life intentionally”*. When women and children are faced with violence to such extent that they have lost their lives, this undoubtedly amounts to a clear breach of their right to life by their offenders. Even though the case **The Director of Public Prosecutions v V. Jagdawoo & Ors [2016 SCJ 100]**, deals with abuse of authority by public officers and inhuman and degrading treatment, its ratio is of supreme importance in the field of human rights. The Court held that *“The right to life and protection from torture and any form of inhuman or degrading treatment are fundamental constitutional rights guaranteed under section 4 and section 7 of our Constitution respectively. The peremptory nature both of the right to life and of the right to freedom from torture and other cruel, inhuman or degrading treatment is further highlighted by the fact that these rights cannot be derogated from. In international human rights law, there can be no derogation to the protection of these rights even in the gravest of crisis situations as are laid down in Article 4(2) of the International Covenant on Civil and Political Rights, Article 27(2) of the American Convention on Human Rights and Articles 3 and 15(2) of the European Convention on Human Rights”*.

114. From the above, this leads to the understanding that these rights should be promoted and protected by the State with respect to each citizen, the moreso it has signed and ratified the ICCPR (1966) along with other regional covenants. In the same case, the Court went further and expatiated on the fact that there is an undefined duty on Mauritius in view of its positive obligations with regard to civil and political rights and it should afford *“security and protection of the law to all categories of its citizens”*. In here, we can note that the term ‘all categories of its citizens’ include women, children and LGBT people also. Another case to be cited here is **The Director of Public Prosecutions v V. Jagdawoo & Ors [2016 SCJ 100]** where the following has been held, *“Constitutional rights and criminal law provisions would remain purely theoretical and illusory unless there is in place an effective law enforcement machinery endowed with the appropriate legal and investigative mechanism for the prevention, investigation and punishment of any such violation of human rights”*.

115. Moreover, in line with interpreting rights as provided at Section 3 of the Constitution, in the case **Madhewoo v The State of Mauritius and Ors [2015 SCJ 177]**, the Court has highlighted that that Article 3 is not a mere preamble. Additionally it has also been held in **Madhewoo v The State of Mauritius and Ors [2015 SCJ 177]** that “*It is not in dispute that the Constitution is given a generous and purposive interpretation and in particular the provisions that enshrine fundamental rights should receive a generous and not literalist interpretation*”. Equally important, the Court has cited the case **The Société United Docks and Others v The Government of Mauritius [1982 PRV 34]**, where it was held that “*freestanding enacting section which had to be given effect in accordance with its terms*”. From this it can be deduced that even though there is a plethora of civil and political rights in our Bill of rights (Constitution, 1968), whenever any citizen seeks remedy before the Supreme Court for violation of any of these rights, they should be given their true meaning and should not be interpreted as “*creating rights which they do not contain*” (**Matadeen v Pointu [1998 MR 172]**, cited in the case **Madhewoo v The State of Mauritius and Ors [2015 SCJ 177]**).

116. At Section 9 of the Constitution (1968) there is the right to protection of privacy of home and other property. Subsection 1 of the same Section states that “*Except with his own consent, no person shall be subjected to the search of his own person or his property or the entry by others on his premises*”. A case which concerns a woman who was victim of violence at work and there has been a clear breach of her right to protection for privacy of home and other property is **Principal Labour and Industrial Relations Officer (PLIRO) v Marie Eulalie Job [2012 IND 34]**. Concerning the facts of this case, the declarant is a lady and she was working at Holiday and Resorts Ltd (Legends Hotel). As a case of loss of money in the locker room had been reported, the accused carried out an intimate search on the declarant and she was asked to remove all her clothes. The Court in its analysis had referred to the right to protection for privacy of home and other property at Section 9 and the right to protection from inhuman treatment at Section 7 of Constitution (1968).

117. Concerning the way the complainant was searched the Court held that “*In view of the declarant’s consent it was acceptable for the declarant’s belongings and locker to be searched and, probably, that a frisking or pat down search be carried out but it was in no way carte blanche for a private individual to carry out a strip search*”. Subsequently, the Court has also highlighted that Section 9(2) does not empower any

private individual to carry out a search on a person. The way the declarant was treated, the Court has emphasised that *“This amounts to subjecting that person to a degrading treatment prohibited by Section 7 of the Constitution notwithstanding his consent as no person is allowed to renounce to his Civil and Fundamental Rights and Freedoms. (see article 11 of the Civil Code which expressly provides that: “On ne peut renoncer à la jouissance de ses droits civils et de ses libertés fondamentales. »)”*.

118. In line with the right to protection of freedom of assembly and association at Section 13 of the Constitution (1968), *“no person shall be hindered in the enjoyment of his freedom of assembly and association”*. Like all citizens, LGBT people also have the right to enjoy all civil and political rights established in the Constitution (1968). However, this group of the population are very often faced with the problem of hate speech and verbal attacks by reason that they have a different sexual identity. In line with children, they also form part of the whole group of citizens of Mauritius and shall not be deprived enjoyment of the all the rights provided in the Bill of rights. On this note, in the event any women, children or LGBT people are victims of violence and their Constitutional rights have been infringed, they can apply to Supreme Court to seek redress. Likewise, the Supreme Court is the only legal forum where human rights cases can be adjudicated in view of its original jurisdiction in this area of law (Section 17(2), Constitution 1968).

5.2 Acts of Parliament

1. **Child Protection Act 1994**

119. The Child Protection Act (CPA) is the main legislation on the protection and promotion of children’s rights in Mauritius. It has various provisions directly and indirectly dealing with the issue of violence against children. In the year 1990, Mauritius became a signatory member to the United Nation Convention on the Rights of the Child 1989. As a state party it has fulfilled its obligation, in first place with the enactment of The Child Protection Act 1994 (CPA 1994). This legislation has as objective to make better provision for the protection of children. Moreover, subsequent amendments have been made to this legislative text in order to better protect the child given the rising needs of our society. At the global level, prior to the coming into existence of the United Nations Convention on the Rights of the Child 1989, there was the Declaration of the Rights of the Child 1959 which existed as a soft law. The latter attempted to expand and

amplify the special rights of the child which were first enunciated in the Universal Declaration of Human Rights 1948. The Supreme Court in the case **Mootoo v The State [2012 SCJ 142]** made reference to Article 3 of the preamble of the United Nations Declaration of the Rights of the Child 1959 which underlines the basis and the need for the protection of the child in the following terms: *“whereas the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection”*.

120. Likewise, in the case **Mootoo v The State [2012 SCJ 142]**, the Supreme Court has also made reference to Article 34 of the United Nation Convention on the Rights of the Child 1989, where there is a duty incumbent on State Parties to protect the child from all forms of sexual exploitation and sexual abuse.

Definition of the child

121. It is apposite to start with the way the CPA defines the child as this is directly relevant to the question of who can benefit from its protective framework. Section 2 of the CPA defines the child as any unmarried person under the age of 18. This provision is in contrast with the article 2 of the African Charter on the Rights and Welfare of the Child (African Children’s Charter) which provides that a child means every human being below the age of 18 years. Yet, one may argue that it is still aligned with the provision of the UN Convention on the Rights of the Child (UNCRC) which provides that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
122. In the Mauritian legal framework, a person between 16 to 18, if emancipated by marriage based on article 145 of the Mauritian Civil Code (MCC), is no more considered as a child and therefore the provisions of the CPA do not apply to that person. A person between the age of 16 to 18 should still be considered as a child from a legal perspective. This is the period where a person is supposed to be completing his/her secondary education and preparing for tertiary education. A certain degree of inconsistency can be noted with the definition of the child with reference to the Civil Service Family Protection Scheme Act 1969 which defines a child as one under the age of 18 in its section 2.

Definition of violence

123. The CPA does not make use of the term ‘violence’ but rather the term ‘harm’. Section 2 interprets ‘harm’ as including physical, sexual, psychological, emotional, or moral injury, neglect, ill-treatment, impairment of health or development. It is observed that the CPA does not define the term harm but instead provides a list of mode of harm in a way which is not limitative with the use of the word ‘includes’. Arguably, the CPA can be regarded as being opened to other forms or modes of violence which would be regulated by the protective provisions of the CPA. However, it is argued that the exact use of the term violence has judicial relevance and significance. For example, the South African Children’s Act 2005 makes explicit reference to the term violence and even provides that a physical or psychological harm may be caused by exposing a child to violence, violence towards another person or family violence as per section 7(l) of the said act. Thus, the use of the term violence is more indicative of a particular condition rather than the term harm which is inclusive but not specifically indicative of violence as a condition to which a child may be subjected.

Preventive approach of the CPA

124. The CPA has adopted, at the outset, a preventive approach regarding any harm or violence that a child may be subject to. Section 3 provides to the Permanent Secretary the possibility of enquiry. In cases where there is reasonable cause of suspicion that a child is being subject to a harm, any person may be called, with or without the child, to give evidence.

The Child Mentoring Scheme

125. This scheme, provided by section 3A of the CPA, has as objective the provision of assistance to children between the ages of 10 and 16 and who are victims of neglect, suffer from mild behavioural problems, are in distress or have problems of social adaptation. A child mentor is assigned to children under the scheme and the profile of such mentor, especially the need to have proven experience in matters of child rights, child development and child psychology, is provided by section 3C of the CPA. It is recommended that the child mentoring scheme should be amended to included assistance to all children less than 18 years.

126. It is clear that the CPA does not explicitly provide for cases of violence to be an eligibility ground for the Child Mentoring Scheme. One may argue that a child who suffers from acts of violence, broadly defined, can be a victim of neglect, be in distress and may suffer from problems of social adaptation. However, this depends much on the legal interpretation to be given to the section 3A or the discretion of the Permanent Secretary who identifies child requiring mentoring (section 3A 4(b) (iv)) or the District Magistrate to issue a mentoring order (section 3A 4(b) (iv)). It is contended that a child suffering from violence should automatically and explicitly qualified for the scheme. Subjecting such an important aspect to judicial interpretation or discretion of the Permanent Secretary or the District Magistrate does not enhance consistency and uniformity while dealing with cases of children victims of violence.

Emergency protection order

127. Children suffering from violence are often in critical need of protection orders issued in emergency for safety and protection from the perpetrators. It is noted that section 4 of the CPA makes provisions for such orders entitled Emergency Protection Order. A district Magistrate must first be satisfied by information on oath that the Permanent Secretary has reasonable ground to believe that a child is suffering or likely to suffer significant harm before an Emergency Protection Order is issued.

128. In **Gungahreesoon V v Ministry of Women, Family Welfare and Consumer Protection [2008 RDR 122]**, the issue of Emergency Protection Order was lengthily discussed and the application for a discharge order was rejected after the Court has duly considered the interest of the child in question. In this case the Court has emphasised on the problem of violence against children in our society and the following extract is of supreme importance, *“in the light of the foregoing and in view of a rise in the prevalence of child sexual abuse cases in our society, this court is not satisfied that it would be in the best interests of the child to grant a discharge order under section 6 of the Child Protection Act”*. Moreover, an Emergency Protection Order as granted by the Court cannot be challenged by way of an Appeal as per Section 6(1) of the CPA 1994. The only way to obtain a discharge order as per Section 6(2) of the same Act, is through an application made to the Court by any parent not earlier than 72 hours after the issue of the order. The Court will give due consideration to the interest of the child before granting any discharge order.

129. The term violence is not used, and one has to interpret the word harm as inclusive of all cases and types of violence that a child may suffer. In addition, the word ‘significant’, qualifying the harm in section 4, has not been defined. What amounts to or meet the threshold of significance depends on the discretion of the District Magistrate. Such practice is prone to breed inconsistencies and a lack of clear guidelines as to what amount to significant violence or harm.
130. The Emergency Protection Order confers to the Permanent Secretary the legal authority to enter any premises with the use of force if required, remove or return the child to, or to prevent the removal of a child from any place of safety, cause the child to be submitted to medical examination or urgent treatment and to request for police or medical assistance. Section 5 provides that such an order is valid for 14 days and may be subject to extension for 14 more days. Follow-up action is provided in section 7 within a period of 12 months to the Permanent Secretary allowing the latter to summon any person or the child and enter any premises to ascertain the safety and welfare of the child after the order has lapsed.
131. The period for which an emergency protection order remains valid is maximum 28 days if there has been a renewal. It can be argued that children who suffer from cases of harm or violence tend to remain in such situations for periods much longer than the longevity of the Emergency Protection Order. It is therefore more suitable for such an order to remain open up to the time that the Permanent Secretary is completely and reasonably satisfied that the condition of violence to which the child is subject has been effectively remedied. The imposition of a time limit to such an order defeats the purpose and the rationale of conferring protection to the child victim.
132. The same argument is applicable for committal orders given by the court as per section 8 of the CPA. A child who is victim of any harm may be committed to a place of safety in his/her best interest. Such an order is also subject to the limitation of 28 days maximum which may not be adequate. Committal orders seem to be based on the discretion of the Permanent Secretary and the District Magistrate. It is to be noted that the South African Children’s Act 2005 clearly states that the best interest of the child, as a guiding pillar, must be the determining factor in any decision whether a child in need of care and protection should be removed and placed in temporary safety as per section 151(8). The CPA is devoid of any such standard as the best interest of the child clearly

stipulated in the law even if courts do use this standard to decide on such matters. In terms of the duration of similar orders, the South African law provides that they remain valid for much longer period compared to provisions of the CPA of up to 2 years as per section 159 of the South African Children's Act.

Specific forms of violence provided by the CPA against children

133. The CPA explicitly provides for seven types of violence to which children can be subjected. These are ill-treatment (section 13), child trafficking (section 13A), abandonment of child (section 13B), abducting child (section 13C), sexual offences (section 14) indecent photographs of children (section 15) and mendicity (section 17). It is contended that these offences are all directly or indirectly linked to violence against children. The absence of bullying from the list is however highlighted.
134. Section 13(1) provides that any person who ill-treats a child or otherwise exposes a child to harm commits an offence. The use of a child in any advertisement in a way that is detrimental to his or her morality or psychological development or to another child watching the advertisement also commits an offence as per section 13(2) of the CPA.
135. As for child trafficking, section 13A (1) provides that any person who wilfully and unlawfully recruits, transports, transfers, harbor's or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years. The Court while adjudicating on child trafficking (at material times provided at Section 15 of the CPA 1994) in the case **Pierre Charles Jacques Lamarie v The State [2004 SCJ 2]** has pointed out that "*a strong signal must be given that the Courts in this country will deal with severity offenders who will stop nowhere to satisfy their perverted lust and would be prepared to go to the extent of depraving young children of this country*".
136. Section 13A (5) also regulates the role of the press while reporting cases of child trafficking by imposing a prohibition on the use of photograph or picture of the child in press articles. The South African Children's Act 2005 states in its section 281 that the purpose of the chapter on child trafficking is to give effect to the UN Protocol to Prevent Trafficking in Persons and that its provisions is law in the Republic (section 282). In addition, due to the transboundary nature of the offence of child trafficking, the South African law recognises and provides for international co-operation with the possibility of

entering into agreements with other countries to combat this offence, a concept which is missing in the CPA. It is interesting to note that section 285 of the South African Children's Act 2005 explicitly criminalises any behaviour facilitating trafficking in children including the leasing or subleasing or allowing any room, house, building, or establishment to be used for the purpose of harbouring a child who is a victim of child trafficking. Again, such explicit provisions are missing from the CPA.

137. Section 13B provides for the offence of child abandonment by stating that any person who, for pecuniary gain or by gifts, promises, threats or abuse of authority, incites a parent to abandon a child or a child to be born shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years. The same section also punishes the offence of complicity to child abandonment. The offence of child abandonment is not a new to our law, as such in the case **Police v Labour [2016 INT 345]** light was shed on this issue where the Court held the following, "*but it is also clear that this offence of abandonment of child (albeit under the age of 7) was already present in our laws ante 2005...*". On an analytical note, at that time the existing provision was limitative in nature and was applicable in cases where children were under the age of 7 years. Conversely, to protect the child in a more effective way Section 13B of the CPA 1994 punishes offenders of child abandonment- which is applicable to every child- to reiterate the definition of child under the Act is all encompassing whereby include any unmarried person under the age of 18.

138. Section 13C regulates the offences of child abduction. It provides that any person who, by force or fraud, without the consent of the legal custodian (a) takes away or causes to be taken away a child or (b) leads away, decoys, entices or causes to be led away, decoyed or enticed, a child out of the keeping of the custodian or from any place where the child has been placed or is with the consent of the custodian shall commit an offence of abduction, and shall, on conviction, be liable to penal servitude for a term not exceeding 25 years. It is apposite here to compare and contrast the subject of child abduction with provisions of the South African Children's Act 2005. At the outset, the South African Children's Act 2005 recognises the Hague Convention on International Child Abduction and gives effect to its provisions. Section 275 clearly stipulates that the Hague Convention has force of law in South Africa and that its provisions are law in the Republic. There is a clear and blatant absence of such progressive provisions in the CPA which thus fails to contribute to the existing legislative framework on child abduction.

139. The fifth type of violence which is sexual by nature is regulated under section 14 entitled sexual offences and section 15 regulating indecent photographs. It provides that any person who causes, incites or allows any child to (a) be sexually abused by him or by another person (b) have access to a brothel and (c) engage in prostitution shall commit an offence. The sentence applicable if the child is one with mental disabilities is up to 30 years and up to 20 years in any other case.
140. In **Police v L. M. E. Tranquille [2012 INT 179]**, the accused was found guilty for causing child to be sexually abused in breach of sections 14(1)(a)(2)(a) and 18(5)(b) of the Child Protection Act. At material time, the Accused was aged 17 years and the complainant was 14 years old. The Court reiterated that at Section 14 of the CPA 1994, an offence is bound to have been committed even if the sexual intercourse was with the consent of the minor. Given the fact that the complainant was truthful and reliable on material issues, the Court relied on her sole evidence and the accused was found guilty as charged.
141. In **N Daby v The State [2019 SCJ 160]**, the Court cited the case **Gukhool A v The State [2017 SCJ 113]** where the purpose of Section 14(1) of the CPA 1994 which deals with sexual offences was clearly spelt out. The ratio from **Gukhool A v The State [2017 SCJ 113]** is vital and the following was held, *“The enactment of section 14(2) is a striking manifestation of the clear intent of the legislator to improve the legal arsenal for curbing the mischief of child abuse by making better provision and creating new offences for the better protection of children”*. The Court in this case went further and emphasised that *“the legislature stepped in to bring new legislation to achieve a purpose which is in line with the obligations of Mauritius as a signatory of the Convention on the Rights of the Child”*.
142. Equally important, when dealing with cases of sexual offence under Section 14 of the CPA 1994, an element to be considered is the consent of the child victim. Given the intent of the legislator to better protect children with the enactment of the CPA 1994, at its Section 14(2) it is provided that *“...a child shall be deemed to be sexually abused where he has taken part whether as a willing or unwilling participant or observer...”*. To support the above analysis, reference can be made to the case **Police v J. L. S. Merle [2016 INT 334]**, where the following analysis was made, *“The Court wishes to add that it is immaterial whether the complainant consented to the act*

of sexual intercourse or not, since the issue of consent does not arise". Therefore, the issue of consent as a defense to the offender does not hold water because the offence is bound to have been committed irrespective of whether there was consent of the child at time of the sexual intercourse and this was considered by the Court in **Police v L. M. E. Tranquille [2012 INT 179]**.

143. Section 15 outlaws indecent photographs of children in the form of taking, distributing, having in one's possession or publishing or causing to do any of the mentioned acts and imposes a penalty of 30 years of imprisonment for a child with mental disabilities and 20 years for any other case. Mendacity, which is the causing of any person to beg, is punished by a fine of up to 25000 MUR and a term of imprisonment not exceeding 2 years.

2. The Protection From Domestic Violence Act 1997

144. The Protection From Domestic Violence Act draws its existence since the year 1997 and has constantly been amended to better suit the needs of our society, the most recent amendment dates back to the year 2016. The Protection From Domestic Violence Act 1997 (PFDVA 1997) was enacted with the main aim to provide protection to victims of domestic violence. Under the said enactment there is a series of orders through which victims of domestic violence can seek redress by making an application to the Court. These remedies in the form of orders include a Protection Order, a Protection Order against a person living under the same roof, an Occupation order, a Tenancy Order, an Ancillary Order in respect of furniture aftermath an occupation order has been issued or an Ancillary Order for alimony. A person victim of domestic violence will have to make an application before the Court, in case that person wants to seek protection in the form of any of the above-mentioned orders.

145. Briefly, the PFDVA 1997 confers jurisdiction on the "*District Court of the area where the person, for whose benefit an order under this Act is sought or is in force, lives*" (Section 2 of the PFDVA 1997). Likewise, to further ease of the procedural aspects, in the year 2011 the Protection From Domestic Violence (Hearing of Applications for Protection, Occupation and Tenancy Orders) Rules were made by the Chief Justice. Despite the fact that we have enactments and rules in place, it is of paramount importance to see how cases have been dealt at the level of the Court. In this way we will also

analyse the extent to which the mentioned codified remedies have been effective to victims of domestic violence.

146. Equally important though the term “Domestic Violence” has been lengthily defined at Section 2 of the PFDVA 1997, the Supreme Court in **Phagoo v The State [2001 SCJ 55]** has expatiated on both domestic violence and the aim of giving the offender a penalty be it pecuniary or custodial. In this essence the Court held the following, “*Domestic violence, even if it is a slap in the face given in a fit of anger, cannot be condoned. But the sentence must be proportionate to the degree of the offence and must not, by its severity, be likely to put an end to a long relationship and destroy the family unit. The deterrent effect to be achieved here is to bring home to the appellant that he cannot use any violence towards his spouse*”. Additionally, after a Protection Order has been granted, the person against whom the order has been issued should be notified about same. To substantiate, the Supreme Court in **Roseawon v The State [2010 SCJ 385]**, held that “*An interim order being issued ex parte, the prosecution must prove that the interim order was brought to the knowledge of the accused*”.

147. In the event there has been breach of an order granted by the Court under the PFDVA 1997 and in case domestic violence has been committed, the legislator has provided for penalties at Section 13 of the same Act. It is important to underline that at the said Section 13 different penalties have been catered for first, second and third or subsequent convictions. On an analytical note, the provision for harsher penalties for cognate domestic violence offences undoubtedly aims at having a deterring effect. Also, a breach of a Protection Order is an offence under the PFDVA 1997 and should not be assimilated to a contempt of Court as held by the Supreme Court in **Phagoo v The State [2001 SCJ 55]**. The Court has adjudicated on breach of Protection Order in the case **Police v Joosub [2017 PL3 88]**, where the Accused was found guilty as charged and reiterated the penalties at Section 13 of the PFDVA 1997.

148. Likewise, in **Henrico Z.E v The State [2012 SCJ 216]** the Supreme Court sitting in its appellate jurisdiction affirmed that “*Protection orders are issued for the protection of victims of domestic violence. They are not lightly issued by the court and they are equally not meant to be treated with levity by the offending spouse/partner.*”. This leads to the understanding that even though a Protection Order may appear to be a soft remedy however, the Court has reiterated its importance in the above cited case. The moreso,

breach of an order under the PFDVA 1997 amounts to an offence for which the offender may get either a pecuniary or even a custodial sentence.

149. As to concerning the duration of a Protection Order, it can be granted for a maximum period of 24 months. Coming to Occupation Order, in **Chan King Tong J v Chan King Tong P [2017 LPW 152]**, the Applicant had obtained a Protection Order in 2015 and same was breached by Respondent on four occasions. Given the aggressive behaviour of the latter towards the former, in front of their suffering child, the Court granted the Occupation Order which has been prayed for, in the interest of the family. In addition, in **S. Lotun v N. Lotun [2016 LPW 198]**, the spouse observed an extremely violent behaviour towards his wife and attempted to strangle her during a dispute and the Court has granted an occupation order for a lapse of one year.

150. In addition, the Court has granted a Protection Order for a period of two years in the case **Ramsurrun S v Ramsurrun R [2017 LPW 66]**, and has equally made a very important remark with regard to Occupation Order and the following was held *“I concede that an occupation order would confer upon her the exclusive right to reside in the conjugal house...”*. From the above, it can be analysed that an Occupation Order can protect a victim in a better way compared to a Protection Order. However, an Occupation Order may be ordered by the Court for a maximum of 24 months as per Section 4(4) of the PFDVA1997. In contrast, it can be analysed that for a Tenancy Order as per Section 5 of the same Act it is permanent in nature. Moreover, in cases where the Court is satisfied that there is a serious risk of harm being caused to the applicant before hearing the application, the Court may issue an Interim Tenancy Order.

151. It should be noted that the Supreme Court has even spelt out the procedure to be adopted in cases of domestic violence as well as the approach that the court needs to adopt. In the case of *Nunkoo v Nunkoo 2016 SCJ 368*, the court stated that: *“Hearings under the Act are to be conducted in accordance with the simplified and less formal procedure laid down in the Act and the Rules which is aimed at ensuring that the rights of all parties are respected; such applications also have to be dealt with with patience, tact and consideration. I can only draw the attention of the relevant authorities to the prescient words of Seetulsing J. (as he then was) in 1999 to the effect that “there may (...) be an urgent need for Family Courts and more specifically regional Family Courts to deal with among other cases, cases of domestic violence and child protection” (see M*

(h) v M (w) [1999 SCJ 21]), which appear to have been to some extent endorsed recently by the Advisory Committee on the Reinforcement of the Framework for Protection against Domestic Violence which recommends the creation of a specialised Court for timely and efficient handling of cases of domestic violence.”

152. The Ministry of Gender Equality has retained the services of legal resource persons on a sessional basis to assist victims of domestic violence to obtain redress from courts. The Attorney General’s Office assists victims of domestic violence by providing services of counsel, as and when required at court level. With regard to application of Court Orders under the Protection from Domestic Violence Act (No. 6 of 1997) (PDVA) and legal representation at Court, this service is provided free of charge at the level of the Family Support Bureaux of the Ministry of Gender Equality, Child Development and Family Welfare. In addition, women victims of domestic violence are provided with free legal advice at the level of the Family Support Bureaux. They also benefit from free legal representation at Court by the Legal Resource Persons of the Ministry.

153. The Ministry of Gender Equality and Family Welfare has been conducting training with police officers dealing with cases of domestic violence in collaboration with the Police Training School since 2016. In 2016, 421 Police Officers were trained in view to improve response towards victims of domestic violence. In 2017, 300 Police Constables and 144 Police Station Managers and Assistant Managers and in 2018, 204 police constables given similar training (Statistics obtained from Ministry of Gender Equality). There are 92 Domestic Violence Officers posted at Police Stations. Modules covered during the training are legal framework that is International & Regional Conventions and treaties & PDVA, profiling child perpetrators, customer care in policing, psychological debriefing of trauma victims, understanding rights and need of victims, victimology and research work on domestic violence.

In terms of statistics, the six Family Support Bureaux around the country has recorded 2709 cases in 2016 (2434 women), 2269 cases in 2017 (1972 women), 2066 cases in 2018 (1778 women) and 634 cases as at March 2019 (547 women).

Statistics on Court Orders from 2015 to 2018 - Source: Statistics Section of Ministry of Gender Equality, Child Development and Family Welfare

	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<i>Application of Protection Order</i>	<i>556</i>	<i>879</i>	<i>616</i>	<i>531</i>
<i>Interim Protection Order Issued</i>	<i>525</i>	<i>757</i>	<i>576</i>	<i>506</i>
<i>Protection Order issued</i>	<i>332</i>	<i>494</i>	<i>361</i>	<i>270</i>
<i>Application of Occupation Order</i>	<i>8</i>	<i>20</i>	<i>13</i>	<i>24</i>
<i>Occupation Order issued</i>	<i>5</i>	<i>6</i>	<i>6</i>	<i>7</i>
<i>Application of Tenancy Order</i>	<i>2</i>	<i>4</i>	<i>1</i>	<i>1</i>
<i>Tenancy Order issued</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>0</i>

Statistics on Court Orders from July 2018 to May 2019

	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>
<i>Application of Protection Order</i>	34	42	40	34	40	23	43	35	32	39	31
<i>Interim Protection Order Issued</i>	29	29	35	30	26	20	33	30	20	35	20
<i>Protection Order issued</i>	18	24	24	28	10	24	14	22	16	24	24

Source: Statistics Section of Ministry of Gender Equality, Child Development and Family Welfare

3. Combating of Trafficking in Persons Act 2009

154. The Combatting of Trafficking in Persons Act of 2009 (CTPA) does not define ‘persons’ in its interpretation section. It can safely be stated therefore that this act applies to children, women and LGBT people all in the same manner. In addition, section 3 of the CTPA states that the Act shall be in addition to, and not in derogation from, the Child Protection Act.

155. It is underlined that the CTPA defines trafficking as the recruitment, sale, supply, procurement, capture, removal, transportation, transfer, harbouring or receipt of a person (i) by the use of threat, force, intimidation, coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability (ii) by the giving or receiving of

payments or benefits to obtain the consent of a person having control or authority over another person.

156. Exploitation and forced labour have been defined which bear some connotation to violence but again without mentioning the term. According to section 2 of the CTPA, exploitation has been defined as including all forms of slavery or practices similar to slavery, including forced marriage, sexual exploitation, forced labour and illegal removal of body organs. As for forced labour, it means labour or services obtained or maintained through threats, the use of force, intimidation or other forms of coercion, or physical restraint. The definitions of exploitation and forced labour comprise of violent acts from which women, children and LGBT people are protected.

157. Since section 11 of the CTPA criminalises trafficking directly by the action itself or indirectly as accomplice in an act of trafficking (section 11(2)) by imposing a sanction of penal servitude not exceeding 15 years, it can be said that violence resulting from trafficking of children, women and LGBT people are catered for.

158. A general observation relevant to the protection of children, women and LGBT people from violence as a result of trafficking pertaining to the CTPA is that it provides for a restrictive list or category of violence. It is argued that other forms of violence such as psychological violence may result from acts of trafficking. The CTPA does not explicitly provide for such situations and one has to rely on judicial interpretation and discretion of the court in view of extrapolating the scope of the CTPA to encompass a greater number and forms of violence. It is argued that this may not be the most complete and effective form of protection conferred.

159. In **Police v Dauhoo [2019 PL2 92]**, the applicant is provisionally charged for the offence of Trafficking in person- in breach of section 11(1)(a), (2)(a) & 14 of Combating of trafficking in persons Act 2009. Before the District Court of Port Louis, he was granted bail on a series of conditions pending his trial.

160. On the basis of factual information with regard to the above-mentioned case, the applicant (Mr Dauhoo) manages a guest house in Port Louis and he was arrested for trafficking in person. The victim is a lady aged 30 years old of Malagasy origin (Defimedia, 2019). Since this is a recent case, the accused has not yet been tried before a Court of Law and up to now there is only the above cited bail ruling.

4. Computer Misuse and Cybercrime Act 2003

161. A number of violent acts are being perpetrated today by the use of information and communication technology. Indeed, children, women and LGBT people are genuinely exposed to the dangers that the computer as a tool may pose. The Computer Misuse and Cybercrime Act (CMCA) of 2003 is meant to confer the required protection to children, women and LGBT people with the appropriate protection from violence perpetrated via information technologies devices.
162. Section 4 of the CMCA provides that any person who causes a computer system to perform any function for the purpose of securing access to any program or data held in any computer system with the intent to commit an offence under any other enactment, shall commit an offence. It implies that if a person has the intention of using a computer and cause any sort of mental violence on children, women or LGBT people through social media by way of pictures or messages for instance can be punished under section 4.
163. The main issue with this legislation is that it does not define adequately the various ways in which information technology and computer systems can be used to perpetrate violence towards the three groups of the study. The fast-changing nature of computer crimes causing violence to the three groups requires a dynamic piece of legislation with view of keeping pace with the inventive minds of computer criminals.
164. In **Police v F J Mohamad [2011 INT 120]**, the accused was prosecuted for having withdrawn Rs.500 from Mrs Diolle's account. In fact, the complainant remitted her ATM card and her pin code to the accused for the purpose of withdrawing Rs 6,000 for her, given that she had a heavy workload on that particular day. The accused had withdrawn Rs 6500- out of which Rs500 was for him and he has admitted same in Court. The accused was found guilty as charged for this offence. In line with unauthorised access to computer data the Court underlined the following:
- “...the insertion of an ATM card in the facility and the keying-in of a PIN code in respect of debit of an account is a ‘function’ that creates a pathway ‘access’ to data that would have been otherwise been protected and/or ‘makes use of any of the resources of the computer system’ and it is the function leading to access that causes money to be debited from a person’s account. Indeed, it is the unlawful act of causing a computer*

system to perform the function coupled with the knowledge that such access is unauthorized that is punishable and not necessarily the withdrawal of money per se.”

165. Likewise, the case of **Police v M. K. Blaise [2013 INT 14]**, can be analysed where the accused has inserted a stolen MCB Maestro card in an ATM to withdraw and transfer money. The accused was employed by one Mrs A. Beekharry (complainant) and was remunerated in terms of wages. Whilst in the employment of the complainant, the accused had stolen her MCB Maestro card and had withdrawn a sum of Rs21, 700. The accused was found guilty for *‘having caused a computer system to perform functions knowing that the access she intended to secure was unauthorised’*- in breach of section 3(1) of the Computer Misuse and Cybercrime Act 2003.

5. Data Protection Act 2017

166. Many a times, moral violence is caused to women, children and LGBT people by the usage of their personal data. Blackmailing, stigmatisation, shaming and similar acts can be considered as violent acts towards the three groups possible through the handling of personal data. The Data Protection Act 2017 (DPA 2017) provides for the legislative framework on data protection which linked to protection of the three groups against virtual or online violence. Section 23 provides that a data controller cannot collect personal data unless it is for a lawful purpose and it is necessary for that purpose. This implies that the reason for collection of personal data may be lawful and yet not acceptable if it does not meet the necessity threshold. In addition, there is a legal duty on the data controller to inform the person whose personal data are being collected about the purpose, intended recipients, name and address of the data controller, whether the supply of the data by the data subject is voluntary or mandatory and the consequences for that data subject if all or any part of the requested data is not provided.

167. In addition, section 21 regulates the principles relating to processing of personal data. Moreover, every controller shall adopt policies and implement appropriate technical and organisational measures so as to ensure and be able to demonstrate that the processing of personal data (Section 22). The collection of such personal data should also be compatible for the purpose, adequate, relevant and not excessive and not kept for longer than is necessary according to the same section. Section 27 also imposes a duty on data controller to destroy personal data as soon as reasonably practicable. Any offence

committed in relation to the above duties by a person is met with a punishment of fine not exceeding 200000 and to imprisonment for a term not exceeding 5 years.

168. The DPA 2017 is a decent piece of legislation, it does not explicitly recognise the types and degree of violence that can be perpetrated on children, women and LGBT people by the (mis)handling of personal data. It only generally protects data without acknowledging the fact that women and LGBT people may arguably require a greater degree of protection by the law against violence through data. The South African Protection of Personal Information Act 2013 has dedicated a specific part on the processing of personal information of children (Part C). Its section 34 provides that a responsible party may, subject to section 35, not process personal information of a child. The following section 35 then provides for a detailed framework concerning instances where such processing is allowed but under strict regulation by the law. In similar way Section 30 of the DPA 2017 protects the personal data of the child, such that no person shall process the personal data of a child below the age of 16 years unless consent is given by the child's parent or guardian. Likewise, in Mauritius the DPA 2017, "special categories of personal data", in relation to a data subject also includes personal data pertaining to his sexual orientation, practices or preferences (Section 2, DPA 2017).

6. Early Childhood Care and Education Authority Act 2008

169. The Early Childhood Care and Education Authority Act 2008 provides for the establishment of an authority (section 3) with the objectives of harmonising and promoting integrated early childhood care and education policies, strategies and programmes in line with recommendations of international and national institutions, ensuring that all programmes and policies for education, care and development of the young child in the Republic of Mauritius are in conformity with the Conventions on the Rights of the Child and helping in ensuring a smooth transition of the young child from pre-school to lower primary school (section 4). One of the functions and powers of the Authority under section 5 is to take such action as may be appropriate, in collaboration with relevant line Ministries and authorities, to prevent any form of violence, including sexual abuse, negligent treatment, maltreatment or exploitation, on young children.

7. Workers' Rights Act 2019

170. The Workers' Rights Act 2019 (WRA 2019) protects both women and LGBT people from discrimination. Discrimination can be a cause for moral or psychological violence. Section 5 of the WRA 2019 provides for protection from discrimination in employment and occupation by defining discrimination as affording different treatment to different workers on the basis of sex and sexual orientation. **The grounds on which discrimination is prohibited includes age, race, colour, caste, creed, sex, sexual orientation, HIV status, impairment, marital or family status, pregnancy, religion, political opinion, place of origin, national extraction and social origin.**
171. Children are often victims of various types of violence at the workplace and they require special protection. Accordingly, section 8 of the WRA 2019 imposes a restriction on the employment of children by stating that no person shall employ a child for employment or work in any occupation. However, the child can remain at the place of work of his parent or assists his parent in a family business in a light job which is not harmful to his health or his development or prejudicial to his participation in a vocational orientation or training programme. It should be noted that a child has been defined as a person under 16 under the WRA 2019.
172. In addition, section 9 provides that no person should employ a young person in work which, by its nature, or the circumstances in which it is carried out, is likely to jeopardise his health, safety, or physical, mental, moral or social development. A young person has been defined as a person, other than a child, who is under the age of 18.
173. Moral or psychological violence caused to women or LGBT workers due to non-payment of remuneration is also catered for by the WRA 2019. Section 35 provides that where, after making an enquiry, the supervising officer is satisfied that an employer has failed to pay any remuneration due to a worker or a group of workers, the supervising officer may, where he thinks fit, apply to the Judge in Chambers for a protective order, on behalf of the worker or group of workers in the amount of the remuneration due against an employer and any bank or other financial institution holding funds on behalf of the employer.
174. The WRA 2019 also caters for psychological and moral disturbance that can be extremely harsh after a miscarriage or a stillbirth. Section 52(4) provides that where a female worker suffers a miscarriage which is duly certified by a medical practitioner, she shall be entitled to 3 weeks' leave on full pay immediately after the miscarriage. In

addition, according to section 52(5) of the WRA 2019, where a female worker gives birth to a stillborn child, she shall, on production of a medical certificate, be entitled to 14 weeks' leave on full pay.

175. Both LGBT people and women derive protection from the WRA 2019 against violence at work. Section 114 provides that no person shall harass, sexually or otherwise, assault, verbally abuse, swear at or insult or humiliate in any manner whatsoever, express the intention to cause harm to; bully or use threatening behaviour towards, use aggressive gesture indicating intimidation, contempt or disdain towards or by words or act, hinder a worker in the course of or as a result of his work. Furthermore, an employer shall be vicariously liable for violence at work, including sexual harassment, committed by a worker and any third party where the employer knew or should have known of the violence at work and failed to take any action to prevent or stop the violence.

176. The Workers' Rights Act 2019 has been recently enacted, repealing the former Employment Rights Act 2008. Therefore, judicial pronouncements regarding discrimination on the workplace under the Employment Rights Act 2008 can be scrutinised. In the case **De Speville Diane v College Labourdonnais also known as Compagnie Ltee La Bourdonnais [16 IND 1]**, the Defendant had caused several changes to be made to the working terms and conditions of the Plaintiff. In short, the Plaintiff was occupying the post of English teacher, her salary was decreased and at some point, in time her post was changed to librarian. She was then offered an LLB contract which is completely different from a PRB contract. The Plaintiff contends that she has not been treated like other employees, thus amounting to discrimination. However, given the fact that the Plaintiff prayed for her being allocated a PRB contract and all arrears of salaries amounting to Rs 225,000 be paid to her, the Court held that it is outside the jurisdiction of the Industrial Court to grant the orders prayed. The Industrial Court Act underlined that it not empowered by the Industrial Court to grant such orders.

177. In the dispute **Mrs Sooleka Dalwhoor And Belle Mare Beach Development Co. Ltd (The Residence Mauritius) [ERT/RN 77/18]**, Mrs Dalwhoor is the complainant and was employed by The Residence Mauritius. The employer prevented the complainant to wear "tikka" on her forefront during working hours. The complainant being faced with this situation of discrimination had caused a complaint to be filed before the

Employment Relations Tribunal on the basis of Section 4(5) of the Employment Rights Act 2008. At the said section discrimination includes “*affording different treatment to different workers attributable wholly or mainly to their respective descriptions by age, race, colour, caste, creed, sex, sexual orientation, HIV status, religion...*”. After perusal of the dispute, the following was held by the ERT, “*the manner in which the Respondent implemented its decision to ban the ‘tikka’ to all employees, the moreso a decision emanating from a misconceived interpretation of the law, we hold that on the principles of fairness and best practices of good employment relations (Section 97 Employment Relations Act 2008), the Respondent’s action was irrational, unmeasured and undesirable*”.

8. Equal Opportunities Act 2008

178. Violence can be an outcome of discrimination and discriminatory practices. The Equal Opportunities Act 2008 (EOA 2008) is the principle legislative framework on the protection against discrimination. It covers both the public and the private sector for discrimination in areas such as employment activities, education, provision of goods and services, accommodation, disposal of immovable property, companies, partnerships, societies or registered associations, clubs, access to premises and sports. It also includes within its ambit sexual harassment. As such, a person may lodge a complaint with the Commission if he/she feels humiliated, offended or intimidated by an unwelcome sexual advance, an unwelcome request for a sexual favour or any other unwelcome conduct of a sexual nature.

179. The EOA 2008 has also added on to the existing list of status on the basis of which discrimination is prohibited in the Constitution. As such, new grounds such as impairment and sexual orientation have been added. This is an important development as violence very often originates from discrimination on these grounds especially against women and LGBT people. It should be noted that the Commission has recommended that the Ministry of Health and Quality of Life amend their Blood Donors Questionnaire by removing a question that was discriminatory towards LGBT people in November 2014.¹¹² The EOA 2008 has also expanded the scope of protection from discrimination by explicitly providing for categories of discrimination such as direct discrimination, indirect discrimination and discrimination by victimisation.

¹¹² The question was ‘Are you/were you engaged in homosexual activity?’.

180. In terms of available avenues for children, women and LGBT victims of violence arising out of discrimination, there exist the Equal Opportunities Commission and the Equal Opportunities Tribunal. The said Commission is a quasi-judicial body handling complaint submitted by aggrieved persons. Where necessary and required, the Commission may refer cases to the Tribunal which has the following jurisdiction: (a) Hear and determine complaints referred to it by the Commission (b) Issue interim orders if the matter is urgent (c) Make an order for the respondent to pay compensation to the complainant, in an amount not exceeding Rs. 500,000 (d) make a recommendation that the respondent takes action to reduce the adverse effect of the act of discrimination on the complainant and (e) Issue directives to ensure compliance with the Act.
181. In the case **Mrs Vijaya Sumputh v Equal Opportunities Tribunal (EOT) [2017 SCJ 292]**, the Equal Opportunities Commission (EOC) investigated into the appointment of the Mrs Vijaya Sumputh (Applicant) as Executive Director of The Trust Fund for Specialised Medical Care. The EOC had referred the matter to the EOT praying, cancellation of her appointment as Executive Director of The Trust Fund for Specialised Medical Care, declaring the post of Executive Director vacant and that a proper “appel à la candidature” be carried out for this post. Mrs Sumputh has then made an application before the Supreme Court to set aside an order of the EOT. Since the said order was not a final determination of the EOT, the Court has set aside her application. The Court reiterated that in the event the applicant is not satisfied with the determination of the EOT, she has a right to appeal to that decision before the Supreme Court by virtue of Section 41 of the Equal Opportunities Act 2008.
182. One major criticism against the EOA 2008 is that it does not explicitly and significantly provide for the issue of violence. There is no substantive link established between violence and discrimination. This is in sharp contrast with the South African Promotion of Equality and Prevention of Unfair Discrimination Act. For instance, in this Act, section 7 provides that no person may unfairly discriminate against any person on the ground of race, including the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence. In addition, section 8 also provides that no person may unfairly discriminate against any person on the ground of gender, including gender-based violence.

9. HIV and AIDS Act 2006

183. HIV and AIDS statuses can be the cause of violence, both psychological and physical. Women, children and LGBT alike can be subject to acts of violence simply because they are HIV positive.¹¹³ The HIV and AIDS Act 2006 (HAA 2006) provides that any person who is HIV positive or has AIDS shall not be considered as having a disability or incapacity by virtue of any enactment and his status or presumed status shall not be used as a ground to discriminate against that person (section 3(1)). In addition, section 3(2) provides that subsection 1 (cited above) shall not affect the operation of a pension law if that law provides for a benefit accruing to a person according to the degree of disability which entitles him to such benefit.
184. HIV testing facilities, while getting registered with the Permanent Secretary, have the legal obligation to show evidence to ensure confidentiality and providing counselling according to section 4 of the HAA 2006. Section 6 caters for potential cases of violence against children, women and LGBT people with HIV status by providing that no person shall induce or cause another person to undergo an HIV test as a condition for employment, continued employment benefits and promotion or continued employment of the other person and as a condition for procurement or offer of goods and services from the other person. Section 13 also imposes a high threshold confidentiality of information regarding recording, collection, storing and security of information, records or forms used in respect of HIV tests and related medical assessments. Section 18 provides strict offences and penalties of fines up to 100000 and terms of imprisonment not exceeding 5 years.
185. It is apposite to briefly elaborate on the affordability, accessibility and availability of testing services and facilities for HIV. In principle, the fact that health services in the public sector is free, affordability is not per se an issue. Indeed, HIV testing are available in public health institutions. According to section 5 of the HAA 2006, the Permanent Secretary shall make available facilities, in such public hospitals and other

¹¹³ See World Health Organisation 'Violence against women and HIV/AIDS' p 23 <https://www.who.int/gender/violence/VAWhiv.pdf> (accessed 30 March 2020).

public health institutions as he may designate, for HIV testing in respect of persons who request an HIV test for themselves. This also enhances accessibility to HIV testing for people in need. However, Affected Key Populations such as LBGT people may still face problem with HIV testing. For instance, stigmatisation still exists despite efforts from the state to reduce it through the National Policy on HIV 2012 (section 5.1).

10. Juvenile Offenders Act 1935

186. Young persons and juveniles who have committed criminal offences can sometimes be subject to both physical and psychological violence during detention periods or trials. It is of paramount importance to protect them from events or incidents that may affect them and hamper their development. The Juvenile Offenders Act 1935 (JOA 1935) provides for Juvenile Courts in section 3 by stating that District Courts sitting for the purpose of hearing any charge against a juvenile or of exercising any other jurisdiction conferred on Juvenile Courts by or under this Act or another enactment shall be known as Juvenile Courts. The aim of establishing these courts is to ensure that young and juvenile offenders are not subject to a criminal process which may prove to be detrimental to their rehabilitation.
187. There is also restriction to attendance of sittings of the Juvenile Court. Section 6 of the JOA 1935 provides that no person shall be present at any sitting of a Juvenile Court except (a) members and officers of the Court (b) parties to the case before the Court, their attorneys, barristers, witnesses and other person directly concerned with the case (c) bona fide representatives of the newspapers or new agencies (d) such other persons as the Court may specially authorise to be present. The JOA 1935 also provides for the separation of juveniles from adults. Section 8 provides that the Commissioner of Police shall make arrangements for preventing a juvenile while detained in a police station, or while being conveyed to and from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (other than a relative), who is charged with any offence other than an offence which the juvenile is jointly charged, or of which he has been jointly convicted, and for ensuring that a girl, being a juvenile, while so detained, being conveyed or waiting, is under the care of a woman.
188. The law relating to bail and detention under the JOA 1935 also takes into account the interest of juveniles. The principle is that bail should be granted to a juvenile after

recognisance being entered into by him, or his parent or guardian. It is only in exceptional cases where bail should be denied. The same rule applies for detention in the sense that juveniles should be detained in special and protected facilities to separate them from adults offenders and potential cases of violence against them (section 9). According to Section 18 of the JOA 1935, where the parent or guardian, of a juvenile represents on oath before a juvenile Court that he is unable to control the latter and wants him to be sent to an industrial school, the Court may after hearing the juvenile, order that he be removed to and detained in an industrial schools until he attains the age of 18 or for a shorter period. For this procedure, the parent or the guardian of the juvenile needs to give an undertaking or a security to the satisfaction of the Court to pay the expenses of the maintenance of the juvenile at that school (Section 18 (1) of the JOA 1935).

11. Civil Status Act 1981

189. The Civil Status Act (CSA 1981) 1981 is the main law regulating marriages in Mauritius. There are several forms of violence that are linked to the institution of marriage, thus making a review of its related laws essential when dealing with violence against children, women and LGBT people. For instance, the practice of child marriage may cause various forms of violence on the child ranging from physical to psychological ones. As for women, having husbands who are civilly married to them but who have also celebrated religious marriages with other women may also be a form of violence, especially psychological and economic in nature. In relation to LGBT people, prohibition of same sex marriages (as is the case under the CSA 1981) can also be a cause of violence against them. Thus, the review of the CSA 1981 is an essential exercise.

190. Under the aegis of the Prime Minister's Office, the Civil Status Division has the legal duty of registering marriage together with birth, still birth, death and the registration, conversion and issuance of the National Identity Card. The laws regulating these matters are the CSA 1981, Mauritian Civil Code (MCC) 1808, National Identity Card Act 1986 and Data protection Act 2017. No marriage shall take place without the consent of both parties in accordance with article 149 of the MCC. Section 24(2) of the CSA 1981 provides that the officer celebrating a civil marriage should obtain consent of each party

to the marriage. It thus implies that any marriage conducted forcefully or without consent is not legal and acceptable under the law.

Child marriage

191. An exception to this rule is made under article 145 of the MCC for a minor over the age of 16 but under 18 to contract a civil marriage with the consent of the father and mother or the one exercising parental control. It is noted that as per article 148 of the MCC, the community legal regime applies to any marriage contracted by a minor having received a dispensation of age an exemption from age, unless the Judge in chambers decides otherwise after hearing the future spouses. From a different perspective, it can be stated that child marriage is still allowed under Mauritian law. The proposed Children's Bill has maintained the status quo with the only change about the fact that the child cannot be forced into the marriage. It should be noted that the Republic of Mauritius has placed a reservation on Article 6 (b) of the Maputo Protocol (2003) regarding child marriage.

Polygamous marriages

192. Monogamy is the only form of marriage acceptable under Mauritian law. According to article 150 of the MCC, a second civil marriage cannot take place before the dissolution of the first one. In addition, a woman is not allowed to contract a new civil marriage until 300 days have passed following the dissolution of the previous one in accordance with article 228 of the MCC. This requirement can be relaxed if the woman produces a medical certificate attesting that she is not in a state of pregnancy. or that she was not in a state of pregnancy at the dissolution of the marriage.
193. However, the practice of one civil marriage and other religious marriages is common in Mauritius especially within the Muslim community. The Muslim Family Council, established under section 29 and 30 of the Civil Status Act, is entrusted with the responsibility of registering Muslim religious marriages and making rules governing marriages celebrated in accordance with Muslim rites and the dissolution of such marriages.
194. Interviews with Muslim women has revealed that there are cases where the husband will not even inform the civilly wedded wife that he is taking another wife under religious

rites as doing so is allowed under Muslim rites of religious marriages.¹¹⁴ This is a worrying source of economic violence according to the women interviewed as there is a degree of financial negligence shown by husbands once they take another wife under religious marriages. Women who are in de facto unions which include Muslim marriages and polygamous marriages have certain economic and other rights regulated by Chapter 9 of the MCC, more precisely article 228-2 to 228-10. The idea is to ensure at least a basic widow pension after the death of the husband or partner. However, all other forms of civilly unregistered marriages are not protected by the law. For instance, the right to inheritance is severely affected in polygamous unregistered marriages.

Civil statuses for LGBT people

195. The CSA 1981 is silent over the definition of spouse and it also does not explicitly prohibit same-sex marriages or civil unions. However, a reading of the Protection from Domestic Violence Act shows that such marriages or unions are not allowed in Mauritius since the spouse has been defined as ‘a person who has been civilly or religiously married to a person of the opposite sex’. This has serious implications on matters related to adoption and family planning for LGBT people. It is still unclear whether same-sex couples can adopt children in Mauritius.
196. Both single and married parents can be adoptive parents. LGBT individuals are not explicitly prohibited from being adoptive parents.¹¹⁵ It should also be noted that gay surrogacy both for men and women is practised in Mauritius without any legal prohibition.¹¹⁶ It is therefore clear that while the law does not explicitly prohibit LGBT individuals from adopting a child or planning a family, there is also no clear legal recognition of these aspects as their basic human rights. This legal situation is in stark contrast with the situation in South Africa. In December 2005, the Constitutional Court of South Africa ordered Parliament to rectify laws that deny same-sex couples the ability

¹¹⁴ Interviewees have requested for anonymity.

¹¹⁵ Intercountry Adoption USA [online], available from: https://web.archive.org/web/20180402230053/http://www.passportsusa.com/family/adoption/country/country_352.html [Accessed 25th November 2019].

¹¹⁶ See Surrogate Mothers https://www.findsurrogatemother.com/fertility-clinics/eggseptional-port-louis-mauritius_16326 [Accessed 25 November 2019].

to marry.¹¹⁷ In November 2006, the Civil Union Act was enacted by the South African Parliament providing for same-sex marriages.

197. The South African judiciary also considers sexual orientation of a parent as an irrelevant issue when deciding on matters of child custody.¹¹⁸ The situation was formalised with once again the intervention of the Constitution Court of South Africa giving same-sex partners the same adoption rights as married spouses.¹¹⁹

198. Trans people are also another Gender and Sexual Minorities group to whom basic civil status related rights are being denied. The CSA 1981 mandatorily requires any birth to be registered within 45 days of the birth as per section 12. While there is not explicit non-recognition of transgender people, section 13 of the CSA 1981 dealing with contents of entry when a birth is being registered, can be interpreted as implying that the sex of the baby has to be registered as male or female. There is no provision for changes of status after a transgender person has undergone a sex-change operation which may amount to a violation of the right to privacy and the right to family life as established by the European Court on Human Rights¹²⁰. This implicitly is prohibited since the only time a baby would be assigned the status of boy or girl would be at the time of birth registration. While persecution or physical violence may not be blatant against transgender people, there is still social stigmatisation and discrimination against them. It is difficult for someone to affirm his/her identity as a transgender person especially when there is no specific law to protect his/her rights. It should be noted that while public hospitals provide for hormone treatment, free of cost, for trans people, medical sex change though is not possible in Mauritius.

12. Mauritius Child Care Society Act

199. Violence suffered by children can be caused by a lack of parenting skills and skills deficiency such as communication skills and upbringing skills.¹²¹ The primary objective of the Mauritius Child Care Society Act 1958 is to establish a Mauritius Child Care

¹¹⁷ Minister of Home Affairs and Another v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others, [2005] ZACC 19.

¹¹⁸ Isaack, Wendy (2003). "Equal in Word of Law: The Rights of Lesbian and Gay People in South Africa". Human Rights. **30** (3): 19–22.

¹¹⁹ Du Toit and Another v Minister of Welfare and Population Development and Others [2002] ZACC 20, 2002 (10) BCLR 1006 (CC), 2003 (2) SA 198 (CC) (10 September 2002), Constitutional Court (South Africa).

¹²⁰ B. c. France – 25 mars 1992, n° 13343/87 ; Christine Goodwin c. Royaume Uni – 11 juillet 2002; I. c. Royaume-Uni – 25680/94; Grant c. Royaume Uni – 23 mi 2006; Y. Y. c. Turquie – 14793/08.

¹²¹ Le Poire Berth Family communication - Nurturing and control in a changing world (2006) 212.

Society which has as aim the promotion of motherhood skills and child care in Mauritius through lectures, home visits, baby shows and exhibitions and to do such things as are incidental or conducive to the attainment of these objects. One aspect to be highlighted about this Act is that the focus seems to be only on mothers and not on fathers who may also be responsible for the upbringing of the child. As for its functions, the activities of the Society seem to have been transferred to the other divisions of the Ministry of Gender Equality, Child Development and Family Welfare such as Child Development Unit (CDU) and the Early Child Care and Development Authority.

13. Mauritius Family Planning and Welfare Association Act 2018

200. The Mauritius Family Planning and Welfare Association Act (MFPWA) 2018 establishes the Mauritius Family Planning and Welfare Association (Section 3 of the MFPWA 2018). The primary objective of this Association is to promote awareness on planned parenthood, promote family welfare, healthy ageing, good health and social integration through effective family planning services by addressing the need for sexual and reproductive health and rights in the community through information, education and advocacy and work for the advancement of the rights of women, men and young persons with a view to enabling them to make free and informed choices regarding their sexual and reproductive health and rights (section 4 of the Act).
201. The MFPWA also has an elaborate list of functions. It is responsible for providing sexual and reproductive health and rights information and services, including sex education and marriage counselling, specially to the youth and to vulnerable groups, setting up a network of youth friendly services with particular emphasis on addressing issues related to unwanted teenage pregnancy, collecting and disseminate information and statistics relating to family welfare and sexual and reproductive health and rights, and much more (Section 5 of the Act).
202. The MFPWA 2018 does not explicitly deal with the issue of violence against women and children. The welfare of a family is closely linked with violence within the family unit. Though there is the Protection against Domestic Violence Act that specifically cater for the issue of violence, the MFPWA could be an important legislation imposing the need to eradicate violence against women and children in order to meet its objective of enhancing family welfare. As the Act is currently, there is no such nexus between family welfare and violence. This new legislation (MFPWA 2018) has repealed the

previous MFPWA (2012) and it has re-enacted the law that makes provision for sexual and reproductive health and rights in accordance with international standards.

14. Mauritius Mental Health Association Act 1974

202. Persons with mental disabilities can be more prone to violence, both psychological and physical violence. There is therefore a critical need to ensure that such persons are giving the required support to prevent them from being victims of violence. The Mauritius Mental Health Association Act (MMHAA) 1974 has as objective the establishment of an Association whose objective in turn is to, *inter alia*, promote and manage a school for educationally subnormal children. The Mauritius Mental Health Association has thus been established as a specialised school for adults and children with intellectual disabilities. The main objectives of the school are to promote education for children with intellectual disabilities, to assess and develop the children's intellectual capacity in academic and technical work, to develop children's potential for further integration in the Mauritian society and to give support to families with intellectual disabilities.¹²²

15. Mental Health Act 1998

203. People suffering from mental disorders are often subject to violence in the society which can take different forms.¹²³ The Mental Health Act (MHA) 1998 is a legislation that caters for the planning and management of mental health care in Mauritius (section 4). In the interpretation section of the Act (section 2), care has been defined as diagnostic and therapeutic interventions for the benefit of health, including institution-based treatment, community-based treatment and measures designed for social integration and rehabilitation. A Mental Health Board is also established under section 3 and its overarching objectives are to promote standards of good practice and efficiency of mental health services in view of protecting mental patients' health rights and investigating complaints and grievances of patients, patients' next of kin, visitors and staff.

204. The MHA 1998 is a comprehensive act providing for examination of patients, treatment, discharge and leave of patients and protection of patients and their property.

¹²² Mauritius Mental Health Association <http://www.actogether.mu/fr/trouver-une-ong/mauritus-mental-health-association> [Accessed 25th November 2019].

¹²³ Mohit V et al 'Violence and mental illness: what is the true story?' J Epidemiol Community Health 2016;70:223-225.

However, the Act does not allude to the connection between mental health patients and violence. In fact, the terms violence, moral, psychological or physical, is not mentioned at all. Section 39 does provide for penalties in the form of a fine not exceeding 5000 MUR and a term of imprisonment not more than 2 years for medical officer, psychiatrist and other officers who would be found guilty of neglect, abuse or cruelty on mental patients. However, there is a lack of elaboration pertaining to the forms and types of violent acts and actions that women, children and LGBT people may suffer as mental health patients. The South African Mental Health Care Act of 2002 dedicates a full chapter on the rights and duties relating to mental health care users with specific provisions on respect, human rights and dignity, unfair discrimination, exploitation and abuse and knowledge of the rights of mental health patients. This aspect is essential for a better protection of patients from violence which is lacking in the Mauritian law.

16. National Adoption Council Act 1987

205. The National Adoption Council Act (NACA) 1987 establishes the National Adoption Council with the aim of inquiring into demands of adoptions, advising the authority on such questions and coordinating with overseas official agencies engaged in the adoption and welfare of children. It is has been documented that adopted children can be victims of violence.¹²⁴ Treating the subject of adoption and violence should therefore be a foundational principle of any law on adoption or on institutions responsible for adoption. The NACA 1987 makes no reference to violence in cases of adoption except for stating that its responsibilities in grounded to the principle of adoption and welfare of children. There is no explanation or definition of what welfare means and the extent to which violence is an essential aspect when deciding on the welfare of children. This can be considered as a serious lacuna of the law.

17. National Children's Council Act 2003

206. The purpose of the National Children's Council Act (NCCA) 2003 is to establish a National Children's Council. The Council's key duties are to be the key consultative and coordinating national body on all activities and issues related to children, protect the rights of children, promote their interest and well-being and ensure their participation in

¹²⁴ <https://tavistockandportman.nhs.uk/about-us/news/stories/adopted-children-require-significant-therapeutic-input-recover-past-trauma-providing-families-support-throughout-adoption-process-vital/> [Accessed 25th November 2019].

matters of interest to them and to promote activities for the welfare of children in line with the Convention on the Rights of the Child. The Council is managed by a National Children Board which has an extensive list of functions (section 9) premised on advising on policy development and legislation concerning child welfare and ensuring that children's rights are taken into account at all times.

207. While the term violence has not been explicitly mentioned, it can be safely inferred that the welfare of the child would also include his/her protection against violence. While it may not be practical to elaborate on all issues faced by children in the Act, the interpretation section could provide for a list of issues that the Council can treat among which violence could be explicitly mentioned. It provides for a clearer and more explicit recognition of violence as an issue hampering the welfare of the Mauritian Child.

18. National Council for the Rehabilitation of Disabled Persons Act 1986

208. Both children and adults with disabilities are at much higher risk of violence than their non-disabled peers, according to two systematic reviews recently published in the *Lancet*.¹²⁵ The National Council for Rehabilitation of Disabled Persons Act 1986 establishes the Council under its section 4 to promote the welfare of disabled persons. The Act falls short of referring explicitly to violence against disabled children and women as an issue in Mauritius.

19. Protection of Elderly Persons Act 2006

209. Elderly persons including women are often victims of violence.¹²⁶ The Protection of Elderly Persons Act 2006 serves the purpose of conferring protection to elderly persons which also includes women. The protection conferred tends to be a general one as the Act does not make specific provision to protection of elderly persons against violence. Section 3 establishes a protection of the Elderly Network which has an objective to ensure, promote and sustain physical, psychological, emotional and social and economic protection of elderly persons. This list does not include sexual protection in the light of significant number of sexual abuses that elderly women face.¹²⁷

¹²⁵ World Health Organisation <https://www.who.int/disabilities/violence/en/> [Accessed 25th November 2019].

¹²⁶ <https://www.helpage.org/what-we-do/rights/violence-against-older-women/> [Accessed 25th November 2019].

¹²⁷ Addressing the issue of elderly abuse in an ageing population: the case of Mauritius Ministry of Social Security <http://socialsecurity.govmu.org/English/Documents/Security%20and%20Protection.pdf> [Accessed 25th November 2019].

210. Section 8 of the Act also sets up the Elderly Watch consisting of volunteers and voluntary organisations working for the care of elderly persons on a regional basis. The functions of the Elderly Watch are essentially to promote the welfare of elderly persons in the region for which it is responsible and to report cases of repeated abuse of an elderly person to an officer of the Unit. This implies that cases of violence against elderly women can be treated through the Elderly Watch mechanism.
211. In a more legally binding manner, the Act also provides for the Elderly Person's Protection Order. Section 9 provides that where a Court is satisfied by information on oath that the officer-in-charge of the Unit has reasonable cause to believe that an elderly person has suffered, is suffering or is likely to suffer an act of abuse, the Court shall issue an elderly person's protection order restraining the respondent from engaging in any conduct which may constitute an act of abuse and ordering him to be of good behaviour towards the elderly person.
212. The Act also provides for offences and resulting penalties that a person may commit under the Act against an elderly person including women. As per section 11, any person who willfully subjects an elderly person to ill-treatment, whether physical or verbal, subjects an elderly person to prolonged mental or emotional harassment and intentionally causes pecuniary loss or material prejudice to an elderly person shall commit an act of abuse and be liable to a fine not exceeding 50000 MUR and a term of imprisonment not exceeding 2 years.

20. Protection of Human Rights Act 1998

213. The Protection of Human Rights Act 1998 is the main legislative framework for the promotion and protection of human rights in Mauritius. It establishes the National Human Rights Commission which has two divisions namely the Human Rights Division and the National Preventive Mechanism Division (specialised in torture in cells and detention centres). The Commission is responsible for assessing, investigating, analysing, submitting reports and preparing state reports to international human rights bodies on the situation of human rights in Mauritius.
214. Though not explicitly provided for, this mandate also includes working on the issue of violence against children, women and LGBT people. Cases of violence against the three groups can be submitted to the Human Rights Division even if cases specific to children

or women may be directed to other specialised authorities on women and children. According to section 4 of the Act, the Human Rights Division may enquire into any written complaint from any person alleging that any of his/her human rights has been, is being or is likely to be violated by an act or omission of any other person acting in the performance of any public function conferred by any law. This Act therefore is more geared towards the protection of violence perpetrated towards women and LGBT people by public officials or public bodies.

5.3 The Criminal Code

215. From above we have seen violence against women and children under their respective legislative texts. It is of equal importance to address violence against the three groups from a criminal law perspective. Despite the fact that both the PFVDA 1997 and the CPA 1994 provides for specific offences, we also have in place the Criminal Code Act 1838 [Act 6/1838] (CCA 1838) which also provides for general offences against individuals. Therefore, for an offense an offender may be prosecuted under either the specific legislation (that is, PFVDA 1997 or the CPA 1994) or the CCA 1838. As such “*it is the prerogative of the Director of Public Prosecution to decide under which statute to prosecute a person*” as per what was held in the case **Police v L. M. E. Tranquille [2012 INT 179]**. Further, under the CCA 1838, the legislator has classified offences committed against individuals as offences against the person and offences against property. As to LGBT people, up to now there is no legal provision specifically criminalising violence against them.

5.3.1 Violence against women- offences committed against the person

216. Women are constantly being victims of violence. As such in first place the analysis will be on offences committed against the person, reference will be made to the relevant sections of the CCA 1838 and the arguments will be supported with case laws. Concerning offences against individuals under the CCA 1838, Chapter I deals with offences against the person. These offences include murder, manslaughter, rape, sodomy, assault and much more. It is to be noted that today in Mauritius both women and children are more at risk of being victims of these offences. Section 215 of the CCA 1838 deals with manslaughter and it is defined as “*Homicide committed wilfully is manslaughter*”. The penalty for the offence of manslaughter is a term not exceeding 45 years (Section 223

(3) of the CCA 1838). Additionally, in the event the offender is found guilty of manslaughter but has preceding, accompanying or following another crime, the penalty is higher as such he shall be liable to penal servitude for a term not exceeding 60 years (Section 223(1) of the CCA 1838). The offence of murder is defined at Section 213 of the CCA 1838 as “*Manslaughter committed with premeditation or by lying in wait is murder*”.

217. Furthermore, Section 214 of the same Act provides a broad definition of premeditation; however in simpler terms it means the intention to commit the crime. In line with the penalty for murder, Section 222 of the CCA 1838 provides for a penal servitude for a term not more than 60 years. Another offence to be analysed is assault and at Section 230 of the CCA 1838 where it is stipulated that any person who is found guilty of this offence shall be punished by imprisonment for a term not exceeding 2 years and a fine not exceeding 50,000 rupees. In addition, for assault with aggravating circumstances offenders are punished by more severe penalties. The legislator has also catered for assault committed upon father or mother at Section 231 of the same Act. Equally important, under the CCA 1838 the offence of rape is provided at Section 249 and its penalty upon the offender being found guilty is a penal servitude for a term not less than 10 years. The offence of sodomy is provided at Section 250 of the CCA 1838 and a person being found guilty of this offence shall be liable to a penal servitude for a term not exceeding 5 years.

218. To illustrate offences against the person involving female victims, in first place reference can be made to the case **The State v Ashish Takoordyal [2017 SCJ 2]**, where a husband was sentenced to undergo 35 years penal servitude as he was found guilty of manslaughter, by killing his wife. The Court also considered the cold-blooded way he disposed off the dead body- that is by cutting same with a grinder so that the body parts could fit into raffia bags. In this case the issue of domestic violence was addressed and it was pointed out that “*This Court is also mindful of the upsurge of serious acts of domestic violence being committed in this country which all too often result in the loss of precious lives or in extreme injuries being inflicted to helpless victims. These serious acts of domestic violence therefore call for a strong and clear signal to potentially like-minded offenders that such crimes will be treated with severity and that domestic violence is not a possible avenue when conflicts arise in a marriage or in a relationship*”.

219. Moreover, in **The State v Noorah Ziaoudeen [2018 SCJ 152]**, a son was sentenced to undergo 25 years of penal servitude as he was found guilty of manslaughter by killing his mother. Coming to the offence of murder, the case **The State v Naseerudin Tengur [2016 SCJ 291]** is a glaring example as to how a lady was murdered in an atrocious way. The offenders came with the motive to steal, and on her arrival one of them decided to rape her and finally she was strangled with a pair of trousers. The Court of Assizes having considered, the seriousness of the offence together with antecedents of the accused, has sentenced him to penal servitude for life. Tacking the offence assault of in **Bhugaloo v The State [2015 SCJ 141]**, the appellant had assaulted his wife and was sentenced to undergo one week imprisonment. The Court of Appeal in this case has underlined that *“If on one hand, the Court is always mindful of the risk that a long family relationship may be endangered by a severe custodial sentence, yet domestic violence in itself is a serious offence with grave consequences for the family and society at large”*.
220. Likewise, assault is also termed as inflicting wounds and blows. In **The State v Yves Georges D’Hondt [2014 SCJ 362]**, the appellant was found guilty for having inflicted wounds and blows to his wife which ultimately led to the death of the latter and he was sentenced to 10 years imprisonment. Turning to sodomy and rape, these are two offences which are a real matter to our society. Indeed, several women irrespective of their age as well as children have been victims of these two offences. In the case of **Cheetamun v The State [2019 SCJ 49]**, the appellant was sentenced to 22 years of penal servitude for having raped and killed an old lady aged 80 years. Concerning the offence of rape, there is also relationship rape which is very often left without consideration. The Court has expatiated on relationship rape in **R. Gopaul v. The State [2011 SCJ 193]** by citing the case **Millberry v R. [2003 1 Cr App. R. 25]**, where the Court of Appeal in England has held that; *“‘relationship rape’ and ‘acquaintance rape’ are to be treated as being of equal seriousness to cases of ‘stranger rape’”*.
221. Property crimes involve the taking away or destruction of property through the use of violence or threat. These crimes include larceny, embezzlement, swindling, arson and much more. Concerning offences against property under the CCA 1838, chapter II deals with these offences. Dealing with the codified offences against property, firstly larceny is provided at Section 301 of the CCA 1838 and the subsequent sections deals with specific types of larcenies which are as follows, larceny with wounding (Section 303), larceny with violence by night breaking (Section 304), larceny with other aggravating

circumstance (Section 305), larceny by night breaking (Section 306) inter alia. Moreover, the CCA 1838 also caters for the offence of swindling and embezzlement at its Section 330 and 331 respectively. Finally, arson is another offence which is committed against property and same is provided at Section 346 of the CCA 1838. Just like larceny, for arson also the CCA 1838 has provided for some specific sections, these include- arson causing death (Section 347) and threatening arson (Section 348).

222. It is of equal importance to analyse judicial pronouncements where women have been victims of offences against their property. In **A.A.I. Baccus v The State [2012 SCJ 67]**, the appellant was sentenced to 14 years of imprisonment for having committed larceny upon persons on a public road whilst he was on his motorcycle whereby victimising in all seven women. Furthermore, in the case **Police v. Lajolie Rudolphe Jerry [2014 PL2 155]**, the accused was found guilty for having threatened to set fire to his sister's house. After having considered the case laws on both violence against women and violence against their property as per the CCA 1838, the following analysis can be made-; in some cases involving crimes committed against women, the offenders first came with the intention to steal that is committing an offence against their property. However, these offenders also end up committing violence against the victims for instance, rape, manslaughter and even murder.

223. To support this analysis, reference can be made to the previously cited case of **The State v Naseerudin Tengur [2016 SCJ 291]**, where the offender came with the motive to steal at his aunt's place and end up murdering her. In similar way there is the case **The State v J.C Nampoongah and Ors [2011 SCJ 365]**, a group of men attacked a lady with the intention to rob her belongings but end up in each turn by turn raping her. In line with gang rape, in this case it was highlighted that "*rape is a serious offence and gang rape is a most heinous offence*". Moreover, in line with violence against women the Court in **The State v J.C Nampoongah and Ors [2011 SCJ 365]**, has further underlined that "*There is therefore the responsibility on the Court to pass a sentence that is commensurate with the gravity of the offence, to emphasis the disapproval by the public, to punish the offender and to protect women from such terror*".

5.3.2 Violence against children- offences committed against the person

224. Violence against children includes physical, sexual, psychological and emotional violence. These offences are often committed by their parents themselves, caregivers, friends and strangers. According to a recent statistic from the World Health Organisation (2019), on the global sphere last year approximately 1 billion children within the age group of 2 to 17 years have been victims of violence. Undoubtedly, when children are victims of violence there is a huge impact on their health. Under the CCA 1838 offences which are committed on children are same as expatiated above when violence committed against women was discussed. Additionally, in the same section where the offence of rape is provided, there is also the offence of attempt upon chastity which is also known as “attentat à la pudeur” and it is punishable by penal servitude for a term not exceeding 10 years (Section 249(2) of the CCA 1838). The offence of sexual intercourse with minor under the age of 16 is also stipulated at section 249 (4) of the same Act and the penalty upon a person found guilty is penal servitude for a term not exceeding 20 years. Another offence in relation to children is murder of newly born child and infanticide which is stipulated at Section 220 of the CCA 1838 and the maximum penalty is a penal servitude for a term not exceeding 60 years as per Section 222 of the same Act.

225. In Mauritius, children are victims of murder, sexual harassment, rape, sodomy and much more. Thus, it is important to analyse judicial pronouncements in relation to the above-mentioned offences. The case of **Lotoah J M R v The State [2012 SCJ 376]** and **The State v Prodigue [2010 SCJ 317]** are two connected cases, thus they will be analysed together. In the former the appellant was sentenced to undergo 30 years of penal servitude for having raped a girl child of 2 ½ years and afterwards killed her by putting her body in a plastic bag and threw it in the sea. The accused in the second case has not only helped the appellant in the first case to commit the above-mentioned offences but he also committed sodomy on the child. Thus, he was sentenced to 29 years penal servitude for both offences. In line with the offence of sodomy against children the Court held the following in the case **Mootoo v The State [2012 SCJ 142]**, “*Section 250(2)(a) of the Criminal Code, therefore, must not only be viewed from the stand point of penalties provided for perpetrators of offences against child victims but also from the angle of protecting the rights of children from being induced or coerced through their immaturity from abusive conducts by adults*”.

226. Concerning the offence of attempt upon chastity (Section 249(2) of the CCA 1838), a related case is that of **Rama v The State [2010 SCJ 249]**, where a teacher was charged to undergo 4 years of penal servitude for having committed an indecent act “attentat à la pudeur” upon a child of 12 years on five different occasions. The Court in this case took note of the acts “of a gross sexual nature” complained of and maintained the sentence of 4 years penal servitude in appeal. In line with sentencing offenders of child victims, the following passage from **J.D. Bedos v The State [2006 SCJ 105]** should be pointed out, “*The aim of the legislator in providing for a stiff sentence for that type of offence is surely to protect minors... They all need various degrees of protections from falling prey to adventurous and irresponsible Don Juans trying them as objects of sexual experience.*”

5.3.3 Violence against children- offences committed against their property

227. In very rare cases children are victims of violence committed against their property. In the case **Legoffe J W v The State and Marie J K v The State [2010 SCJ 25]**, a girl aged 17 years and her boyfriend were first victims of larceny whereby of their valuable belongings were taken away. Moreover, the offenders also gang raped the girl on a public beach. Consequently, after considering all the aggravating circumstances of the case each offender was sentenced to 22 years penal servitude and this sentence was maintained on appeal.

5.3.4 Violence against LGBT people from a criminal law perspective

228. In Mauritius up to now, there are no provisions in the CCA 1838 specifically criminalising offences against LGBT persons. Moreover, there is no judicial pronouncement where an offender has been sentenced for having committed violence against someone belonging to the sexual minority group. However, it is good to point out that all the crimes against the person and against their property, which are stipulated in the CCA 1838 applies in general to everybody. Therefore, any LGBT individual can make a complaint in the event they have been victim of the above expatiated offences as discussed from the criminal law perspective.

Article 250 of the CCA

229. Article 250(1) of the Criminal Code 1838 provides that any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not

exceeding 5 years. The continued criminalisation of same sex intimacy constitutes a direct infringement of the constitutional rights of LGBT people, in particular the rights to personal liberty (section 3 and 5), protection against inhumane and degrading treatment (section 7), privacy (sections 3 and 9), freedom of expression (section 3 and 12) and protection against discrimination (section 3 and 16). The fact that article 250 prohibits the practice of anal intercourse is undoubtedly unconstitutional and in violation of the principle of equality and privacy enshrined by the Constitution.

230. From a comparative perspective, South Africa has made enormous progress on the legality of same-sex sexual activity which can be a source of inspiration. In 1997, the Cape Provincial Division of the High Court in South Africa ruled that the common law crime of sodomy was incompatible with the constitutional rights of equality and privacy.¹²⁸ In 1998, the Witwatersrand Local Division of the High Court ruled that the common-law crimes of sodomy as well as provisions commission of unnatural sexual act were unconstitutional.¹²⁹ This decision was reaffirmed by the Constitutional Court of South Africa in October 1998¹³⁰. In India the case Justice K.S.Puttaswamy(Retd) vs Union Of India [2018] brought to light that *'the right to privacy was a constitutionally protected right in India, as well as being incidental to other freedoms guaranteed by the Indian Constitution'¹³¹*. In furtherance, in this judgment it was also underlined that the right to privacy also included preservation of personal intimacies and sexual orientation¹³². The implication of this case is such that it has ignited hope for LGBT people whereby through the right to privacy they can legally lead their life¹³³.

231. Another landmark case in India is that of Navtej Singh Johar v Union of India thr. Secretary Ministry of Law and Justice.¹³⁴ The Supreme Court of India decriminalised all consensual sex among adults, including homosexual sex. The matter before the Court was whether Section 377 of the Indian Penal Code which criminalised homosexual acts as an 'unnatural offence' was constitutional or not. The court found that the criminalisation of

¹²⁸ S v Kampher 1997 (4) SA 460 (C).

¹²⁹ National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others (CCT11/98) [1998] ZACC 15.

¹³⁰ McNeil, Donald G. (9 October 1998). "South Africa Strikes Down Laws on Gay Sex". New York Times. Retrieved 28 June 2011.

¹³¹ <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/> [Accessed 20th January 2020].

¹³² <https://www.youngbhartiya.com/article/implications-of-the-puttaswamy-judgement-on-lgbtq-rights> [Accessed 20th January 2020].

¹³³ No. 119 as above.

¹³⁴ Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice, W. P. (CrI.) No. 76 of 2016 (Supreme Court of India).

sexual acts between consenting adults violated the right to equality guaranteed by the Indian Constitution. The then Chief Justice Misra adjudicated that the court found criminalising carnal intercourse to be 'irrational, arbitrary and manifestly unconstitutional'.^[2] The court ruled that LGBT people in India are entitled to all constitutional rights, including the liberties protected by the Constitution of Indian. It held that "the choice of whom to partner, the ability to find fulfilment in sexual intimacies and the right not to be subjected to discriminatory behaviour are intrinsic to the constitutional protection of sexual orientation".

232. Similarly, a 2016 Supreme Court ruling that overturned the country's colonial-era anti-sodomy law has been upheld by Belize's court of appeals¹³⁵. There was an anti-sodomy law in place which called for a 10-year prison sentence for anyone convicted of engaging in consensual same-sex relations¹³⁶. This was challenged by Caleb Orozco who is a health educator and he argued that such a law was unconstitutional¹³⁷. He claimed that this was in violation of Belize's constitutional guarantees of personal privacy and human dignity and infringed his right to live free from discrimination as well as his freedom of conscience and freedom of expression¹³⁸. The Court found that the anti-sodomy law that was in place was indeed unconstitutional and could not be applied to consensual sexual acts conducted in private¹³⁹.

233. Section 250 and its constitutionality have been challenged before the Supreme Court of Mauritius by Young Queer Alliance (YQA) and Collective Arc-en-Ciel. On the 6th of September 2019, four young Mauritians who are all members of the YQA and who come from all parts of Mauritian society, have approached the Supreme Court of Mauritius for leave to seek constitutional redress by declaration that Section 250 of the Mauritian Criminal Code Act of 1838 (as amended) violates their fundamental rights and freedom and is unconstitutional.¹⁴⁰ On October 25, 2019, Abdool Ridwan Firaas Ah Seek filed a complaint in the Supreme Court for unconstitutionality of Section 250 of the Criminal

¹³⁵ <https://www.metroweekly.com/2020/01/belize-appeals-court-upholds-decision-overturning-law-criminalizing-gay-sex/> [Accessed 20th January 2020].

¹³⁶ No. 121 as above.

¹³⁷ No. 121 as above.

¹³⁸ No. 121 as above.

¹³⁹ No. 121 as above.

¹⁴⁰ Young Queer Alliance 'Four Mauritians seek to establish equality and freedom under the law for LGBT persons before the Supreme Court of Mauritius' (17 September 2019) <https://youngqueeralliance.com/2019/09/17/four-mauritians-seek-to-establish-equality-and-freedom-under-the-law-for-lgbt-persons-before-the-supreme-court-of-mauritius/> (accessed 30 March 2020).

Code in the presence of the Collectif Arc-En-Ciel. By criminalising sexual acts by two adults of the same sex and consenting in their privacy, Section 250 is in violation of the Mauritian Constitution, the supreme law of our country. It violates several fundamental constitutional rights, including those of equality, privacy, freedom of expression, personal freedom, protection from discrimination and protection from inhuman and degrading.¹⁴¹

234. It has to be noted that the Law Reform Commission in 2007 had recommended that sodomy be decriminalised in Mauritius. This was echoed by the Director of Public Prosecution in a Newsletter highlighting the colonial aspect of the law. In its Universal Periodic Report, the UN Human Rights Council, through Canada, Australia and Ireland, had recommended that Mauritius amend the law on sodomy in 2013. It should be further noted that the ACHPR in 2016 noted with concern the delay in reviewing and enacting the Sexual Offences Bill. In addition, the Human Rights Committee in 2017 expressed concerns that Section 250 had not yet been repealed and the UPR 2018, where fifteen countries recommended that Mauritius ‘repeal Section 250’ and/or ‘amend its sexual offences laws.

235. The situation of violence against LGBT people is brilliantly summarised by Joshua Hepple in his article entitled ‘Will LGBT [people] ever be equal?’ as follows - The criminalisation of homosexuality also perpetuates violence and gives society an excuse to abuse individuals who are lesbians, gays, bisexual, trans or intersex (LGBT) persons. Some countries which have legislation against homosexuals, such as Singapore, have tried to defend it by saying that the law is very rarely enforced and that homosexuals will not be persecuted. While prosecution against LGBT people on the basis of article 250 is rare in Mauritius, in 2015, a same-sex couple was arrested on the suspicion that they were practising sodomy.¹⁴² But in fact, having these laws on the statute books stigmatises LGBT individuals as criminals. There is therefore a need for the law on sodomy to be repealed regardless of whether or not arrests have been made- because such a law is perpetuating violence and labelling the LGBT individuals as criminals.

Article 282 of the CCA

¹⁴¹ CAEC ‘Plainte pour inconstitutionnalité de l’article 250 – Communiqué de presse – 25.10.19’ <http://www.collectifarcenciel.org/communique-de-presse-25-10-19/> (accessed 30 March 2020).

¹⁴² <https://city-press.news24.com/News/no-paradise-for-mauritian-queers-20170220-3> [Accessed 25th November 2019].

236. Article 282 of the CCA provides that any person who, with intent to stir up contempt or hatred against any section or part of any section of the public distinguished by race, caste, place of origin, political opinions, colour or creed— (a) publishes or distributes any writing which is threatening, abusive or insulting; (b) uses in any public place or at any public meeting or procession any gesture or word which is threatening, abusive or insulting; or (c) broadcasts any matter which is threatening, abusive or insulting, shall commit an offence and shall on conviction, be liable to a fine not exceeding 100,000 rupees and penal servitude for a term not exceeding 20 years. It is noted that article 282 had been modified by the Judicial and Legal Provisions Act 2018, which had added “sex” to this article.

237. However, the purview and scope of the Section 282 do not explicitly include the protection of LGBT people from contempt and hatred through any of the means elaborated upon therein. This undoubtedly leaves LGBT people exposed to violence caused by contempt or hatred displayed against them. For instance, in June 2018, the annual Pride March scheduled to be held in Port Louis was met with threats and violence by a group of religious extremists. 126 death threats were recorded against Collectif Arc-en-Ciel and its members by fundamentalists opposing the event in the week preceding it.¹⁴³

238. In 2004, Canada’s Federal Criminal Code, more precisely its section 318(4) was amended adding sexual orientation to the list of classes protected against hate speech. It is hugely interesting to note that hatred in the criminal code context has not been defined. However, there is case law helped in filling this gap. In the case of **R v Keegstra**, the Court held that:

*Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.*¹⁴⁴

¹⁴³ Mail and Guardian (12 December 2019) Mauritius - Paradise for who? <https://mg.co.za/article/2018-06-15-00-mauritius-paradise-for-who>. [Accessed 25th November 2019]

¹⁴⁴ R v Keegstra [1990] 3 SCR 697 at 777.

239. The above abstract on hatred can be used to inspire the Mauritian legislator and judiciary to legislate and adjudicate on hate speech, contempt and hatred perpetrated against LGBT individuals.

5.4. Programmes and Policies on violence against children

5.4.1 The Child Development Unit

240. The Child Development Unit (CDU) draws its existence since the year 1995. The purpose of the CDU is to ensure that the survival, protection, development and participation rights of the Mauritian child are upheld as per the Convention on the Rights of the Child. In line with the welfare and the promotion and protection of the rights of Mauritian child, primary consideration is laid on the dimension “the best interests of the child”- in all policies, programmes and actions. Equally important, there are the main objectives of the CDU which include- the provision for protection services to children victims of violence, abuse and neglect on a 24 hr 7 days basis, the provision follow-up sessions to victims whereby aiming at ensuring their recovery from trauma and thereafter their re-insertion in society, the preparation and support to children victims of violence for legal encounters, and much more. The CDU also has a hotline service available for the reporting of cases of violence against children along with counselling programme. Moreover, CDU acts as Central Authority in International Child Abduction cases and helps in the provision of alternative care to abused children. In brief in terms of alternative care the facilities include temporary removal to a shelter for children in distress, foster caring and eventually in special cases as a remedy of last resort, committal to a charitable institution.

241. In addition, the CDU helps in the provision of trained mentors to children who shown signs that they are in distress due to mild behavioural problems through a well spelt child Mentoring Programme. Furthermore, the CDU works towards the enforcement of the Child Protection Act 1994 and its relevant regulations. The CDU is legally required to report to the Permanent Secretary of the Ministry of Gender Equality, Child Development and Family Welfare, any case of suspected ill-treatment, abandonment, neglect, destitution, abuse, and sexual exploitation of children including Commercial Sexual Exploitation of Children. Likewise, being required to work collaboratively, the CDU has a duty to develop partnerships with other stakeholders namely governmental institutions,

Non-governmental institutions, community organizations that have as primary objective to promote the best interests of the Mauritian Child. Also, it has to, reinforce the existing networking system for the reporting, monitoring and evaluation of child violence cases and work towards dissemination of information, education and communication to the Mauritian citizens on the importance of child rights, its protection and the development services and facilities in place.

242. It is worth noting that the CDU upholds the principles as firmly established at Article 19 of the Convention of the Rights of the Child 1989 such that the Government is called upon to make sure that the child is protected from any type of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation, while he/she lives in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Also, Special procedures must be put in place to help the child if he/she has been the victim of abuse.

5.4.2 The Permanent Secretary of the Ministry of Gender Equality, Child Development & Family Welfare

243. This organ has the directive and power to carry on investigations and intervene in cases of suspected child abuse. The Child Protection Act 1994 (amended 1998) vests upon the Permanent Secretary or any public officer designated by him, the authority to make application for an emergency protection order in respect of a child who is at risk. The CDU also takes steps in ensuring the child's safety, namely through an application in the court for an Emergency Protection Order. The end result after an Emergency Protection Order has been granted may lead to the removal of the child from his/her home and being placed in the temporary shelters of the Ministry.

5.4.3 Counselling and psychological support provided by the CDU

244. In addition, the CDU has in place face-to-face counselling services in outstations whereby children, victims as well as family members are free to discuss the problems they encounter in a safe environment- while maintaining confidentiality. There is a 24-hour Hot Line Service (113) available at the CDU which helps in providing first hand counselling and giving advice to the public on any family related matters and in particular to those who are in immediate need of help and support. Further there is the provision of parenting skills which are conveyed to parents to build up the parent-child bond and to

aid parents in better understanding their children and vice versa. Children victims of abuse are also provided with psychological support at the level of CDU outstations, with a view to help these victims to cope more effectively with life issues.

5.4.4 Commercial Sexual Exploitation of Children and Trafficking in person

245. The protection of children comprises of steps to fight against Commercial Sexual Exploitation of Children. In this line, the Ministry has implemented a National Plan of Action for CSEC which provides specialized services to victims of Commercial Sexual Exploitation along with training for individuals working with these children. Coming to child trafficking, all alleged cases are made known to the Ministry of Gender Equality and Family Welfare (MGEFW) and recorded at the level of the CDU for social enquiry. Further, the cases are simultaneously reported to the Police for Criminal Enquiry.

246. There are six CDU Outstations across the island where child victims are also provided with immediate and long term protective and support services. These Outstations are situated at- Goodlands, Flacq, Souillac (formerly was Rose-Belle), Port Louis, Bambous and Vacoas. There are two Drop-in-Centres, one at Port Louis and Residential Centre and another one at Grand Rivière North West (GRNW), where protective and supportive services are also provided to child victims.

247. A Residential Drop-in Centre was made operational since May 2016, to cater for the rehabilitative needs of children victims of sexual abuse and commercial sexual exploitation including child trafficking. The setting up of the Drop-in Centre is in line with the recommendations made by the United Nations Committee on the Rights of the Child in January 2016 with a view to strengthening policies and programmes for the prevention, recovery, rehabilitation and reintegration of children victims of Commercial Sexual Exploitation (CSE). The Residential Drop-in Centre which is managed by the National Children's Council can accommodate some 32 children, aged between 0 to 18 years, with separate dormitories between different age groups. The residential centre facilities ensure sustainability in the recovery and rehabilitation of victims of sexual abuse and exploitation and provide efficient services to the victims such as specialized support services, for example psychotherapy & the reconstruction stage. Children are sent back to school to resume their studies or training courses with a view to empowering them for their gradual re-insertion in mainstream society.

248. The issue of Commercial Sexual Exploitation of Children (CSEC) is also addressed by the Drop-in-Centre which is managed by the Mauritius Family Planning and Welfare Association. During the period January 2011 to March 2018, 2960 cases were registered at the Drop-In Centre, out of which 23 were alleged cases of child prostitution. The services provided by the Drop-in Centre for all CSEC victims include: - individual counselling, group counselling, couple and parental counselling, psychosexual counselling and contraceptive counselling, telephone counselling, medical sessions, rehabilitative activities including art and craft sessions and activities for victims, home visits to clients and, preventive educational programmes. Moreover, measures are taken to facilitate the tracking of child trafficking/child prostitution cases with the support of Brigade pour la Protection des Mineurs, as well as providing for psycho-social support and alternative skilling to victims of trafficking.

249. The Ministry of Tourism in collaboration with the Association des Hôteliers et Restaurateurs de l'île Maurice (AHRIM) and the Office of the Ombudsperson for Children, published a brochure in 2010 on the responsibilities of actors in the tourism industry in addressing sexual exploitation of children. Tourist establishments are licensed and controlled by the Tourism Authority and any tourist accommodation found to be involved in immoral activities, such as prostitution or child trafficking, is severely sanctioned.

5.4.5 Protective and Supportive Measures

250. The Protective and Support Services is comprised of the following, in first place a hotline (113) where cases of child abuse can be reported. These cases include also matters on Child Trafficking and Commercial Sexual Exploitation of Children (CSEC) and can be reported either anonymously or otherwise. In order to avoid repeated narrations of incident there are joint interviews by both the Police and CDU Officers. Further victims of child trafficking are given assistance for medical and Police Medical Examinations as well as HIV testing and pregnancy tests. Lastly, victims as well as their families are given psycho-social counselling and support. The Brigade Pour la Protection des Mineurs (BPLPDM) also plays a very important role through a close collaboration with other stakeholders and help in assisting and identifying the victims and providing them support. The BPLPDM carries-out raids in game houses, hotels, discotheques and investigate in suspected and/or alleged cases of child trafficking and CSEC.

251. Therapeutic and rehabilitative activities for instance group counselling and focus group discussions, monthly medical sessions/examinations, contraceptive counselling; and parental counselling form the specialised services which are provided to the CSEC victims. Concerning awareness campaigns which are carried out with regard to Child Trafficking, there are regular IEC campaigns which are carried out by Officers of the Ministry in order to sensitise and educate people at different levels about this problem. According to statistics, from January to June 2018, 1811 persons have been sensitised on child protection issues which include child trafficking in primary and secondary schools, social welfare and community centres by officers of the CDU and psychologist of the Drop-in Centre.

5.4.6 Early Childhood Development (ECD)

252. Children belonging to the cohort of 0-3 equally fall within the responsibility of the Ministry of Gender Equality, Child Development and Family Welfare. On this note, following a study which was commissioned on provision of early childcare in 1996, the data obtained has been used as a reference for the elaboration of the policy paper. Thus, the National Early Childhood Development (ECD) policy paper (0-3 years) was officially presented in the year 1998, which is being implemented to improve the child's overall development through the introduction and adoption of integrated and holistic approach to ECD. From this Policy Paper, an ECD Action Plan has been prepared and its implementation is being done by the Early Childhood Development (ECD) Section. The ECD Section was set up within the Child Development Unit (CDU) of the Ministry to achieve the goals of the ECD Policy Paper.

253. In December 2000, the Institutions for Welfare and Protection of Children, Regulations 2000 under the Child Protection Act, with established norms and standards have been enacted for regulating childcare services including home-based facilities. Likewise, it is compulsory for all Day Care Centres (DCCs) to be registered with the Ministry. The DCCs around the island are categorized in four zones. Further, in November 2003 an Early Childhood Development Programme Guidelines (0-3 years) has been launched- and it provides sound directions on caring services and teaching approaches while emphasis is laid on the play based learning and child-centered pedagogy. Child Care Personnel has been given training for ensuring a good development

perspective of child growth and individual differences. In this way the transition from DCCs to pre-primary schools will be facilitated.

5.4.7 Child Abduction

254. The CDU also caters for cases of international child abduction. In brief, Mauritius has adhered to the Hague Convention on the Civil Aspects of Child Abduction since 1st October 1993. The Civil Aspects of Child Abduction Act are enforced by officers at the Head Office enforce the Hague Convention. This Convention has as main objectives to secure the prompt return of children who are wrongfully retained in another State and ensure that the rights of custody and of access under the law of one Contracting State are effectively respected in another State.

255. The CDU being the Central Authority for Mauritius, it has the following duties- the provision information on the whereabouts and the social background of the child, causing an application to be made to Court for the return of the child as well as securing the effective exercise of the right of the child. It is worth noting that in this exercise there is needed to constantly liaise with the Central Authority of countries involved under the Hague Convention. The other duty of the CDU comprises of, the acceptance of accession of contracting parties by member states necessitate amendments of schedules of the Act and this is a regular feature and has resource implications. Lastly, there is a high level Steering Committee for monitoring acceptance of contracting States and cases have been set up. Indeed, many countries have acceded to the Hague convention on the civil aspects of international child abduction.

5.4.8 Tardy Declaration of Birth

256. For the purpose of issuing birth certificates to undeclared children, there is a sub-unit which works in collaboration with the Civil Status Office and the Attorney at Law. After several years, a procedure provides that a child not officially declared benefit from a CDU investigation on the biological parents, their desire or not to declare their child even with the benefit of a late declaration by the court. The CDU survey is then sent to the SLO, which can decide to issue a birth certificate without the name of the biological parents. The procedure can take several years and the SLO is reluctant to take such a decision because it is to annihilate the rights of the biological parents. But the right to an identity is not respected at the expense of the child for several years. It should be made

clear what the CDU currently calls “fast track procedure birth certificate”; that the CDU investigation and the decision of the SLO Office are carried out at most within 6 months of the birth of the child. Or even within 3 months for the child abandoned at birth. This is to prevent him from being in a shelter for several months or years. By blocking the birth certificate, the right to identity, the right to adoption is also affected.

5.4.9 Sharing of responsibilities/Working together

257. Indeed, the issue of protection and well-being of children is a matter of concern for all and the child protection is the collective responsibility of the whole government along with the community at large. Government should be seen as providing support where it is needed, either directly or through the funded non-government sector, despite the fact that the primary responsibility for rearing and supporting children should rest with families and communities.

258. In this respect, a high powered committee has been put in place under the chairpersonship of the Permanent Secretary and will comprise a schedule officer not below the level of Principal Assistant Secretary from the following Ministries/Departments – Prime Minister’s Office, the Ministry of Social Integration and Economic Empowerment, the Ministry of Finance and Economic Development, the Ministry of Education and Human Resources, the Ministry of Youth and Sports, the Ministry of Social Security, National Solidarity and Reform Institution, the Ministry of Health and Quality of Life, the Attorney General’s Office, the Ombudsperson for Children’s Office, the Police Department; and the National Children’s Council.

259. This Committee has main objective- to look into avenues of collaboration between all parties concerned to ensure rapid intervention in cases involving children. In addition, it will be a platform where the roles and responsibilities of each party would be established with a view to give effect to collective action when dealing with such cases. Following the discussions held at the level of the High Powered Committee this has resulted into the signature of a Memorandum of Understanding between this Ministry and other the Ministries/Department concerned.

5.4.10 National Children’s Council (NCC)

School Child Protection Club (SCPC)

260. Children are also sensitised on issues related to teenage pregnancy (and related problems) through the SCPC. Equally important today many children are also exposed to several issues pertaining to: relationship bullying, cyber bullying, indiscipline, misconduct, harsh language, aggressive parents towards authority of school, intake of alcohol and smoking, amongst others. In short, the SCPC is a multi-holistic project aiming at the initiation of home grown protection clubs for children by children at the level of the School itself. The SCPC is providing a well-structured avenue for the promotion of Child Protection with a view to combat violence and indiscipline at school.
261. The objectives of the SCPC include, providing a well-structured platform through School Child Protection Clubs, developing the skills and competencies to both curb and combat violence against children firstly within the school premises, empowering the child on the way to contribute towards the creation of a violence free and child friendly environment conducive for the holistic development of the child, conducting in a coherent and systematic approach activities on Child Rights/Child Protection and finally addressing issues against problems relating to bullying gang violence and discipline.
262. Briefly, the ‘Atelier Partage Parents’ purports to offer adequate and appropriate information regarding child development in general and on the prevention from all forms of child violence. Parents will be informed accordingly with regard to the support services available to respond to the various needs of parents during their different periods of parenting- which ranges from the phase of pre-birthing to late adolescence through early childhood.
263. The said Atelier sessions are held in Social Welfare centres and Community Centres island wide where the main topics discussed encompass health, nutrition, rights and responsibilities of children, child violence and challenges encountered in parenting which occurred at the different developmental phases of children from pre-birth to 18 years. In short, the objectives of the “Atelier Partage Parents” comprise of the enhancement of the relationship between parents and children in general, the removal and reduction of intergenerational gaps which often lead to conflicts between parents and children, the improvement of parenting skills of parents particularly those who are faring in deprived areas and found themselves in disadvantaged circumstances and the empowerment of parents with the capacity to manage and develop coping techniques with regards to their family problems.

5.4.11 Children's Club

264. There are in all 21 children's Clubs which are in operation around the island, mostly in socially difficult areas. Members of the children's Clubs include children 3 years to less than 18 years old. The objectives of the clubs are the promotion of educational activities about norms and values in society, the enhancement of creative capacity of children by motivating them to participate in creativity workshops, giving them an opportunity to increase their self-esteem, encouraging children to practice outdoor games and promote social integration, carrying out welfare and developmental activities in order to prevent the occurrence of child abuse and commercial sexual exploitation of children (CSEC). According to information obtained, from January 2018 to June 2018, 9911 children have participated in the Children's Club.

5.4.12 Creativity Centre

265. There is a Creativity Centre for children which has been set up in Mahebourg, having as aim to serve as a focal point for creativity, recreation and leisure activities for children, just like the "Bal Bhawan" of India. Through the bilateral relationship, this project has received the support of the Government of India by way of the technical assistance of experts. We also celebrate the following international events:

5.4.13 Day of the African Child (DAC)

266. The Organization of African Unity (OAU) adopted the African Charter on the Rights and Welfare of the Child (African Children's Charter/Charter) on 11 July 1990 and it entered into force on 29 November 1999. This Charter establishes the African Committee of Experts on the Rights and Welfare of the Child (African Committee/Committee), which consists of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child. Furthermore, in 1991, the Assembly of Heads of State and Government of the then OAU had instituted the Day of the African Child (DAC). This happened for the first time in memory of the 16th June 1976 student uprising in Soweto, South Africa who marched in protest against the poor quality of education were killed by the then apartheid regime which were in place in South Africa. From that, the OAU and its successor, the AU, have kept it a tradition to remember these children through the DAC and thus celebrating children in Africa. The DAC celebration helps to inspire a sober reflection and action while addressing the

panoply of challenges that are faced on a daily basis by children in Africa. Every year for the DAC, a theme is selected by the African Committee.

5.4.14 Universal Children's Day (UCD)

267. Also, there is the UCD which is a regular feature and is celebrated on a yearly basis more precisely on the 20th November.

268. It was recommended on 14 November 1954 by the United Nations (UN) General Assembly that all countries should establish a Universal Children's Day (UCD). This day is to be observed as a day of fraternity and understanding between children all over the world, thus this day promotes the ideals and welfare of children.

5.4.15 Capacity Building Programmes

269. In addition, the Ministry of Gender Equality and Family Welfare provides regular Capacity Building and Training Programme for professionals and other stakeholders working with and for children mainly. The said training encompasses subjects such as Early Childhood Development Programme, Commercial Sexual Exploitation, Community Child Protection Programme, different techniques of enquiry and investigation, stress management, dealing with difficult clients and first aid inter alia. Up to now a total number of 5000 persons have been trained in these fields.

5.4.16 Preventive /IEC/Community Development /Development

270. A series of activities such as Sports Day, Colonie des Vacances ,outreach and developmental activities to foster the welfare and participation of children are organised by the Ministry in collaboration with the National Children`s Council. International and regional events and campaigns focussed on the promotion of the rights of the child are celebrated on an annual basis in order to sensitise adults about children`s rights and their own duties towards them.

5.5 Programmes and Policies on violence against women

271. It is of utmost importance for women and girls to have enhanced access to justice in view of protecting, promoting and fulfilling their rights. It is equally important for stakeholders responsible for the delivery of justice be trained and educated on matters

concerning the rights and welfare of women and girls. The Ministry of Gender Equality, Child Development and Family Welfare has been conducting training with police officers dealing with cases of domestic violence in collaboration with the Police Training School since 2016. In 2016, 421 Police Officers were trained in view to improve response towards victims of domestic violence. In 2017, 300 Police Constables and 144 Police Station Managers and Assistant Managers and in 2018, 204 police constables given similar training. There are 92 Domestic Violence Officers posted at Police Stations. Modules covered during the training are legal framework (International & Regional Convention and treaties & PDVA), profiling child perpetrators, customer care in policing, psychological debriefing of trauma victim, understanding rights and need of victims, victimology and research work on domestic violence.

272. The Ministry of Gender Equality has retained the services of legal resource persons on a sessional basis to assist victims of domestic violence to obtain redress from courts. In addition, the PGC commissioned in 2017/2018 two studies namely the Gender Audit in the Civil Service in Mauritius: Follow up Actions and the findings on the Sociological profiling of perpetrators of Domestic Violence in Mauritius and produced a Gender Equality Kit. These have served effectively in shaping views and opinions of parliamentarians and decision makers on the issue of women's empowerment and gender equality, and in enlisting their support and participation on gender mainstreaming programme in Mauritius.

5.5.1 Programmes and policies based on the right to dignity

273. The right to dignity is enshrined in the spirit of Section 3 relating to fundamental rights in The Constitution of Mauritius. Even though it is not clearly spelt out, it can safely be inferred that the right to dignity is indirectly guaranteed. For instance, the fourth schedule of the Mental Health Care Act 2019 states that 'the patient shall be treated with humanity and respect for the inherent dignity of human person'. The Mental Health Care Act is one of the few acts that clearly writes the importance of the protection of the right to dignity in the Mauritian Legal System. The Criminal code and the Mauritian Civil Code in their protection of right to privacy may also be said to protect the right to dignity.

274. The State of Mauritius protects the rights to life, integrity and security of the Person through sections 4 and 7 in the Constitution through the protection of the right to life and

Protection from inhuman treatment respectively. It states No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment. The article 249 of Mauritian Criminal Code states that “Rape, attempt upon chastity and illegal sexual intercourse Any person who is guilty of the crime of rape, shall be liable to penal servitude for a term which shall not be less than 5 years. Section 2 of the Protection from Domestic Violence Act 1997 pertaining to the heading “domestic violence” (d) can be used to prosecute rape (Domestic violence includes “compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain;”).

275. There are also gaps in national legislation on some forms of gender-based violence, including the lack of an explicit prohibition of marital rape. However, in an amendment made to the Protection from Domestic Violence Act in 2016, the definition of domestic violence includes *inter-alia* “compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or other person has the right to abstain”. The Children’s Bill is expected to address legislative gaps and clear possible misinterpretations of legislation to ensure greater safety to children in and outside marriage.

5.5.2 Administrative measures on sexual violence

276. Regarding the issue of sexual violence, a Protocol of Assistance to Adult Victims of Sexual Assault is operational since March 2006. The purpose of the Protocol is to ensure a prompt and timely assistance to victims of sexual assault. The Protocol defines the role and responsibilities of all stakeholders concerned, namely – Ministry of Gender Equality and Family Welfare; the Ministry of Health and Quality of Life and the Police Department. The Protocol ensures a coordinated approach of all authorities concerned with such cases.

277. In 2017, the Ministry of Gender Equality, Child Development and Family Welfare has launched, with the collaboration of the Civil Society Organisation, Association for Population and Development, the Men As Caring Partners Project. The main aim of this project is to promote greater involvement of men in the sharing of family responsibilities. Some of the ways identified to achieve same is by enhancing the understanding and importance of gender equality to men, ensuring the effective participation and involvement of men in family wellbeing, meet specific male sensitive needs and

concerns, especially with regard to their sexual and reproductive health, promoting equal opportunities to men and women in the development process and ensuring that men become caring partners through the implementation of 'Male Responsibility and Family Well-Being'. The residents of Trefles and Batimarais have benefited from the Project and the aim is to extend the other regions of the country.

278. In 2019 the Ministry of Justice, Human Rights and Institutional Reforms, in collaboration with stakeholders, produced a guide for migrant workers involved in the secondary economic activities in Mauritius entitled "Know your Rights" which aims at informing prospective and current migrant workers, of their rights and also on the risks of prostitution. The Ministry of Defense is in the process of finalising a National Action Plan to combat trafficking and shelter for victims of TIP.

5.5.3 Administrative measures on domestic violence

279. In view of protecting women's dignity which is affected by all forms of violence, the Ministry of Technology, Communications and Innovation has developed mobile applications allowing users to interact with the Ministry of Gender Equality, Child Development and Family Welfare. One such applications is the 'Family Welfare App' which acts as a medium to report cases of child abuse and domestic violence in an effective and timely manner. A 'one click help' has also been included in the application which allows for immediate response by the hotline service of the concerned Ministry. A sensitisation and advertisement campaign has also been organised to encourage people to use the application. Moreover, the Family Protection and Welfare Unit of the Ministry of Gender Equality, Child Development and Family Welfare has been organised talks and activities on protection against violence. Several topics were covered such as prevention of domestic violence, harassment at work and reinforcement of family values to the benefit of 1820 women who participated.

280. There is also a close collaboration between the Police and the Family Welfare and Protection Unit as same is imperative in an effective combat against domestic violence. Discussions are ongoing for a more holistic approach between the Police Family Protection Unit and the Family Welfare and Protection Unit. Such an initiative will ensure prompt intervention in cases of domestic violence by Police Officers and on the other hand, Family Welfare and Protection Officers will be responsible for providing psychosocial support to victims of domestic violence and will also be engaged in the

rehabilitation of perpetrators of domestic violence. With the merging of the services offered by the Police and the Ministry of Gender Equality, Child Development and Family Welfare, the Police Department would also be included as a key actor in the Integrated Support Centre.

281. The Domestic Violence Information System (DOVIS), a computerised system for the registration of reported cases of domestic violence, would subsequently be extended to the Police Department for harmonisation of action taken for cases of domestic violence. Through DOVIS connectivity, cases of domestic violence received by the Integrated Support Centre will automatically appear in all outstations of the Police Family Protection Unit and those of the Family Welfare and Protection Unit. Such a setup would ensure real-time relay of information pertaining to cases of domestic violence and would consolidate the existing network to address this social ill. It is also being planned to introduce a Domestic Violence Review Committee with the aim of identifying any shortcoming from stakeholders while addressing cases of domestic violence and ensuring that agencies are responding appropriately to victims of domestic violence by putting in place appropriate support mechanisms, procedures, protocols, resources and proactive measures so as to avoid further incidents of domestic violence.

282. In Budget Speech 2018-2019, the Prime Minister highlighted that *“domestic violence is unfortunately a failing of our modern society, undermining not only the strength of our society’s growth but also endangering our women and children. That is why government will support the relevant NGOs to set up additional emergency shelters for women and children.”* In this respect, in addition to the SOS Femmes, since 2017, there are 3 additional shelters which provided emergency accommodation to women victims of domestic violence and their children. These are Chrysalide, Passerelle and Safe Haven Halfway Home.

Number of victims admitted since July 2018 to May 2019

Passerelle

MONTH	VICTIMS	CHILDREN
2018		
July	8	14
August	11	13
September	8	14
October	7	9
November	7	8
December	6	11
2019		
January	11	18
February	11	15
March	12	14
April	10	14
May	8	14

Chrysalide

MONTH	VICTIMS	CHILDREN
2018		
July	11	12
August	10	09
September	05	05
October	06	06
November	07	10
December	07	09
2019		
January	05	07
February	08	08
March	06	08
April	05	05
May	02	04

SOS Femmes

MONTH	VICTIMS	CHILDREN
2018		
July	32	41
August	35	39
September	36	42
October	40	47
November	43	46
December	47	52
2019		
January	50	53
February	41	54
March	39	51
April	41	56
May	36	53

Safe Haven Halfway Home

MONTH	VICTIMS	CHILDREN
2018		
July	5	3
August	6	3
September	10	4
October	10	4
November	10	4
December	9	3
2019		
January	9	3
February	9	3
March	6	4
April	6	4
May	5	4
June	5	5
July	9	8

283. Despite legislation and institutional mechanisms set up, numerous lacunas were observed in addressing domestic violence. Thus, in 2014, cabinet took note for the setting up of an Advisory Committee on Reinforcement of Framework for Protection against Domestic Violence. The purpose was to: (1) review the legislations to make them more responsive to the protection of victims (2) improve the framework catering for the rehabilitation and/or for the prosecution of perpetrators, and (3) recommend new policy orientation and strengthen the role of major stakeholders involved in combating domestic violence.

284. The Advisory Committee recommended the following: 1. Adopting a more Comprehensive Definition of Domestic Violence; 2. Further Criminalizing Forms of Domestic violence; 3. Improving the Criminal Justice Response to Domestic Violence; 4. Affording Better Protection, Support and Assistance to Victims; 5. Providing Adequate Redress/Reparation for Victims; 6. Consolidating Preventive Mechanisms and 7. Improving Monitoring/Evaluation.

285. The Family Welfare and Protection Unit has also focused on economic empowerment of survivors of domestic violence as it has been noted that women who are the subject of domestic violence are often financially dependent on their husbands. Empowering them helps them to join the workforce for gainful employment, greater financial stability and independence. It also boosts their self-esteem and self-confidence. At Maubank, assistance is provided to women including women victims of domestic violence by providing a loan up to Rs. 500,000. They also assist them to prepare a business plan and monitor progress as well. As at February 2019, two survivors have been employed in a company through the Programme. The concerned Ministry is also in consultation with the Mauritius Institute for Training and Development to provide for training to survivors through the National Apprenticeship Programme.

286. In line with the Government Programme (2015-2019), a National Coalition against Domestic Violence Committee was set up under the aegis of the Prime Minister's Office in 2015. The Terms of Reference of the National Coalition against Domestic Violence Committee are to ensure that an appropriate framework is put in place for the protection of victims of domestic violence so that they get proper accommodation under the care of

institutions and have sufficient means to lead normal lives, to put in place a fast track system with all stakeholders for assistance and support to victims of domestic violence and to keep updated statistics on cases of domestic violence and to ensure that appropriate follow up actions are taken in respect of each case.

287. The Committee recommended, *inter alia*, harmonization of data collection and setting up of an Integrated Support Centre by the Ministry of Gender Equality, Child Development and Family Welfare. The Committee also recommended that a fast track approach be adopted by the Ministry of Health and Quality of Life to attend to victims of domestic violence, attending hospitals. The Committee also recommended the strengthened collaboration between the MGE and the Police.

288. More often than not, victims of domestic violence require urgent medical attention and health services. Following recommendations made by the National Coalition Against Domestic Violence Committee, victims accompanied by Police Officers are attended to on a fast track basis. They are also referred to Medical Social Workers for (a) interview/advice/counselling and to liaise with relatives concerning support to victims and (b) contact with the Family Support Bureau (Ministry of Gender Equality) – for application of Protection, Occupation and Tenancy Orders as well as for services of Psychologists.

289. The Police Family Protection Unit also conducts capacity building programme in collaboration with Police Training School with a view to train police officers including front liners and middle managers, to better respond to the needs of victims of domestic violence. Statistics in this respect are as follows:-

	2016	2017	2018	2019(Jan-Mar)
Station Managers Chief Inspectors/Inspectors	174	101	11	59
Front liners	288	91	-	-
Police Constables	496	311	293	13
Trainee Police Constables	526	130	226	378
In House Training	35	38	12	54

290. Another in service delivery is a Reconstruction and Recovery Programme started since 15 March 2017. The Programme consists of recalling victims of DV on a quarterly basis as a face to face interaction to know whether violence has stopped, reduced or escalated after service delivery at the police. Victims are empowered to shift from being victims to that of survivors and make use of all available support services needed for full recovery. Victims are also sensitized on their rights to protection from domestic violence. Table below indicates the number of Reconstruction and Recovery Programme held and number of participants.

	Session	Attendees
2017	22	295
2018	28	438
2019 (Jan-Mar)	10	164

291. The Family Welfare and Protection Unit has also established a Rehabilitation Programme for Perpetrators of Domestic Violence. It is believed that it is crucial to work with them in view of rehabilitating them to end the cycle violence. The objectives of the Programme are to bring a change in mind-set that would help perpetrators to abstain from committing acts of violence, enable them to manage anger which often lead to domestic violence, empower them to resolve conflicts in a peaceful manner and educate them to become responsible partners in their relationship. In March 2019, 29 facilitators were trained in Mauritius and Rodrigues to ensure the effective implementation of the programme through a multi-sectoral approach.

Number of Sensitisation Campaigns carried out throughout Police Divisions by the PFPU								
	2016		2017		2018		2019 (Jan-Mar)	
	No of sessions	No of Attendees	No of sessions	No of Attendees	No of sessions	No of Attendees	No of sessions	No of Attendees
Primary Schools	293	9499	323	9938	487	15537	169	5188
Secondary Schools	12	1581	66	2852	76	3337	41	1906
Community centres/PTA/Others	77	2478	106	6534	90	4710	9	502
TOTAL	382	13558	495	19324	653	23584	219	7596

292. Different units of the Force like the Crime Prevention Unit, Brigade Pour La Protection des Mineurs and the Police Family Protection Unit (PFPU) consistently carry out awareness campaign on gender based violence, domestic violence, elder abuse, family values and the available services in those fields through talks and lectures in schools, youth clubs, Community Centers, Women Centers and other institutions to sensitize the people on those issues. The statistic for the period year 2016 to 2019 (Jan- Mar) is as follows: -

Security Week			
Sensitization through video show and distribution of pamphlets			
SNo	Year	No of Institutions	No Of Attendees
	2016	12	30010
	2017	28	184 280
	2018	13	9900
	2019 (Jan-Mar)	4	895

5.5.4 Administrative measures on Intimate Partner Violence

293. In 2016, the Ministry sought the consultancy services of the University of Mauritius to conduct a study on “A Quantitative Assessment of Intimate Partner Violence and its Associated Economic Costs in Mauritius”. The objectives of the study were to determine the extent and nature of intimate partner violence in Mauritius and to estimate the economic costs of such type of violence in the Mauritian society. The study estimates the prevalence rate and the incidence for Mauritius. This study also estimates the direct costs of intimate partner violence on victims, households and indirect costs on the economy.

294. The findings were released in 2017. The study revealed that prevalence rates for physical violence, sexual violence and emotional violence stand at 18.4% (53000) for women and 7.5% (22000) for men. The incidence for women who experience IPV in the extreme case is 43 times on average, approximating one episode every 7 to 8 days for the year. For the occasional group, the incidence for women stands at 13 times, that is, averaging one episode every month. The incidence for men stands at one episode every three months. The study also revealed that the expenses which are incurred by victims of IPV for seeking support from parents stands at Rs20.3M. The economic costs to victims due to help seeking strategies such as friends, colleagues, police, SOS Femmes and the Ministry of Gender Equality, Child Development and Family Welfare stand at Rs 38 M. The cost of IPV on household is estimated at Rs. 642 M. The loss productivity at work because of IPV is estimated at Rs. 546 M for the year.

295. Following the study on the Quantitative Assessment of Intimate Partner Violence and Associated Economic Costs in Mauritius, a National Action Plan to address Intimate Partner Violence (IPV) was elaborated in collaboration with stakeholders. Funds to the tune of Rs 500,000 were subsequently earmarked for the financial year 2018/2019 for implementation of the action plan. The elaboration of the national action plan to address IPV (2019-2022) is viewed as another step in the fight to protect survivors of IPV. The action plan will be a roadmap for the fight against intimate partner violence for the next three years.

5.5.5 Action Plan on Gender-based Violence

296. The strategic actions in the Action Plan on Gender-based Violence have been aligned with the SADC Regional Framework for Action for Addressing Gender-Based Violence, revolve around the following five pillars:

- I. A focus on legislation and prosecution:
 - Objective: Send a strong signal to perpetrators to promote deterrence
- II. A focus on primary prevention
 - Objective: Stopping Violence before It Occurs
- III. A focus on capacity building in the identification of IPV:

- Objective: strengthen the workforce dealing with survivors of IPV
- IV. A focus on Enhancing Service Delivery
- Objective: provide quality services that meet the needs of IPV survivors
- V. Monitoring and Evaluation

Awareness programmes are also conducted at the workplace through the Victims Empowerment and Abuser Rehabilitation Policy (VEARP). Its objectives are as follows (a) to promote and make available VEARP services to stakeholders engaged in the fight against gender-based violence to assist both abusers and victims and (b) Set up guidelines to both the public and the private sector in the establishment of workplace initiatives to fight Gender Based Violence.

6. Recommendations

6.1 The perspective of the Law Reform Commission

297. The Law Reform Commission is the institution mandated to keep the law of Mauritius under review in a systematic way. One of its functions is also to make recommendations for the reform and development of the law of Mauritius and advise the Attorney General on ways in which the law of Mauritius can be made as understandable and accessible as is practicable.

With regards to violence against women and children, the LRC has submitted recommendations and drafted opinion papers in the following areas:

- On the reform of the law surrounding sexual offences involving and not involving physical contact with the victim ‘Incorporation of offence of moral harassment in the criminal code’
- Reviewing laws on social media (fake profiles, fake news and other forms of digital communication)
- Reform of law on violation of dignity and liberty of persons in the criminal code
- Reform of law on acts of torture and barbarity in the criminal code
- Reform of violence in the criminal code
- Review of criminal protection of children’s rights

Sexual Offences:

298. Sexual offences form a large part of violence across the three categories, women, children and LGBT. Sexual offences can involve elements of physical contact as well as non physical contact.

299. On the law reform on sexual offences not involving physical contact between the perpetrator and the victim, the Commission proposed to repeal section 248 of the Criminal Code dealing with ‘indecent act in public’ and replace it with provisions on

indecent sexual exposure and to repeal and replace section 254 in order to reformulate sexual harassment.

300. Concerning sexual harassment, which has also been proposed to be included in the list of sexual offences, the Commission proposed that the new provision will be defined as imposing on a person repeatedly remarks or behaviour of a sexual nature that is impairing his dignity because of their degrading or humiliating character or creating a situation against him which is intimidating, hostile or offensive. It also emphasises that even if the behaviour is not repeated, using all forms of serious pressure in the real or apparent purpose of obtaining an act of a sexual nature, whether it is sought for the benefit of the perpetrator or of a third party.
301. The Commission noted that the offence covers a much wider field than the current scenario which views the objective pursued by the perpetrator but also by the consequences of the behaviour on the victim. This reform aims at the disappearance of the relationship of authority; it analyses sexual harassment both from a vertical and horizontal lens. It is possible to impute the offence to a colleague or even to a subordinate.
302. The inclusion of sexual harassment and indecent behaviour among the Sexual offences broaden the ambit of access to justice of victims and stricter penalties for the perpetrators of those acts. Furthermore, the criminalisation of such acts may act as a deterrent as defiance of inexistent legal framework may no longer hold valid.
303. As to reform of the law on sexual offences involving a physical contact between the perpetrator and the victim, the Commission recommended to redefine sexual offences by repealing sections 249 and 250 and replacing them with provisions on 'sexual assault', rape, incest on minor, and sexual act without violence on minor.¹⁴⁵
304. The clause on rape will be extended to include any act of sexual penetration, whatever its nature, committed on the person of the author or the victim by violence, constraints, threat or surprise. It may be the penetration of the penis into a part of the victim's body. It can be an anal or oral penetration, or the penetration of any object in the sex of the victim.

¹⁴⁵ Discussion Paper entitled 'Reform of Law on Sexual Offences involving a physical contact between the perpetrator and the victim' April 2019.

And marital rape will be expressly provided for. Rape can be committed by a man or a woman, the victim can be a man or a woman.

305. As for sexual assault, it is any sexual act exercised directly on the body of the victim, with the exception of rape. The moral element is constituted by the consciousness of committing an abnormal and obscene act against the will of the victim. Like rape, it must be committed by violence, constraint, threat or surprise.

306. Sexual assault without violence on minor consists of any act related to sexual activity committed on a minor below 18 years of age. It can be any act of a sexual nature, whether or not there has been penetration, provided it is done without violence, constraint, threat or surprise. The victim's consent to the infringement is a component of the offence. Otherwise, the offence would fall under either rape or sexual assault with the aggravating circumstance that it is committed against a minor.

Incorporation of moral harassment in the criminal code.

307. Currently, only when moral harassment is committed within work relations that it constitutes an offence as per the Employment Rights Act (now repealed and established as Workers' Rights act). Moral harassment is not incriminated in the Criminal code. The commission proposes to include a new section 255 which would make it an offence to morally harass another person. The new section would be divided into three parts which would target i) repeated conduct likely to lead to or leading to a deterioration of another person's work conditions likely to violate his rights and his dignity, to damage his physical and mental health or compromise his career prospects; ii) repeated words or conduct which have as object or as effect the degradation of the living conditions resulting in impaired physical or mental health; iii) harassment of one's spouse or partner, present or past, by repeated words or conduct which are destined to lead to or have as effect the degradation of living conditions resulting in impaired physical or mental health.

Reviewing the law on fake Social media profiles and fake news

308. With issues such as sexting and sharing of images, the commission recommended the removal of obscene words such as indecent and obscene which may be open to constitutional challenge and focused on the issue of consent. With regards to fake profile, the ICTA was discussed with the inclusion of stricter fines.

309. The sharing of images negatively affects many young **children** and young adults. The fact that with or without consent is placed at the heart of this law provides equal opportunities for both sides to be heard and actions to be taken.

Reform of law on violations of dignity and liberty of persons in the criminal code

310. The commission recommended that provision be made for the offence of discrimination by a public officer during his discharge of duties in terms of restricting to services that they are legally or legitimately entitled to.

311. The commission also recommended the establishment of the offence of recourse to prostitution (new section 253A based on article 225-12-1 to 225-12-4 CPF) and to reform existing provisions about procuring prostitutes.

312. Many public officers or those in position of authority often engage in systemic violence such as discrimination- in many cases it is also done on purpose, laced with perception of race, caste and class. Therefore, discrimination being categorised as an offence provides a redress mechanism for victims of discrimination.

Reform of law on torture and acts of barbarity

313. The commission suggested to establish torture or acts of barbarity as an aggravating circumstance to several other offences namely rape (sec 250) and procuring prostitute (sec 253). Linking rape as torture and act of barbarity demonstrates the severity of this fleau.

Reform of law on violence in the criminal code

314. In the interim report on reform of criminal code submitted in May 2016, the commission recommended that within acts of violence, both the psychological and the physical should be considered. It should also provide for new aggravating circumstances to acts of violence, such as acts committed against a minor under the age of 16 years or against a person whose particular vulnerability, due to age, sickness, disability, a physical or psychological disability or to pregnancy, is apparent or known to the author, acts committed on a teacher or member of staff working in an educational institution. (Repeal sections 228-231 and replace section s 228 and 229 about Acts of violence).

6.2 Recommendations pertaining to the international legal framework on violence against children, women and LGBT people

315. There is a pressing need to domesticate all the international human rights instruments such namely the ICCPR, the ICESCR, the CEDAW, the UNCRC, the UNCRD, the ACHPR, the Maputo Protocol and the ACRWC. Section 4 has discussed and elaborated on the various progressive provisions of the above-mentioned international instruments with regards to the protection of women, children and LGBT people against violence. However, a lack of domestication of these instruments in the Mauritian jurisdiction does not allow the use of these provisions before domestic courts. This is because of the dualist nature of the state of Mauritius which requires domestication of international laws for them to have legal effect domestically.

316. The rich jurisprudence from judicial and quasi-judicial institutions at the UN and AU level on the question of violence against women, children and LGBT people can only be fully applied in a binding manner in Mauritius if they are domesticated. Without domestication, it can only be used for its persuasive value and not for its binding nature.

6.3 Recommendations pertaining to the acts of Parliament relevant to violence against the three groups

317. It is worth noting that, since women, children and LGBT people are victims of violence, there need to be strong legislative provisions in place to punish their offenders. Moreover, an accused can only be prosecuted for an offence known to law- that is the offence should be provided in a legislative text. In following passage from the case **Dharmarajen Sabapathee v The State (Privy Council) [1999 PRV 1]** can be quoted *“Article 7(l) of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (nullum crimen, nulla poena sine lege) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy; it follows from this that an offence must be clearly defined in law”*.

318. **Child Protection Act 1994** - The CPA 1994 does not define violence but instead provides for the term 'harm'. Since children are more exposed to violence it is recommended that the CPA 1994 should be amended to cater for the definition of violence as well as the different types of violence including bullying which children are subjected to. With the intent to better protect the child, the CPA 1994 should also cater for provisions on child labour as well as economic violence faced by children (The Children's Bill does cater for child labour).
319. Moreover, in line with Emergency Protection Order, the restrictive time limit of a maximum of 28 days upon renewal being made- should be amended. The reason behind is that after the lapse of this time limit, the child may be again at risk. Indeed, if a more prolonged time frame is introduced, this will ensure the security of the child and most importantly at the same upholding the principle of the 'best interest of the child'. It is also recommended that author of violence against children be submitted to compulsory psychological follow-up and an assessment be carried out regarding both the family and the author.
320. **It is also recommended that an assessment of the impact of the violence be conducted to judge the necessity of a protection order.**
321. In similar thought, this recommendation applies also for interim committal orders. Even though interim orders are per se of a relatively short period, however in context of child protection it is advisable that it may be enlarged so that the child is better protected, pending determination of a final committal order. It is also recommended that provisions be made for an assessment be conducted on the person of the author and the non-author parent to explore the possibility of the child victim to remain in his home after distancing the parent who is the author of violence. It is not in the best interest of the child to be separated from the family and placed in a shelter immediately without proper evaluation.
322. Additionally, on basis of recommendations concerning the offence of child trafficking same should be reviewed. It is therefore highly recommended that the offence of facilitation of child trafficking should be equally sanctioned by criminalising acts such as leasing or subleasing or allowing any room, house, building, or establishment to be used for the purpose of harbouring a child who is a victim of child trafficking. In line with child abduction, the existing provisions are not protective enough and it should be

reviewed- the more so Mauritius has already acceded the Hague Convention on International Child Abduction¹⁴⁶.

323. In line with the duty to report under Section 11 of the CPA 1994, it is recommended that this section should be amended to include psychologist, counsellor, social worker, members of NGOs having contact with the child in question- to notify the Permanent Secretary that the child has been ill-treated, neglected, abandoned or otherwise exposed to harm, as the case may be. Equally important, according to Section 29 of the Children Bill, there is a mechanism called Mandatory reporting by person performing professional or official duties.

324. In furtherance the Article 145 of the Civil Code as well as Section 18 of the Juvenile Offenders Act 1935 should be repealed. Also there should be in place a proper legislative framework to prohibit all forms of corporal punishments against children be it at home or in institutions they attend. Equally important, the procedure for birth registration of an abandoned child should be made easier in order to prevent the child in question from staying for longer periods of time in shelters. It is worth noting that when there is delay to obtain a birth certificate, the adoption process is equally delayed.

325. **The Protection From Domestic Violence Act 1997** - In the PFDVA 1997 the term domestic violence has been defined at Section 2 and includes several instances constituting domestic violence. However, this term is limitative as it does not include psychological and economic violence. It is recommended that definition of domestic violence should be reviewed to meet the new requirements of our societal needs. Coming to Protection Orders, from the above discussed case laws we have seen how there has been breach of same. Therefore, it is recommended that regarding breach of any orders under the PFDVA 1997, the law should be amended to provide only for custodial sentence, thereby removing the pecuniary sanction. In this way, the person against whom an order under the PFDVA 1997 has been issued will refrain from causing any breach. In similar way, on basis of recommendation, Protection Order as remedy to victims of domestic violence should be reinforced, that it is not seen as a measure inferior compared to Occupation Order.

¹⁴⁶ Multilateral conventions/treaties signed/ratified/acceded by Mauritius after independence.

326. **Combating of Trafficking in Persons Act 2009** - In this piece of legislation as well violence is not defined, instead the term ‘exploitation’ has been defined in a broad way. For instance, psychological and economic violence does not fall within the ambit of exploitation. These two types of violence are indeed a matter of concern when it comes to human trafficking. Therefore, it is recommended that the Combating of Trafficking in Persons Act 2009 should be reviewed in order for better protection of persons.
327. **Computer Misuse and Cybercrime Act 2003** - This Act of parliament has the aim to provide for repression of criminal activities perpetrated through computer systems. However, the ways violence inflicted through computer misuse have not been provided. When dealing with computer misuse the most common form of violence is economic violence. Many people especially women and elderly persons are victims of financial abuse through their ATM card and pension book. It is recommended that this legislation should cater for provisions on economic violence as well as the ways violence can be perpetrated through the use of technology. Equally important, nowadays many people are glued to their mobile phones and tablets where they spend lots of time on their preferred social network. As this legislation dates back to the year 2003, it should be updated to include new provisions given the fact that we have known much advancement in terms of technology.
328. **Equal Opportunities Act 2008** - The Equal Opportunities Act 2008 does not have provisions specifically on violence. In line with the promotion of equal opportunity there is the issue of psychological violence which is faced by those who have been victimised. Therefore, it is recommended that the EOA 2008 should cater for a provision on psychological violence.
329. **Mauritius Family Planning and Welfare Association Act 2018** - The term ‘welfare’ even though it is mentioned throughout this new piece of legislation, it has not been defined. Since we are dealing with provision regarding sexual and reproductive health, it is recommended that the terms ‘violence’ and ‘welfare’ should have been defined. Moreover, there should also be sensitisation and educational programmes aiming at delivering sexual education to youngsters.

330. **Mental Health Act 1998** - In this legislation also it is recommended that provisions on violence along with the types of violence should be introduced. In this way, women, children as well as ~~LGBTs~~ LGBT people who are mental patients will be protected against violence in a more effective way.
331. **National Adoption Council Act 1987** - Since children are victims of violence, it is recommended that the National Adaption Council Act 1987 should provide for provisions regarding violence against adopted children and most importantly defining and providing for the types of violence that adopted children may be victim of. In furtherance, the term 'welfare' should be also defined in the Act.
332. **Protection of Elderly Persons Act 2006** - It is recommended that the issue of sexual abuse against elderly person should be provided in the Protection of Elderly Persons Act 2008. Equally important, in the Act provisions regarding protection from sexual abuse should be introduced in order to better protect elderly persons.

6.4 Recommendations relevant to children

333. The introduction of the Children's Bill in Parliament will repeal the Child Protection Act and bring in new elements and components necessary for the protection of rights and welfare of children. The main objective of the proposed bill is to repeal the Child Protection Act and replace it with a more appropriate, comprehensive and modern legislative framework so as to better protect children 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.
334. Provisions have been made within the bill for the better care, protection and assistance to children and their families; for the respect and promotion of the rights and best interests of children; for the setting up of structures, services and means for promoting and monitoring the sound, physical, psychological, intellectual, emotional and social development of children; for children under the age of 12 not to be held criminally responsible for any act or omission; for child witnesses and child victims under the age of 14 to be, subject to certain conditions, competent as witnesses without the need for them to take the oath or making solemn affirmation; for the setting up of a Children's Court, which shall consist of a Civil Division, a Protection Division and a Criminal Division and for addressing the shortcomings in the Child Protection Act.

335. The above amendments were much needed and are in line with the recommendations of the LEA at least in principle. Substantively, a few more changes can be recommended to the bill. For instance, the bill defines the child as a person below the age of 18. Following the statement made by the Minister of Gender Equality and Family Welfare and the definition of the child by the bill, it is recommended that section 9 entitled forcing child to be married be amended. It should clearly state that a child is not allowed to get married below the age of 18, civilly or religiously. It is thus recommended that relevant provisions of the Civil Code and the Civil Status Act be amended to reflect this outright ban on marriage of children.

336. Section 23 of the bill also provides for the right to privacy in terms of prohibition of any act by any person that affects the privacy of the child. It is recommended that section 9 of the Constitution should also be amended to confer a complete protection related to privacy. This is so because according to the case of *Madhewoo v The State*, section 9 of the Constitution restrictively protects privacy of the home, bodily search and property of a person.

337. The bill also provides that a child under the age of 12 shall not be held criminally responsible for an act or omission. **It is recommended that this age be reviewed and set at 16 years old.**

6.5 Recommendations relevant to LGBT people

6.5.1 The Canadian perspective on the rights of LGBT people

338. In the year 1997 Quebec has banned discrimination on the basis of sexual orientation. This said amendment took place following a brutal police raid on a gay bathhouse called Truex.

339. Moreover, this raid was widely publicized and threatened the newly elected Parti Québécois's image as a progressive party. It is to be noted that at the time, sexual orientation as a human right was not considered by any other province- not even in the federal Human Rights Act and in the Charter of Rights and Freedoms. In 1976, the Saskatchewan Federation of Labour undertook a huge step and adopted a non-

discrimination policy on the basis of sexual orientation. At that time, it was the only labour federation in the country to consider this form of discrimination.

340. However, gays and lesbians still faced discrimination in Canada. According to information obtained, in February 1981, 150 Toronto police officers raided four bathhouses and arrested hundreds of gay men. Later, this action was later characterized as the largest police action since the October Crisis. Further this was characterized the raids as an “ugly action” and a clear case of discrimination against homosexuals by The Globe and Mail: *“This flinging of an army against the homosexuals is more like the bully-boy tactics of a Latin American republic attacking church and lay reformers than of anything that has a place in Canada.”* Irrespective of the existence of a recommendation from its own Human Rights Commission, the Ontario government has refused to include sexual orientation in its Human Rights Code.

341. Sexual orientation as a human right has been rejected since many years by politicians in Canada. In 1974, the government refused to include sexual orientation despite the fact that British Columbia had produced one of the most innovative human rights laws in the world. Even though members of Parliament and SMOs insisted to have sexual orientation included in the federal Human Rights Act and the Charter of Rights and Freedoms- same was rejected. In the mid- 1970’s the Ontario Human Rights Commission has conducted province wide public consultations with regard to possible reforms to the Code and the most contentious issue by far was sexual orientation. The Ontario Human Rights Commission recommended in its 1977 report entitled ‘Life Together’, the government to include sexual orientation in the Code and the response was swift and highly critical.

342. As this issue received disproportionate attention in the media and the public response was so critical that the Ontario government rejected this recommendation from its own commission. In contrast, Quebec became the first jurisdiction to ban discrimination on the basis of sexual orientation. Arguably, it would take almost another decade before Ontario did the same. Even at that time, this was only a beginning. In the year 1993 a judge in Ontario applied a twisted logic to reject the argument that prohibition of same sex marriage was discrimination on the basis of sexual orientation: *“The law does not prohibit marriage by homosexuals, provided it takes place between persons of the opposite sex.”* Notably, the banning of discrimination on the basis of sexual orientation was an important symbolic first move.

343. Moreover, in 1990 sexual orientation as a human right was continuously refused in many provinces. A major overhaul of Newfoundland's Human Rights Act in 1988 was almost dropped entirely when the Cabinet became ~~got~~-involved in the debate over sexual orientation. In 1990, the province's justice minister insisted that such discrimination did not exist in Newfoundland. According to information obtained, the Newfoundland Human Rights Commission's files gave an indication that it never investigated a single case of discrimination against gays and lesbians prior to 1993, despite that the Newfoundland Human Rights Association had documented several incidents. In the year 1997, the government backed down and amended the law and only Prince Edward Island and Alberta were left. The government of Alberta expressed its refusal to amend its human rights legislation.
344. Alberta was already an important battleground in the fight for the rights of sexual minorities. In early 1970's, the first gay rights groups appeared in Canada's largest cities in the early 1970s which included the Gay Alliance Towards Equality (GATE) in Edmonton, founded in 1971. Furthermore, GATE was the first to organise campaigns to have sexual orientation included as a prohibited ground for discrimination. Peer counselling was offered by both GATE and Calgary's People's Liberation (founded in 1973) via phone lines and in some cases held social events and hosted drop-ins. Also, The Women's Collective which was founded in Calgary in 1977 has held its first all-woman dance that year and hosted- meetings, social events, and consciousness-raising groups.
345. Additionally, the Women's Collective operated a drop-in centre and the Lesbian Information Line. In 1980, a Lesbian Mothers' Defence Fund was launched in Calgary. Also, in 1983, Calgary hosted the province's first lesbian conference and the first lesbian organization Women space was established in the year 1982 in Edmonton. In this way in the 1990's, similar organizations saw the day in Red Deer, Grande Prairie, Medicine Hat, and Lethbridge. With the rapid increase of gay and lesbian rights organizations this illustrated how minorities appropriated rights discourse to advance their claims and there was a flourishing gay rights movement in Alberta by the 1990s.
346. The efforts of activists can be attributed to every success in the fight for equal rights for sexual minorities in Alberta. Indeed, the province's political leaders were reluctant to follow other provinces in line with the legislating of equal rights for gays and lesbians. Despite a 1976 recommendation from the Alberta Human Rights Commission that the

law be amended, the Progressive Conservative government had declined to address sexual orientation. The party refused to move forward on this issue. In 1979, a provincial organization called the Alberta Lesbian and Gay Rights Association was formed and activists wrote briefs, mounted letter-writing campaigns and held meetings with members of the legislature.

347. In contrast, the government appointed a chairman to the Human Rights Commission who was openly opposed to gays and lesbians. The commissioner urged that sexual orientation was a choice and that people who display their sexual orientation should expect discrimination. In 1989, it was declared by one cabinet minister that the province would never prohibit discrimination if it meant allowing homosexuals to teach in schools. Also, it was insisted by another cabinet minister that “two homosexuals do not constitute a family.” Moreover, ten years later the government went to such extent whereby it introduced legislation restricting common law marriages to heterosexual couples.

348. Besides politics, the social context in Alberta was another hurdle for the gay and lesbian rights movement. On national television, Calgary’s 1995 lesbian and gay film festival was attacked by religious groups (which had received a \$4,000 federal grant) for being a “pornographic film orgy.” One minister urged that *“I’m not after the homos or the bi’s, I’m after the fact they’re showing porno movies in a tax-funded situation.”* Further, two years later, the chief superintendent of the Calgary Public School Board was convinced to ban two books from school libraries that dealt with homosexuality by reason that they were “pro-gay”, by a group of evangelical Christians. This also led to the public opinion being divided. A 1999 opinion poll established that a large majority of people in both Quebec and Atlantic Canada (over 87 percent) supported the inclusion of sexual orientation in human rights legislation, and in Ontario it was 75 percent. The weakest support was on the prairies which were for an overall of 65 percent.

349. It was almost inevitable that the courts would have to intervene, given such a hostile climate. By the year 1998, Alberta was the only jurisdiction (except for the Northwest Territories) where discrimination against gays and lesbians was legal. A professor named Delwin Vriend, was fired from King’s College in Edmonton because he was gay. According to the college, “homosexual practice goes against the Bible, and the college’s statement of faith.” Initially, the Human Rights Commission refused to hear his case. However, a new commissioner along with a vigorous campaign on behalf of activists led

the commission to change its position on investigating sexual orientation cases. Meanwhile, the victim convinced the Alberta Supreme Court that the commission's initial decline to consider his case violated his rights under the Charter of Rights and Freedoms.

350. Even though the Alberta Appellate Court reversed the ruling, the Supreme Court of Canada ruled in the year 1998 that Alberta's human rights law's omission of sexual orientation violated Section 5 of the Charter. Therefore, that Court has ordered the government of Alberta to interpret its human rights legislation as if it included sexual orientation. Thus, this became for the first time in Alberta's history that it was illegal to discriminate on the basis of sexual orientation. Following this, Prince Edward Island amended its statute two months later. However, despite Alberta enforced the law as the Court required but it firmly declined to formally amend its laws.

351. Following the Supreme Court of Canada's 1998 ruling on sexual orientation, this led to what was described by one author as "*a venomous torrent of homophobic hatred,*" from attacks on radio shows to protests in front of the provincial legislature. The Alberta Treasurer, Stockwell Day, has called on the provincial government to invoke the Charter's despite the clause. Albertans continue to their battle with discrimination based on sexual orientation, despite a decade after the Supreme Court's ruling. Darren Lund, an Alberta resident successfully pursued a complaint before a provincial human rights tribunal against Reverend Stephen Boissoin of the Concerned Christian Coalition in the year 2008. Also, Boissoin had written a letter which was published in the Red Deer Advocate that attacking homosexuality as wicked and dangerous. They ruled in favour of homosexual rights and this decision was a victory for human rights. Also, this victory was due to Lund had the support of both the commission and the provincial government. Unfortunately, the decision was reversed by the Court of Queen's Bench on the basis that Boissoin's hate speech constituted free speech. Further, in 2012 Lund's appeal to the Alberta Court of Appeal was dismissed, whereby there was also an order to pay Boissoin's legal costs.

352. The former Minister of Justice and Attorney General for Newfoundland, Lynn Verge, argued that the failure was '*because I couldn't get the Cabinet to go along with what I wanted*', when he was confronted during a committee hearing in 1990 on the government's decision to not include sexual orientation in 1988. The Cabinet as a whole was stuck on a series of recommendations with regard to extending protection,

significantly on extension of protection to gays, and *“I decided as a matter of political strategy to take a two-step approach, step one, which I accomplished, which was amending the code to change the procedures.”*

353. In Canada, same-sex sexual activities between consenting adults were considered crimes punishable by imprisonment before 1969. That year, the Canadian government passed an omnibus bill decriminalising private sexual acts between two people over the age of 21 – a breakthrough in treating gay men, lesbians and bisexuals equally under the law. Almost ten years later, in 1977, Quebec became the first jurisdiction in Canada to amend its provincial charter of human rights to include sexual orientation as a prohibited ground for discrimination.

354. Since July 2005, same-sex marriage is legal in Canada. The Civil Marriage Act was amended to allow for same-sex couples to get married. In addition, there is also the human right to change legal gender in Canada without the need of a surgery even though there may be some variances among the states. Legal gender change has many different contexts within Canada. Birth certificate is arguably the most recognised authoritative statement of gender. Changes to this document are regulated province by province. Some require proof of surgery for a certificate change, others require a psychologist's statement. For citizens born outside of Canada, recognition is at the federal level in the form of changes to one's certificate of Canadian citizenship and/or passport which at present requires proof of surgery to obtain.¹⁴⁷ Canadian laws also allow for same-sex adoption

6.5.2 Recommendations

355. Section 3 and 16 of the Constitution of Mauritius should be amended to expressly include sexual orientation as a ground on the basis of which discrimination, especially those acts leading to violence or are a result of violence, is prohibited.

356. There is a need to amend section 250 of the CCA in view of decriminalising same-sex physical relationships notwithstanding any challenge before the Supreme Court. In 2019, the Government has asked the Law Reform Commission to rework on its Sexual Assault

¹⁴⁷ <https://www.equaldex.com/region/canada> [Accessed 20th December 2019].

Law reforms based on the Canadian Model.¹⁴⁸ A comprehensive and umbrella legislation on Sexual Offences would be most desirable, in line with the Canadian model. As discussed in the report, the constitutionality of section 250 of the CCA is currently being challenged before the Supreme Court. In the event of there being an unsatisfactory decision, supranational institutions such as the UN Human Rights Committee or the African Commission on Human and Peoples' Rights should be contemplated. There is also the possibility of appealing any unsatisfactory decision of the Supreme Court to the Judicial Committee of the Privy Council.

357. There is a need to amend section 282 of the CCA to ensure that hatred and contempt against LGBT people are severely punished by criminal laws. It is recommended that the constitutionality of this provision should be challenged before the Supreme Court.

358. A dose of judicial activism is required from the Supreme Court while dealing with cases brought, or to be brought, before it regarding LGBT people. Inspiration can be drawn from Canadian and Indian judiciaries on the way in which they have progressively adjudicated on issues of LGBT people with judicial interpretation of their constitutions.

359. The National Human Rights Commission and the Equal Opportunities Commission must jointly initiate studies on LGBT issues. The purpose should be to know the ground reality of the difficulties that ~~the~~ LGBT people are facing and how these issues can be solved constructively both judicially and otherwise.

360. The Executive branch of the government must initiate a national debate on the issue of LGBT people especially in view of amending various laws that are repressive towards them. There is a general sense of reluctance on the behalf of politicians to look into the crucial question of rights of LGBT individuals. This mindset must be changed to see progress in this particular area.

361. A multi-stakeholders approach must be adopted to address questions of same-sex marriage, adoptions by LGBT people and sex transition facilities and recognition. The Canadian model has been proposed by various quarters justified by the fact that Canada is one of the most gay-friendly nations of the world. The Academia and civil society

¹⁴⁸ <https://www.lemauricien.com/article/government-rejects-law-reform-commission-sexual-assault-law-proposals-two-demands-from-the-womens-movement/> [Accessed 2nd March 2020]

organisations must initiate studies, seminars and conferences in a comparative approach to thrash out the multiple ways in which Canada can be served as a model.

7. Conclusion

362. The report started with an introduction and background to the study- whereby introducing the term violence along with cases of violence against women, children and LGBT people supported by newspaper articles. Moreover, the legal framework in Mauritius was explained in detailed- highlighting the importance of the Constitution and the Judiciary. Also, detailed explanation as to the structure of the judiciary was given- underlining our highest Court of Appeal being the Judicial Committee of Privy Council.

363. Then Judicial and quasi-judicial organs mandated to protect women and children against violence was lengthily discussed. Moreover, other independent bodies were dealt with, including the National Human Rights Commission, the Equal Opportunities Commission, the Mauritius Police Force, and the Independent Police Complaints Commission which have established complaint mechanisms place. Then, an overview of violence in the context of Mauritius was provided and reference was also made to the different types and forms of violence that women are faced with. In this section, referenced definitions were also used to properly understand violence from different perspectives.

364. On matter of violence against women, firstly domestic violence was explained in detail and it has been observed that this form of violence is the most prominent in the Mauritian society. Then the problems of marital rape, abortion, economic violence, sexual harassment against women were elaborated. Concerning violence against children, they are victim of different forms of violence which include domestic violence, child maltreatment and emotional psychological violence, violence at school which include bullying and peer pressure, cyber crime, sexual abuse and teenage pregnancy, child marriage and much more.

365. Then the issue of violence against LGBT individuals was addressed in detail. These include, ostracization, rejection, discrimination within the personal and professional sphere, physical assault and battering, verbal abuse and discrimination. The International legal and normative framework on violence on women, children and LGBT people was expatiated. In this phase, the United Nations international instruments that Mauritius has

signed were considered. Moreover, the Optional Protocol establishing complaint mechanisms under the relevant treaties were also discussed. To better understand the complaint mechanism, reference was made to several communications from treaty bodies and their respective recommendations were analysed in detail.

366. Further, there were also analysis of periodic reports submitted by Mauritius to treaty bodies where matters pertaining to violence against women and children and LGBT people were underlined. Equally important, an overview of the regional legal obligations of Mauritius on violence against women, children and LGBT people at the level of the African Union was given. The regional legal obligations of Mauritius on violence against women, children and LGBT people was considered in detailed.

367. Decisions of both the African Commission regarding the issue of violence against women and the African Committee of Experts on the Rights of the Child (ACERWC) regarding the issue of violence against children were scrutinised. The next phase in the report was the assessment of the legislative framework on violence against women, children and LGBT people in Mauritius. In this part, the Constitution along with several acts of parliaments were lengthily discussed and reference were made to case laws which showcase the types of violence that women and children are faced with in Mauritius.

368. In addition, the existing lacunas in the acts of parliament referred to in the analysis were underlined. Then, programmes and policies on violence against children- that is the role, functions and duties of the Child Development Unit was dealt with in detail. The Programmes and Policies on violence against women were equally analysed and reference was made to programmes and policies based on the right to dignity, administrative measures on sexual violence and domestic violence and the action plan on gender-based violence.

369. Lastly, a series of recommendations were given from the perspective of the Law Reform Commission and pertaining to the international legal framework on violence against children and women. Recommendations were also given pertaining to the acts of Parliament relevant to violence against the three groups, as to what amendments should be brought to better protect the three groups. Finally, recommendations relevant to LGBT people were made while taking into consideration the Canadian perspective on LGBT issues.