

The present report is structured and presented according to the areas (in italics) identified by the High Commissioner for Human Rights in 2019<sup>1</sup> and their corresponding list of issues (in bold and in inverted commas).

## **A. CROSS CUTTING ISSUES**

### *Equality and non-discrimination*

**“ Prevention of and protection from discrimination based on gender identity and sexual orientation [...] “**

1. We commend the enactment of the Children’s Act 2020 in December 2020, which includes protection of the child from discrimination on the grounds of the child’s or child’s parents’ race, caste, sex, disability, etc<sup>2</sup>.

2. **We recommend the inclusion of ‘gender identity and sexual orientation’ as a ground for discrimination in this particular legislation and in any other relevant ones where only ‘sex’ is used, including the Equal Opportunities Act (2008).**

3. **We recommend, as in 2022<sup>3</sup>, that section 250 of the Criminal Code (1838) on ‘sodomy and bestiality’ which criminalizes sodomy, be repealed with a view to decriminalizing same-sex sexual conduct between consenting persons.**

In November 2020, the Mauritius Supreme Court heard key evidence in a case challenging the constitutionality of section 250. Two other legal challenges were also filed in 2019 challenging the same section<sup>4</sup>. The Supreme Court has reserved its judgment in one of them.<sup>5</sup>

**“Investigating all complaints of violence and hate speech against lesbian, gay, and transgender persons, and bringing those responsible to justice”.**

4. **We recommend that all complaints of violence and hate speech against LGBT persons be systematically considered and investigated, and that those responsible be brought to justice.**

5. There is currently no specific legislation against homophobic and/or transphobic violence or hate speech.

6. **We recommend that section 46 (ha) of the ICTA be more specific to include ‘sexual orientation and gender identity’, adding the following in italics: “Any person who uses telecommunication equipment to send, deliver or show a message which is abusive, threatening, which is likely to cause or causes humiliation, inconvenience, distress or anxiety to any person; *based on his age, impairment, HIV status, domestic circumstances, sex, sexual orientation, gender identity/expression, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority with homophobic / transphobic intention at the origin of the act as aggravating factor shall commit an offence” under Section 46 of***

<sup>1</sup> Letter by the High Commissioner of Human Rights to the Foreign Minister dated 21 April 2019, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MU/LetterMauritius.pdf>

<sup>2</sup> Article 11 of the Children’s Act 2020, <https://gender.govmu.org/Documents/2021/children's%20act%202020.pdf>

<sup>3</sup> KDI Recommendations to Mauritian Members of Parliament, March 2022, [https://www.google.com/url?q=https://kdimoris.mu/wp-content/uploads/2023/03/Recommendation-du-KDI.pdf&sa=D&source=docs&ust=1689492772896387&usg=AOvVaw0uTnMtwknhgl\\_rPZCTRQWF](https://www.google.com/url?q=https://kdimoris.mu/wp-content/uploads/2023/03/Recommendation-du-KDI.pdf&sa=D&source=docs&ust=1689492772896387&usg=AOvVaw0uTnMtwknhgl_rPZCTRQWF)

<sup>4</sup> <https://www.humandignitytrust.org/country-profile/mauritius/>; <https://www.reuters.com/article/mauritius-lgbt-lawmaking/interview-gay-mauritian-men-seek-to-overturn-anti-gay-law-on-paradise-island-idUSL3N26L3D2>;

<sup>5</sup> <https://youngqueeralliance.com/2022/06/02/section-250-young-lgbt-mauritians-seek-for-justice-at-the-supreme-court/>

the ICTA 2001.

**7. We recommend the amendment of Article 282 of the Criminal Code, entitled 'incitement to racial hatred' and the deletion of the term 'racial' to encompass all incitement to hatred in general, including based on sexual orientation and gender identity.**

**8. As the Civil Status Act, section 2(g) of the Equal Opportunity Act, or articles 144 and thereafter of the Mauritian Civil Code do not restrict marriage to only heterosexual couples, we recommend that all marriages between consenting adults be accepted at the Civil Status Office<sup>6</sup>.**

## **B. CIVIL AND POLITICAL RIGHTS**

### *Prohibition of all forms of slavery*

**"Taking measures to prevent and prosecute trafficking in persons, including by enforcing the Combating of Trafficking in Persons Act."**

### **9. The Adoption Bill**

One critical measure we recommend to prevent trafficking in persons, including children, is the enactment of the Adoption Bill. A KDI's member, KDZM, submitted recommendations thrice to the Government and all MPs in 2018 and 2021. There have been no responses thereto from Ministry<sup>7</sup> officials or the Minister of Gender Equality and Family Welfare herself. In May 2022, local media have reported cases of child trafficking<sup>8</sup>. This is particularly alarming in the absence of a register of children waiting for adoption at the National Adoption Council and the absence of a legal framework facilitating adoption of local children by Mauritian nationals. In 2022, the Minister of Gender Equality and Family Welfare announced that a series of Bills would be introduced at the National Assembly in 2023<sup>9</sup>, while the Minister of Finance announced the introduction of the Bill in his Budget speech 2022- 2023<sup>10</sup> but no timeframe was indicated, nor was there any mention or update thereon in the current year's budget (2023- 2024).

**10. As per the submissions of our member KDZM to the Committee on the Rights of the Child (CRC) and KDI's recommendations to Mauritian MPs<sup>11</sup>, we recommend the finalization of the Adoption Bill in the best interests of children of the Republic of Mauritius<sup>12</sup> in line with the Hague Convention, with the following:**

- (a) adopted children to access their biological identity;**
- (b) a partnership between the Mauritius Government and an international entity for adoption to become a public (free) and safe service;**
- (c) the establishment of regulated rates for legal professionals, as an adoption procedure can vary between MUR Rs 15k and 100k. This could contribute to countering the increasing number of child trafficking;**

<sup>6</sup> <https://kdimoris.mu/wp-content/uploads/2023/03/Recommendation-du-KDI.pdf>, page 16

<sup>7</sup> The Ministry of Gender Equality and Family Welfare

<sup>8</sup> <https://www.lexpress.mu/article/409028/enquetetraffic-humain-allegue-un-couple-souconne-vendre-bebes-pour-rs-100-000>, accessed on 14 June 2023

<sup>9</sup> <https://govmu.org/EN/newsgov/SitePages/Several-Bills-to-be-introduced-at-the-National-Assembly-in-2023-to-better-protect-women-and-children.aspx>

<sup>10</sup> [https://mauritiusassembly.govmu.org/mauritiusassembly/wp-content/uploads/2023/03/2022\\_23budgetspeech\\_english.pdf](https://mauritiusassembly.govmu.org/mauritiusassembly/wp-content/uploads/2023/03/2022_23budgetspeech_english.pdf), page 45, at para 268

<sup>11</sup> Recommendations to Mauritian Members of Parliament <https://kdimoris.mu/wp-content/uploads/2023/03/Recommendation-du-KDI.pdf>

<sup>12</sup> including Rodrigues and Agalega and to facilitate their adoption

- (d) the establishment of a register of potential adoptive parents and a list of children, including those with special needs, and that these children be given priority for adoption;
- (e) training be provided by national authorities to inform, assess and prepare identified and screened adoptive parents;
- (f) cases of children without birth certificates be considered and fast-tracked at the State Law Office;
- (g) prioritizing local matching before international adoption;
- (h) retraction period to be set to 3 months for the biological mother;
- (i) contestation period in favour of the biological family be maintained to 21 days, as presented in the draft bill;
- (j) clarifying the adoption protection order in the bill;
- (k) specifying simple and plenary adoptions in the bill;
- (l) prioritising plenary adoptions and clarifying the procedures for intra-family adoptions;
- (m) specifying that adopted children of Mauritian birth and/ or Mauritian parents be assigned *de facto* Mauritian nationality;
- (n) the follow up of adopted children by the relevant Mauritian adoption state agency over a period of 3 years, including abroad via social services attached to Mauritian embassies or via foreign social services.

**“Acceleration of the adoption of a comprehensive action plan to prevent, combat and prosecute all forms of trafficking in persons, including trafficking in children”**

11. Sexual exploitation and trafficking are prevalent in Mauritius, although its actual extent is difficult to determine due to the clandestine nature of the offences, and the lack of comprehensive and disaggregated data on cases reported and investigated upon. This is confirmed by the report of the UN Special Rapporteur on the sale and sexual exploitation of children<sup>13</sup>, and findings of the 2023 US Report on Trafficking which highlight that traffickers exploit girls, particularly from low-income communities, in child sex trafficking, including through online platforms<sup>14</sup>. Women and children of African descent (Creoles), and LGBTQI+ persons, are vulnerable to sex trafficking<sup>15</sup>.

12. A National Action Plan to combat Trafficking in Persons in Mauritius 2022-2026, developed with the assistance of the International Organization for Migration<sup>16</sup>, is according to the same US Report, being implemented since December 2022<sup>17</sup> to help guide the response to trafficking in persons in the country. However, there were decreased anti-trafficking law enforcement efforts over the last reporting period, to the extent that Mauritius was downgraded in the 2023 report<sup>18</sup>. Training is said to be ensured by the Mauritius Police Force, however it needs reinforcement with practical exercises related to investigations and victim identification.<sup>19</sup>

<sup>13</sup> Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Mama Fatima Singhateh, January 2023, A/HRC/52/31/Add.1 , A para 11

<sup>14</sup> 2023 Trafficking in Persons Report: Mauritius, <https://www.state.gov/reports/2023-trafficking-in-persons-report/mauritius>

<sup>15</sup> Ibid

<sup>16</sup> Highlights of Cabinet meeting, 9 December 2022

<https://pmo.govmu.org/CabinetDecision/2022/Highlights%20of%20Cabinet%20Decisions%2009%20December%202022.pdf>

<sup>17</sup> [https://www.panapress.com/Mauritius-to-implement-National--a\\_630736421-lang2.html](https://www.panapress.com/Mauritius-to-implement-National--a_630736421-lang2.html)

<sup>18</sup> Mauritius was downgraded from ‘Tier 2’ to ‘Tier 2 Watch list’ compared to the previous reporting period 2023. See Trafficking in Persons Report: Mauritius

<https://www.state.gov/reports/2023-trafficking-in-persons-report/mauritius/>; and <https://www.state.gov/reports/2022-trafficking-in-persons-report/mauritius/>

<sup>19</sup> See Trafficking in Persons Report: Mauritius

<https://www.state.gov/reports/2023-trafficking-in-persons-report/mauritius/>

**13. We recommend measures against child trafficking through the implementation of section 24 of the Concluding Observations of the CRC<sup>20</sup>, including and in addition to:**

- (a) specific training including for more responsive and efficient hotline services<sup>21</sup>;**
- (b) the adoption of a victim-centered approach;**
- (c) application and respect of laws and protocols;**
- (d) allocation of resources to act efficiently;**
- (e) using the established victim identification and referral SOPs, systematically and proactively identify trafficking victims;**
- (f) conducting campaigns, sensitization and awareness-raising, including on the new provisions set out in the Children's Act, is critical for the wider public, professionals working with children, and the media;**
- (g) increasing efforts to investigate and prosecute trafficking crimes under the 2009 anti-trafficking law and setting adequate penalties for convicted traffickers to include significant prison terms;**
- (h) ensuring consolidated and disaggregated data with regard to the number of cases reported, investigated and prosecuted, etc.**

**14. We wish to recommend further:**

- (a) that research be conducted for a better understanding of most effective actions;**
- (b) that the duty of care of sexual perpetrators and psychological support be compulsory in our laws for both adult and minor perpetrators, to prevent the risks of relapse;**
- (c) that sexual education in schools be correctly conducted by trained persons who feel at ease to conduct these sessions, to increase the chances that children, including victims, speak freely about matters related to sexuality;**
- (d) financial support to poor families to help counter commercial and sexual exploitation of children. Protection of all children should be a priority for the Government;**
- (e) that representatives of Civil Society also be part of the steering committee on the implementation of the National Action Plan to combat Trafficking in Persons in Mauritius 2022- 2026.<sup>22</sup>**

### **C. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

#### *Right to health*

**"Guaranteeing safe, legal and effective access to abortion [...]."**

**15. We recommend:**

- (a) as per 35 (a) of the 2023 Concluding Observations of the CRC<sup>23</sup>, that abortion be decriminalized in all circumstances; repealing section 235 of the Criminal Code;**
- (b) that safe abortions for every girl and woman in the Republic be preceded by a certified medical and psychological assessment, and that their views are heard and given due consideration as part of the decision-making process and that access to post-abortion care services for adolescent girls be facilitated;**

<sup>20</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMUS%2FCO%2F6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMUS%2FCO%2F6-7&Lang=en)

<sup>21</sup> As mentioned in the alternative report of the CSOs in July 2022 concerning this item, CSOs report to the CRC, June 2022, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FMUS%2F49432&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FMUS%2F49432&Lang=en)

<sup>22</sup> Mentioned in the Highlights of Cabinet meeting, 9 December 2022

<https://pmo.govmu.org/CabinetDecision/2022/Highlights%20of%20Cabinet%20Decisions%2009%20December%202022.pdf>, page 2, para 4

<sup>23</sup> Committee on the Rights of the Child Concluding observations on the combined sixth and seventh periodic reports of Mauritius, CRC/C/MUS/CO/6-7;

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMUS%2FCO%2F6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMUS%2FCO%2F6-7&Lang=en)

- (c) that all contraceptive methods and methods to prevent STIs and HIV infection be made available to children including those below the age of 16, accompanied by appropriate and timely counselling and use of IEC materials to create awareness;
- (d) that mandatory comprehensive information sessions on sexuality be conducted by professionals with updated and correct information in all schools (including state-run schools), as also recommended by the UN Special Rapporteur on the sale and sexual exploitation of children<sup>24</sup>;
- (e) that the quality of content of campaigns and activities carried out in schools, by relevant organisations (such as Drop-In Centres and the Mauritius Family Planning and Welfare Association) to combat teenage pregnancy be reviewed with the expertise of civil society organizations;
- (f) that the National HIV Action Plan for the period 2023–2027 be harmonized with policies promoting the sexual and reproductive health of adolescents, with a view to ensuring that adolescents have access to confidential HIV testing and counselling services, without the need for parental consent, and that professionals providing such services fully respect the rights of adolescents to privacy and non-discrimination.

#### **D. RIGHTS OF SPECIFIC PERSONS OR GROUPS**

##### *Women*

**“Strengthening efforts to combat gender-based violence and domestic violence, by bringing perpetrators to justice, facilitating complaints, protecting women against reprisals or social reprobaton, and providing them with adequate assistance.”**

#### **GENDER-BASED VIOLENCE (GBV) AND DOMESTIC VIOLENCE**

##### **16. The National Gender Policy (NGP)**

We applaud the launching of the NGP 2022- 2030<sup>25</sup> in March 2022. It is the third NGP. It sets as objectives, *inter alia*, that

“(a) all forms of gender-based discrimination will be eliminated;

(b) the Gender Equality Bill will be enacted;

(c) gender equality obligations from international and regional treaties/ conventions will be fulfilled as commitments by the Government through legal reviews and amendments to legislations”.<sup>26</sup>

17. The NGP paradoxically assigns civil society the role of “lobbying and advocating for the enactment of the Gender Equality Bill and to review other enabling legislations which may not be compliant to realizing gender equality”<sup>27</sup>, while no efforts have been made so far by the Government to include civil society organisations in the drafting of this Bill, nor have the programmes and policies

<sup>24</sup> A/HRC/52/31/Add.1, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Mama Fatima Singhateh, 30 January 2023, para 119 (r )

<sup>25</sup> National Gender Policy 2022- 2030,

<https://gender.govmu.org/Lists/DocumentsLinks/Attachments/3/National%20Gender%20Policy%202022-2030.pdf>

<sup>26</sup> Ibid, page 34

<sup>27</sup> Ibid, page 49

of the NGP been enacted or widely disseminated more than a year following its launching. We have no information either as to the monitoring of its implementation.

18. The NGP highlights that a “participatory approach”<sup>28</sup> was used to draft the said policy and underscores the contribution of the following stakeholders including “Gender Focal Points, representatives of the Private sector, Civil Society Organisations”<sup>29</sup>. Nonetheless, to our knowledge, NGOs were not part of consultations for “brainstorming, drafting and feedback sessions”<sup>30</sup> contrary to what is mentioned in the NGP.

19. Although the NGP was formulated with the technical assistance of a UN agency, notably the UNDP, the above-mentioned policy document fails to *a minima*, acknowledge non-binary genders in the Republic of Mauritius, let alone guide the State towards international human rights norms and standards.

20. The 8-year long policy contributes to perpetuating gender-based discrimination by ignoring the existence of persons of non-binary genders and the violence and stigmatization they face. Throughout workshops and meetings with government officials from 2017- 2019, some local NGOs have exposed the various forms of discrimination, exclusion and marginalization encountered by gender, sex and sexually diverse (LGBTQIA+) persons, be it at the workplace, in hospitals, prisons, on the street, and other public places. These include, *inter alia*, lack of legal recognition and protection, bullying and harassment in particular online, family and social rejection, lack of access to gender-affirming healthcare, denial of access to employment, intersectional discrimination.

**21. We recommend in this respect:**

**(a) improved communication and transparency on implementation of the NGP in a timely manner, to allow for better follow up of policy implementation in partnership with stakeholders;**

**(b) inclusive, regular and meaningful consultations between Government and stakeholders, and that gender, sex and sexually diverse (LGBTQIA+) persons and organizations are consulted with regard to legislation and policies that have an impact on their rights;**

**(c) that policy documents such as the NGP include definitions of key terms and concepts which are aligned with international norms and standards;**

**(d) that appropriate definitions of key terms and concepts such as sex, gender, gender identity be in line with UN norms and standards, in particular when they form the basis of policy documents as critical as the NGP.** It appears that the Mauritian Government uses sex and gender interchangeably in its policy documents<sup>31</sup>. Although it acknowledges the distinction between sex and gender discrimination,<sup>32</sup> It does not reflect the same in its policies and strategic documents, where the term ‘sex’ is replaced by ‘gender’ albeit still referring to male and females only.

22. The NGP notes existing challenges<sup>33</sup>, and further states that relevant facilities<sup>34</sup> are inexistent due to budgetary constraints. However, in 2020, Opposition Leader Xavier Luc Duval stated that the

<sup>28</sup> Ibid, pages 8 and 19

<sup>29</sup> Ibid, page 8

<sup>30</sup> Ibid

<sup>31</sup> <https://gender.govmu.org/Lists/DocumentsLinks/Attachments/3/National%20Gender%20Policy%202022-2030.pdf>, page 54

<sup>32</sup> <https://gender.govmu.org/Pages/Gender-Unit.aspx>, under ‘Gender Equality Bill’, accessed on 14 June 2023

<sup>33</sup> National Gender Policy 2022- 2030

<https://gender.govmu.org/Lists/DocumentsLinks/Attachments/3/National%20Gender%20Policy%202022-2030.pdf>, March 2022, page 25. It acknowledges the challenges that exist notably the non-reporting of offences by women due to the culture of silence, the requirement for more training for Police officers and the too few shelters and safe homes for the survivors, in addition to the ‘need for support infrastructure such as housing units after the shelter, subsidized nurseries and child day care centres after school for the working mothers to provide victims of domestic violence a means to build a life free from violence if they decide to separate from their violent partner.’

<sup>34</sup> Such as housing units at disposal of victims after the shelter, subsidised nurseries and child day care centres after school for the working mothers as a means to build a life free from violence if they decide to separate from their violent partner. See National Gender Policy 2022-2030, <https://gender.govmu.org/Documents/2022/NationalGenderPolicy2022-2030.pdf>, at page 25

Ministry of Gender Equality and Family Welfare returned Rs 30m to the government treasury<sup>35</sup>. This is deplorable as there are not enough Family Welfare and Protection Officers at the Ministry, nor are their salaries attractive, rendering child protection even more difficult<sup>36</sup>. We also note with concern a disempowerment of the Mauritian State in putting the burden of responsibility solely on civil society.

**23. We recommend in this regard, regular and rigid monitoring and evaluation of the programs and policies of the Ministry using appropriate tools and resources.**

24. **“The Protection from Domestic Violence Act (PDVA) 1997<sup>37</sup>** was amended in May 2016, and its review is apparently still ongoing.<sup>38</sup> We welcome that it focuses more on the victim (whether child or spouse) rather than only on the spouse, and in particular section 2 (b) which includes children.<sup>39</sup>

25. However, the Minister of Gender Equality admitted to several lacunae encountered while implementing the recent (2016) amendments to the PDVA<sup>40</sup>. A consultative workshop, whose objective was reportedly to come up with concrete proposals for making the PDVA a stronger protective framework for victims while making perpetrators accountable for their actions, was held in 2021. **We recommend that the outcomes of the consultative workshop be made public.**

26. In spite of article 3(4) of the Act allowing for the Court to take into consideration the welfare of any child affected by the respondent's spouse's conduct and the housing needs of the aggrieved spouse, his children as those of the respondent's spouse and his children, this is not enforced in reality. In numerous situations, the victim has to live with the perpetrator of violence. If the spouse takes refuge at an NGO/ shelter to protect herself, the children often stay behind.

27. While the laws are in place, enforcement and prosecution remain a challenge. Many victims still hesitate to report domestic violence to the police or they simply withdraw their complaints due to factors like fear of retaliation from perpetrators, lengthy and costly judicial processes, economic dependence on abusers and cost barriers, societal norms and pressures including stigmatization especially in a small country where confidentiality in the reporting system can be a challenge.<sup>41</sup>

**28. We recommend a review of the PDVA which has apparently been ongoing since at least 2021<sup>42</sup>, to include:**

**(a) as per KDI advocacy and media interventions, a clear definition of verbal/ psychological/ emotional abuse/ violence<sup>43</sup>.** According to a recent national survey commissioned by KDI<sup>44</sup>, the most common form of violence raised by women, the gender diverse community, is this verbal/ psychological/ emotional abuse/ violence;

**(b) the definition of ‘sextortion’;**

<sup>35</sup> <https://defimedia.info/xavier-luc-duval-tire-boulets-rouges-sur-kalpana-koonjoo-shah>, 4 December 2020

<sup>36</sup> Ibid

<sup>37</sup> <https://mauritiusassembly.govmu.org/Documents/Acts/2016/act1016.pdf>

<sup>38</sup> <https://english.lematinal.media/domestic-violence-minister-koonjoo-shah-want-to-make-perpetrators-go-in-rehabilitation/>, accessed on 21 June 2023

<sup>39</sup> “willfully or knowingly placing or attempting to place, or threatening to place, the spouse or the other person in fear of physical injury to himself or to one of his children”

<sup>40</sup> <https://english.lematinal.media/domestic-violence-minister-koonjoo-shah-want-to-make-perpetrators-go-in-rehabilitation/>, accessed on 21 June 2023

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Recommendations to Mauritian Members of Parliament <https://kdimoris.mu/wp-content/uploads/2023/03/Recommandation-du-KDI.pdf>; [https://www.lemauricien.com/actualites/societe/violence-domestique-kdi-et-caritas-tendent-la-main-aux-victimes/545322/?fbclid=IwAR0ArjWhytNFGxprqjlacQkaxdvLsT-LVGu8WxICXeDJJC7-O7\\_3sqH3hM](https://www.lemauricien.com/actualites/societe/violence-domestique-kdi-et-caritas-tendent-la-main-aux-victimes/545322/?fbclid=IwAR0ArjWhytNFGxprqjlacQkaxdvLsT-LVGu8WxICXeDJJC7-O7_3sqH3hM); <https://defimedia.info/egalite-femmes-hommes-comment-passer-letape-superieure>

<sup>44</sup> Gender-based violence and its impact on the economic cost in mauritius: a victims' perspective, <https://kdimoris.mu/wp-content/uploads/2023/03/Final-Report-on-GBV-Pdf-28-March-2023a.pdf>, March 2023

- (c) **gender-neutral terms such that the definition of 'spouse' includes same-sex couples who are not afforded protection in this law;**
- (d) **the inclusion of 'marital rape' as a specific section therein, as recommended by KDI in 2023<sup>45</sup> and as identified by the High Commissioner for Human Rights in 2019<sup>46</sup>;**

**29. We further recommend:**

- (a) the introduction of a legislative framework to include a mandatory psychological treatment by psychologists specialised in domestic violence for victims including children as well as perpetrators;**
- (b) the centralization of all services for victims of domestic violence and their children under one roof (legal, medical, psychological, accommodation etc)**

30. With regards to the application for a protection order,<sup>47</sup> field information indicates that in many cases, the spouse victim has to stay with the perpetrator of violence. If the spouse goes to a local NGO for protection, the children sometimes stay behind. This is detrimental to the care and protection of victims, including to the development of children. It is critical that this be reviewed for better care and protection of victims, including children, witnesses and suffering from the situation, impacting on their development.

**31. We recommend in this respect**

- (a) that children be protected from the perpetrators of violence and that they be with the parent who needs protection;**
- (b) more campaigns and information be conducted on tenancy and ancillary orders, for better knowledge of rights and laws;**
- (c) more financial help to victims, etc. as per the recommendations of the KDI survey<sup>48</sup>.**

**32. Gender Equality Bill**

The Gender Equality Bill was drafted following technical support from the European Union, but has, to date, not been circulated amongst civil society organizations for their views. Although consultations prior to the drafting of the Bill started in 2018, to our knowledge NGOs were not invited to participate therein, nor were requests for invitation considered. The Government Information Services (GIS) reported a validation workshop at the time, to which NGOs were again not invited.<sup>49</sup>

33. The Bill is still under preparation five years onwards.<sup>50</sup> This is a matter of serious concern as it potentially limits the state's ability to not only promote gender equality, but also to act as a deterrent against gender-based violence (GBV)<sup>51</sup> and discrimination, and address those. The recommendation to urgently adopt a Gender Equality Bill has been continuously raised by the CEDAW; the latest dating back to 2018 whereby it is recommended to the State to "Adopt, without delay, a

<sup>45</sup> Recommendations to Mauritian Members of Parliament, <https://kdimoris.mu/wp-content/uploads/2023/03/Recommendation-du-KDI.pdf>

<sup>46</sup> <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MU/LetterMauritius.pdf>

<sup>47</sup> 3(4) In determining an application for a protection order, The Court shall have regards to the following (b)the welfare of any child affected, or likely to be affected, by the respondent's spouse's conduct (c)the accommodation needs of the aggrieved spouse, his children as well as those of the respondent spouse and his children'

<sup>48</sup> Gender-based violence and its impact on the economic cost in Mauritius: a victims' perspective, <https://kdimoris.mu/wp-content/uploads/2023/03/Final-Report-on-GBV-Pdf-28-March-2023a.pdf>, March 2023; La Vie Catholique, 17- 23 March 2023 edition

<sup>49</sup> Republic of Mauritius- Gender Equality Legislation to address discriminatory practices (govmu.org), 25 April 2018

<sup>50</sup> <https://gender.govmu.org/Pages/Gender-Unit.aspx>, accessed on 14 June 2023, and <https://gender.govmu.org/Lists/DocumentsLinks/Attachments/3/National%20Gender%20Policy%202022-2030.pdf>

<sup>51</sup> See later section on GBV in this document



comprehensive definition of discrimination against women [...]and ensure that such a definition is included in the draft gender equality bill"<sup>52</sup>.

34. Mauritian law recognises only males and females, except at birth where the sex could be "undetermined" according to a 2021 amendment of the Civil Code<sup>53</sup>. Trans persons are particularly vulnerable to human rights violations when their name and sex details in official documents do not match their gender identity or expression. Recently, a transgender's person request for a gender reassignment on her official documents was acceded to by the Attorney General after much difficulty and lengthy procedures.<sup>54</sup>

### 35. We recommend:

- (a) that Mauritius enacts the Gender Equality Bill without any further delay;**
- (b) that this law includes all genders, with a non-binary approach;**
- (c) the amendment of anti-discrimination legislation such as the Equal Opportunities Act to specifically protect gender identity, and to include 'gender', 'gender non-conforming' and 'transgender persons including children' as grounds for discrimination. It should also be accompanied by appropriate policy protection of these grounds;**
- (d) that clear procedures be set and facilitated to allow a transgender person to request a reassignment of their sex at the level of civil status, even though their identity does not correspond to the sex assigned to them at birth.**

### 36. Other recommendations :

- (a) the review of gender markers to incorporate other genders as a category in official identity and other documents. This would allow the registration of gender markers other than male or female - using gender neutral or no gender markers - in official documents. We recommend the use of such markers in surveys by Statistics Mauritius and including in the Population and Housing Census to determine the number of other genders for policy and programmatic interventions;**
- (b) specific training on gender identity, sexual orientation, and intersectionality to be conducted for civil servants, civil society, private sector, academia and the media. Technical assistance of the relevant UN agency would be welcome in this regard;**
- (c) We welcome the mobile application 'Lespwar'<sup>55</sup> to report domestic violence. However its access is difficult for persons with literacy difficulties and for those living in poverty conditions without access to the internet. Furthermore, when the author of violence is a close relative, in most cases, he/ she takes control of the phone and isolates the victim even more. This measure has to be completed with a more adequate solution, including the systematic financial help to all victims of violence, campaigns for more help from bystanders, neighbours, etc;**
- (d) Training for parents to help them develop their parenting skills, to provide them with tools to understand the consequences of any form of violence and tools to avoid violence in educating their children, etc;**
- (e) Data:** although recent statistics reveal a fall in the number of reported cases of GBV, this does not reflect a true picture of the prevalence in Mauritius<sup>56</sup>. The 2023 KDI survey "Gender-based violence and its impact on the economic cost in Mauritius" reveals that victims without a protection order are not included in the computation of some of these statistics which further contributes to the underestimation of the number of GBV cases.<sup>57</sup>

<sup>52</sup> Concluding observations on the eighth periodic report of Mauritius, CEDAW/C/MUS/CO/8, 14 November 2018, 10 (b)

<sup>53</sup> Section 13(1B) of Civil Code: 'Where the sex of a newborn cannot be determined due to congenital anomalies at the time of birth or stillbirth, the officer shall register the sex as "undetermined".'

<sup>54</sup> <https://www.lemauricien.com/actualites/magazine/karla-michelle-personne-transgenre-le-combat-pour-lidentite/579450/>

<sup>55</sup> The mobile application is equipped with a panic button that detects the location of the user and enables officers of the Ministry and the Police Family Protection Unit to respond rapidly wordto victims of GBV.

<sup>56</sup> Ibid

<sup>57</sup> Gender-based violence and its impact on the economic cost in mauritius: a victims' perspective, <https://kdimoris.mu/wp-content/uploads/2023/03/Final-Report-on-GBV-Pdf-28-March-2023a.pdf>, March 2023, pages 19 - 20

- (i) the operational definition of GBV be adequately harmonized across institutions;
  - (ii) better congruence and consistency in statistics across data collecting or reporting departments such as the Police, Statistics Mauritius, Family Support Bureau etc, and that data are correctly disaggregated and synergised across;
  - (iii) using a unique identifier to record cases of GBV to avoid duplicate data;
  - (iv) the establishment and prompt operationalisation of the Gender Based Violence Observatory to provide baseline data on the status of GBV in Mauritius, and better dissemination of the Observatory's<sup>58</sup> findings to guide evidence-based decision making and accountability of institutions;
- (f) better law enforcement and stronger protection of victims and children, including via specific training of the police force, as requested by our partners in their 2022 stakeholders report to the CRC<sup>59</sup>.
- (g) It is laudable that the recent Government budget provides for the construction of residential care institutions for children in distress and the setting up of 2 Halfway Homes for children coming out of Correction Youth Centres<sup>60</sup>. **We recommend that a shelter also be set up for gender, sex and sexually diverse persons (LGBTQIA+) who are often victims of violence in their own family settings<sup>61</sup>;**
- (h) **Financial assistance**
- (i) over a definite period to victims of domestic violence, including to allow them to acquire financial independence before finding new housing and employment, and to children of victims;
  - (ii) to victims for daily operations, including costs of transportation to Court, for medical treatment or other emergencies where transport public cannot be practically resorted to. We recommend, as per the OHCHR guidelines<sup>62</sup>, the enforcement of regulations on equal pay for work of equal value to combat discrimination against women and facilitate their financial independence;
  - (iii) be increased to shelters which host victims of domestic violence;
- (i) attribution of housing, in priority, to women victims of violence who are currently living in shelters be fast-tracked on a case-to-case basis;
- (j) a legislative framework to include systematic and regular psychological treatment to adult victims and children by psychologists specialized in domestic violence;
- (k) mandatory counselling sessions for perpetrators of domestic violence
- (l) **Capacity-building:**
- (i) provision of capacity-building to staff of all shelters hosting adults and children;

<sup>58</sup> National Strategy and Action Plan of the High-Level Committee on the Elimination of Gender-Based Violence in the Republic of Mauritius 2020- 2024

<sup>59</sup> Information from Civil Society Organisations, National Coalition-Mauritius-PSWG-Alternative Report, INT\_CRC\_NGO\_MUS\_49432\_E [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FMUS%2F49432&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FMUS%2F49432&Lang=en)

<sup>60</sup> [https://budgetmof.govmu.org/documents/2023\\_24budgetspeech\\_english.pdf](https://budgetmof.govmu.org/documents/2023_24budgetspeech_english.pdf), para 444 (a) and (c )

<sup>61</sup> Kolektif Drwa Imin's 2023 Budget proposals, <https://kdimoris.mu/wp-content/uploads/2023/04/2023.Propositions-Budget-SPP-Gender-Links-et-KDZM.-15-mars-23.pdf>, page 6, section 3.9

<sup>62</sup> Letter by the High Commissioner of Human Rights to the Foreign Minister dated 21 April 2019, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MU/LetterMauritius.pdf>

(ii) **capacity-building of institutions and staff responsible for the implementation of the PDVA, covering the national police, magistrates, lawyers, health technicians and various education and civil society stakeholders, focusing on the deconstruction of gender-based and discriminatory stereotypes, the various types of violence, the consequences, alternatives including sexual harassment;**

(m) **Police officers whose duties and power have been specified in the Act as to report any urgent need of counselling or any other form of psychological support by the victim of the offence, need to be trained on mental health issues so they can better assess those needs. Introduction of a module on gender and GBV in the Police initial training and continuous professional development. The content of the training could be in a manual of good practices, disseminated to media partners too.**

### **National Policy (National Strategy and Action Plan on the Elimination of Gender-based Violence in 2020- 2024<sup>63</sup>)**

#### **37. Recommendations:**

- (a) **That a representative from civil society be a member of this High-Level Committee, or at least be in attendance;**
- (b) **As the National Strategy and Action Plan for the Elimination of Gender-Based Violence in the Republic of Mauritius 2020-2024 enters its final year of implementation, it is crucial that successive national strategies and action plans be prepared in advance, to ensure the smooth continuity of policies;**
- (c) **that mid-term reviews include the participation of stakeholders and be disseminated for better accountability.**

**38. Abrogation of section 242 of the Criminal Code.** As identified by the High Commissioner for Human Rights in 2019<sup>64</sup>, **we recommend the abrogation of this section, namely that “manslaughter committed by any person on his spouse, as well as on his accomplice, at the very moment he finds them in the act of adultery is excusable”.**

#### *Children*

**“Acceleration of the adoption of the Children's Bill and ensuring it is fully compliant with the Convention on the Rights of the Child and its relevant Optional Protocols”.**

**39. Although the Children's Act 2020 has been adopted, we recommend strengthening the effective implementation of its legislation in compliance with the Convention and its relevant Optional Protocols, as per the recommendations of the CRC<sup>65</sup> and those of the Special Rapporteur<sup>66</sup>**

**“Full and explicit prohibition of corporal punishment of children in all settings, including in the home, alternative care settings, schools and penal institutions, and promotion of positive, non-violent forms of discipline”.**

<sup>63</sup> <https://pmo.govmu.org/Communique/PMO%20-%20National%20Strategy%20TP%20FINAL%20WEB.pdf>

<sup>64</sup> <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MU/LetterMauritius.pdf>

<sup>65</sup> Committee on the Rights of the Child Concluding observations on the combined sixth and seventh periodic reports of Mauritius, CRC/C/MUS/CO/6-7, A. 6 (a)

<sup>66</sup> Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Mama Fatima Singhatheh, January 2023, A/HRC/52/31/Add.1 , B para 119 (c)

40. We commend that this prohibition of corporal punishment of children in all settings is included in the Children's Act 2020. However, corporal punishment is still practiced in institutions. In May and June 2023, aggressions<sup>67</sup> towards children in a shelter, supposed to be a place of safety for them, were reported: chili and salt were rubbed on the wounds of a 6-year old child, which were caused by stick blows from caregivers themselves<sup>68</sup>.

**We strongly recommend regular and qualitative trainings to all persons working with children and the implementation of recommendations 21(a) and (b) of the CRC<sup>69</sup>.**

**41. We also recommend that Student Policies of educational establishments be updated to be more inclusive and to reflect current issues occurring in those settings, including and in particular protection of gender, sex and sexually diverse (LGBTQIA+) children.**

**“Putting an end to child sexual abuse and exploitation, especially child sex tourism and online child sexual exploitation, by establishing mechanisms for reporting and investigating such cases, bringing those responsible to justice, and ensuring effective support for the recovery and social reintegration of child victims.”**

42. Please refer to paragraphs 11- 14 of this document.

**“Enforcement of the minimum age of marriage, established at 18 years for both boys and girls, and ending the practice of child marriages.”**

43. This has been provided for in the Children's Act 2020.

#### *Persons with disabilities*

**“Reinforcement of measures to combat violence and ill-treatment of persons with disabilities, especially sexual abuse, and ensuring that all those responsible for such acts are held accountable under the law.”**

44. There are specific clauses protecting persons with disabilities within Mauritian legislation, notably within the Criminal Code and the recent Children's Act 2020 which provide for stronger penal servitude for offences against children or persons with disabilities<sup>70</sup>.

#### **45. Disability Bill**

Official sources dating from 2022 indicate that a disability bill is in its finalization stage<sup>71</sup> and that 'its implications and bearings are under study'<sup>72</sup>. It is not yet finalized, nor has it been circulated to date

<sup>67</sup> <https://lexpress.mu/article/423625/grands-titres-lexpress-ce-jeudi-15-juin>

<sup>68</sup> <https://lexpress.mu/article/424219/loiseau-paradis-festival-daccusations>

<sup>69</sup> Committee on the Rights of the Child Concluding observations on the combined sixth and seventh periodic reports of Mauritius, CRC/C/MUS/CO/6-7, E. 21 (a) - (b) :

“(a) Strengthen legislative implementation by enhancing awareness-raising campaigns and parenting education programmes, including for professionals working with and for children, to promote attitudinal change within the family and the community, with a view to eradicating the practice of corporal punishment

(b) Establish protocols and procedures for action when corporal punishment takes place, including the provision of child-friendly complaint mechanisms, particularly in schools and alternative care facilities, ensuring safe and confidential reporting and the due sanctioning of perpetrators.”

<sup>70</sup> For example, Criminal Code, Section 249.1. C. (4): ‘Any person who has sexual intercourse with a minor under the age of 16 or a mentally handicapped person, even with his consent, shall be liable to penal servitude for a term not exceeding 10 years’

<sup>71</sup> Government Information Services Facebook page, post dated 12 May 2022, <https://www.facebook.com/107005147753802/posts/rights-of-persons-with-disabilities-bill-at-finalisation-stage-says-minister-jee/529522118835434/>

<sup>72</sup> Combined sixth and seventh periodic reports submitted by Mauritius under article 44 of the Convention, CRC/C/MUS/6-7, June 2022, para 214.

to CSOs for their views. The latest national budget makes no mention of the Bill<sup>73</sup>, which presupposes that its enactment and relevant financial implications related to implementation are yet again not on the Government's agenda for the current financial year 2023- 2024.

#### 46. We recommend

- (a) **inclusive, timely and meaningful consultations with relevant stakeholders on such Bills and policies that have impact on the latter's rights.** The development of legislation should be grounded in a human-rights approach that is responsive to the need to protect and promote the rights of every person;
- (b) **the timely promulgation and enactment of this legislation;**
- (c) **with regards to the implementation of inclusive education, we reiterate the recommendations made by the CRC, in line with those made by CSOs, and recommend that they be implemented<sup>74</sup>.**

#### OTHER ISSUES

##### **Continuity of policies**

47. The CRC recommended to "finalize the renewed National Child Protection Strategy and Action Plan (2014–2022), ensuring that it also addresses child safety in the digital environment, prioritizes marginalized and disadvantaged children, allocates adequate resources for its implementation and defines clear lines of responsibility for its implementing partners"<sup>75</sup>. Most members of the present coalition are not aware of either the 2014-2022 plan or the renewed ten-year plan, nor have they been involved in their implementation. **We reiterate the CRC's recommendation regarding the finalisation of the renewed Strategy and Action Plan and request that the latter be disseminated, and if not finalised, that prior consultations with civil society organisations be held to that end.**

48. Similarly, the National Human Rights Action Plan 2012- 2020 did not have an immediate successive plan. The latest Annual Report (2021- 2022) of the Human Rights Division indicates the development of the National Human Rights Action Plan 2023-2030 over the next three years<sup>76</sup>, which supposes an implementation gap of almost 6 years since the last Action Plan. **We recommend that the Government ensures continuity of relevant national strategies and policies for the sustained promotion and protection of human rights of all citizens of the Republic.**

**49. We recommend that the Government builds a more inclusive culture of participation in that regard, involving civil society and other relevant stakeholders at all stages, that is throughout the whole cycle of devising strategy and policies, implementing them and following up on them.**

##### **Cooperation and coordination with civil society members working in relevant fields.**

**50. We recommend that civil society in all fields pertaining to the promotion and protection, including children, women, gender, sex and sexually diverse (LGBTQIA+) persons, in development, implementation, monitoring and evaluation of laws, policies and programmes related to them, be consulted in a participatory, inclusive, systematic and timely manner for the drafting of such strategies and plans; and that such documents be validated and disseminated to all stakeholders.**

<sup>73</sup> [https://budgetmof.govmu.org/documents/2023\\_24budgetspeech\\_english.pdf](https://budgetmof.govmu.org/documents/2023_24budgetspeech_english.pdf)

<sup>74</sup> Committee on the Rights of the Child Concluding observations on the combined sixth and seventh periodic reports of Mauritius, CRC/C/MUS/CO/6-7, para 23 ( c)

<sup>75</sup> Ibid, para 23(b)

<sup>76</sup> <https://humanrights.govmu.org/Documents/Report%20%26%20publication/Performance%20Report%202021%20-%202022.pdf>, page 51, accessed on 15 June 2023

**The National Mechanism for Reporting and Follow-up**

51. The last meeting of the NMRF apparently dates to January 2022<sup>77</sup>, and a preliminary preparatory meeting on the UPR of Mauritius was held under the Chairpersonship of the then Senior Chief Executive in March 2022 with all relevant stakeholders<sup>78</sup>. There has been no known follow-up meeting since then.

**52. We recommend in this regard systematic involvement of civil society in meetings of the NMRF, and that the latter adheres to a regular calendar of meetings.**

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<sup>77</sup> Performance Report 2021-2022, Human Rights Division, Ministry of Foreign Affairs, Regional Integration and International Trade, <https://humanrights.govmu.org/Documents/Report%20%26%20publication/Performance%20Report%202021%20-%202022.pdf>, page 25

<sup>78</sup> Ibid, page 29