



# General Assembly

Distr.: General  
24 July 2013  
English  
Original: English/French

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## Human Rights Council

Working Group on the Universal Periodic Review

Seventeenth session

Geneva, 21 October–1 November 2013

### **Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21**

#### **Mauritius\***

The present report is a summary of five stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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\* The present document was not edited before being sent to the United Nations translation services.

## **I. Information provided by the accredited national human rights institution of the State under review in full compliance with the Paris Principles**

The National Human Rights Institution of Mauritius did not make a submission.

## **II. Information provided by other stakeholders**

### **A. Background and framework**

#### **1. Scope of international obligations**

1. Commonwealth Human Rights Initiative (CHRI) indicated that Mauritius had still not ratified the following human rights instruments: the Convention on the Protection of the Rights of All Migrants Workers, the Convention for the Protection of All Persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. CHRI recommended that Mauritius immediately ratify these instruments.<sup>2</sup>

2. Joint Submission (JS) stated that the Government had made three impermissible reservations to the Convention on the Rights of Persons with Disabilities (CRPD), in contravention of its article 46(1). They directly went against the stated purpose of the Convention in article 1 and would prevent full application of rights throughout the Convention. These were on article 9 on accessibility, article 24 on education, and article 11 on situations of risk and humanitarian emergencies. These reservations demonstrated the widespread exclusion of persons with disabilities and needed to be withdrawn urgently.<sup>3</sup>

#### **2. Constitutional and legislative framework**

3. The Service d'accompagnement, de formation, d'intégration et de réhabilitation de l'enfant (SAFIRE) stated that, in the last report by the State party on its efforts to act upon the recommendations made during the last session of the universal periodic review, Mauritius had mentioned that it was preparing a law dealing with children's issues (the Children's Bill). However, to date, that law had still not been submitted. SAFIRE considered there to be a pressing need for Mauritius to establish a clear and precise legal framework for the protection of minors. In view of the uncertainty surrounding child protection, that law should be submitted as soon as possible.<sup>4</sup>

#### **3. Institutional and human rights infrastructure and policy measures**

4. Defence for Children International – Mauritius (DCI-Mauritius) reported that the National Children's Council (NCC) was mandated under the National Children's Council Act to promote activities for the welfare of children in line with the Convention on the Rights of the Child. However, there was no dividing line between activities of the NCC and those of the Child Development Unit, the specialized agency under the Ministry of Gender Equality, Child Development and Family Welfare to look after the welfare of children. Little was known about the work of the NCC in terms of its work, policies, strategies and recommendations made to the Government.<sup>5</sup>

5. With regard to Recommendation 80.11 concerning realization of children rights and the work of the Ombudsperson for Children, DCI-Mauritius indicated that there were

offices of the Child Development Unit across the country, however, that they were often unavailable or taken up in court proceedings. In addition, the hotline operated by the Ministry of Gender Equality, Child Development and Family Welfare did not seem to work during week-end, when children used the service most. Although there was a structure in place, resources were being spent on the infrastructure. The number of acts of violence against children was on the rise.<sup>6</sup>

6. JS stated that there were three boards which were supposed to be working for the rehabilitation of persons with disabilities, namely the National Council for the Rehabilitation of Disabled, Training and Employment Board, and Lois Lagesse Board. While the members of the boards were elected, they unfortunately could be replaced or removed by the Government without any reason if difficult issues were raised. There was a lack of transparency in the functioning of these boards. Many decisions of the boards were made without consultation with persons with disabilities and their representative organizations. Decision-making processes needed to be more fair, open and transparent.<sup>7</sup>

## **B. Cooperation with human rights mechanisms**

### **1. Cooperation with treaty bodies**

7. CHRI indicated that Mauritius had completed some of its reporting obligations under international treaties, however, that it had failed to satisfy all of its requirements. Mauritius still owed reports to the Committee on the Elimination of Racial Discrimination. According to CHRI, the additional information Mauritius had been required to submit to the Committee against Torture by June 2012 was overdue. Under the International Covenant on Civil and Political Rights (ICCPR), Mauritius had completed four rounds of reporting but its report from 2010 was overdue. CHRI recommended that Mauritius urgently submit the overdue reports to treaty bodies and the additional information that was overdue and commit to meeting deadlines in relation to future reports.<sup>8</sup>

### **2. Cooperation with special procedures**

8. CHRI stated that, at the last session of the UPR, Mauritius had stated that it would consider issuing a standing invitation to all Special Procedures of the Human Rights Council, however, that, no final response had been given by Mauritius in the outcome report adopted at the 11th session of the Human Rights Council. CHRI recommended that Mauritius extend a standing invitation to all Special Procedures of the United Nations Human Rights Council.<sup>9</sup>

## **C. Implementation of international human rights obligations**

### **1. Equality and non-discrimination**

9. JS stated that people with disabilities and parents having children with special needs were often looked down in society. This negative attitude was often due to a lack of information on disability and created a frustration among people with disabilities. All public officers and staff, hospital staff and police officers had no idea on how to assist persons with disabilities. JS recommended, among others, that the Government organize intensive awareness-raising campaign by creating an Awareness Campaign Agency with objectives to empower persons with disabilities as well as their families with information about the rights of persons with disabilities, making disabled people conversant with the CRPD and programmes for the public at large to change their negative attitude and adopt a more positive attitude towards people with disabilities.<sup>10</sup>

## 2. Right to life, liberty and security of the person

10. Global Initiative to End All Corporal Punishment of Children (GIEACPC) indicated that corporal punishment of children was lawful in Mauritius despite the Government's acceptance of relevant recommendations made during the UPR in 2009 and the repeated recommendations on the issue by the Committee on the Rights of the Child and other treaty bodies, i.e. Committee on Economic, Social and Cultural Rights and Committee against Torture.<sup>11</sup> Mauritius, while being examined by the Committee against Torture in 2011, had stated its intention to consider prohibiting corporal punishment of children in the Children's Bill then under discussion.<sup>12</sup>

11. GIEACPC, however, noted that, in terms of legislation in force, there had been no change in the legality of corporal punishment of children since the initial UPR. Today, as in 2009, corporal punishment was lawful in the home, in penal institutions and in alternative care settings.<sup>13</sup>

12. According to GIEACPC, Article 13 (1) of the Child Protection Act 1994 made it an offence to "ill-treat a child or otherwise expose a child to harm" but did not prohibit all corporal punishment. Provisions against violence and abuse in the Criminal Code, the Protection of the Child (Miscellaneous Provisions) Act 1998, the Social Aid Act, the Civil Code and the Protection from Domestic Violence Act 1997 were not interpreted as prohibiting all corporal punishment in childrearing.<sup>14</sup>

13. Corporal punishment was unlawful as a sentence for crime under the Constitution 1968 (amended 2003) and the Juvenile Offenders Act 1935 (amended 1998). There was no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. The treatment of detainees was governed by the Reform Institutions Act 1988 and associated regulations (the Prisons Regulations, the Rehabilitation Youth Centre Regulations and the Reforms Institutions Regulations). The Act stated that "no detainee shall be subject to punishment or privation of any kind", but article 12 allowed the use of "such force as is reasonably necessary ... to maintain discipline in the institution".<sup>15</sup>

14. There was no explicit prohibition of corporal punishment in alternative care settings.<sup>16</sup>

15. GIEACPC expressed the hope that a recommendation would be addressed by the UPR Working Group to Mauritius to enact legislation to explicitly prohibit corporal punishment of children in all settings, including the home as a matter of priority.<sup>17</sup>

## 3. Administration of justice and the rule of law

16. According to SAFIRE, children who were in conflict with the law were currently tried by ordinary law courts and detained in the Correctional Youth Centre or the Rehabilitation Youth Centre, depending on the offence they had committed. SAFIRE considered there to be a pressing need for Mauritius to reform its current juvenile justice system by establishing specialized courts with children's judges and specially trained investigators. Pretrial detention for minors should be abolished and youth offenders should not be tried alongside adults, even if the minor was an accomplice. Furthermore, previous convictions should not be taken into consideration when sentencing a juvenile repeat offender.<sup>18</sup>

17. Moreover, according to SAFIRE, minors should only be detained as a last resort and detained children should systematically follow a rehabilitation and reintegration programme, with the support of the NGOs working with them, to ensure that rehabilitation efforts had a tangible impact on them. That could be done upstream, by accrediting NGOs with the courts. NGOs could become part of the judicial process. A service for assigning court-appointed lawyers to minors should also be put in place.<sup>19</sup>

18. SAFIRE added that a large number of children were currently incarcerated, having been convicted as “children beyond control” on the grounds that they were difficult to manage. SAFIRE considered that the State party should do away with those grounds for conviction.<sup>20</sup>

19. Lastly, SAFIRE stated that an alternative to the penalties prescribed for youth offenders would be to introduce a programme like the one in place for persons aged 18 years or over, namely a community service programme, with the aim of preventing minors who had committed minor offences from having to serve a custodial sentence.<sup>21</sup>

#### **4. Right to privacy**

20. CHRI indicated that the Criminal Code of Mauritius (1838), Section 250 criminalised any person who was guilty of sodomy with a penalty of up to five years in prison and stated that the criminalisation of same-sex sexual conduct by Mauritius was incompatible with its obligations under ICCPR.<sup>22</sup>

21. Furthermore, CHRI stated that the criminalization of same-sex conduct interfered with the realization of the right to the enjoyment of the highest attainable standard of physical and mental health and referred to the Committee on Economic, Social and Cultural Rights holding the criminalization of same-sex conduct had the effect of “nullifying or impairing the equal enjoyment or exercise of the right to health”.<sup>23</sup>

22. CHRI informed that Mauritius had enacted the Equal Opportunities Act (2008) that prohibited discrimination at the workplace based on sexual orientation. CHRI, however, stated that, while Mauritius had promulgated such a progressive law, domestic legislation should also be clear and consistent and that the Criminal Code should be repealed to decriminalize same-sex conduct between consenting adults.<sup>24</sup>

23. According to CHRI, while there had been no reported prosecutions under the Criminal Code for adult same sex consensual conduct in recent years, the mere existence of the law encouraged discrimination based on real or perceived sexual orientation.<sup>25</sup> CHRI recommended that Mauritius repeal Section 250 of the Criminal Code that penalized same-sex conduct between consenting adults and promote and facilitate constructive dialogue on decriminalization of same-sex conduct, sexual orientation and gender identity with government ministries, civil society actors and other relevant stakeholders.<sup>26</sup>

#### **5. Freedom of expression and right to participate in public and political life**

24. CHRI indicated that there was no Freedom of Information law that gave the public the right to access information from the Government. According to CHRI, the Parliament had discussed the implications of introducing a Freedom of Information Bill in April 2011 but no further progress had been made on the Bill in the reporting period. A law was urgently required so that public access to information did not depend on the discretion of government agencies and officials. A freedom of information law was a valuable mechanism to bring transparency and accountability to governance.<sup>27</sup>

25. CHRI recommended that Mauritius draft, enact and implement a Freedom of Information Act at the earliest in accordance with international best practice. Such an Act should: include exemptions that were clearly stated and only apply to specific information that protected the public interest and would be subjected to the harm test; envisage the establishment of an independent commission to oversee the implementation of the Act; ensure that the time frame for providing information not be unduly long; be flexible and not deter citizens from accessing information; extend its ambit to private bodies that received state funding and worked in the public interest, as well as companies that used the natural resources of Mauritius.<sup>28</sup>

26. CHRI reported that, at its first UPR, Mauritius had accepted the recommendation to ensure that any legislation, regulation or measure concerning the media must fully respect the right to freedom of opinion and expression and the freedoms of the media. Mauritius also accepted that this should include the preservation of the media's ability to investigate and report on public officials without fear of penalty.<sup>29</sup> CHRI recommended that Mauritius ensure that human rights guarantees relating to media freedom were observed in practice.<sup>30</sup>

## **6. Right to health**

27. According to SAFIRE, in 2006, Mauritius had introduced harm reduction services, including syringe-exchange programmes and opioid substitution therapy with methadone. While that was commendable, SAFIRE regretted that young people under 18 years of age could not access those health-care services. SAFIRE considered the age restriction to be both arbitrary and discriminatory. It also constituted a violation of the rights of the child, particularly of the right to access health-care services. In 2010, the Committee on Economic, Social and Cultural Rights had encouraged Mauritius to "remove age barriers to accessing opioid substitution therapy and develop youth-friendly harm reduction services tailored to the specific needs of young people who use drugs". The age restriction made young drug users dependent upon the adults who obtained syringes for them in exchange for all kinds of services, which placed them in a vulnerable situation and exposed them to risk.<sup>31</sup>

28. SAFIRE noted that minors did not currently have access to information on sexual and reproductive health. SAFIRE considered that youth-friendly centres should be set up for young people under the age of 18 to give them access to condoms and other forms of contraception. According to the study published by SAFIRE, 47.5 per cent of young girls who lived on the street had fallen pregnant and 32 per cent of them had resorted to abortion. SAFIRE stated that having access to contraception was essential for the well-being and sexual and reproductive health of young minors. Furthermore, sex education at the secondary level was currently only provided at the discretion of the school in question. SAFIRE said that sex education should be part of the curriculum and should be formalized and coherent.<sup>32</sup>

## **7. Right to education**

29. According to SAFIRE, 45 per cent of street children dropped out of school after completing primary school or, to be more precise, after failing the examination to obtain their Certificate of Primary Education, while 13.3 per cent had never set foot in a school.<sup>33</sup>

30. SAFIRE noted that, according to the official statistics of the Ministry of Education, the average primary school enrolment rate in Mauritius was 72 per cent. SAFIRE recommended that the competent authorities take all necessary steps to devise and offer alternative solutions to children who did not attend school and/or were unsupervised. Those alternative solutions should be devised in partnership with the NGOs that worked with the target population to ensure that the facilities met the specific needs of the children in question.<sup>34</sup>

31. As far as children who attended school were concerned, SAFIRE noted that high levels of absenteeism remained one of the causes of school failure and that it was a widespread phenomenon. No solution had yet been found and schools had not yet taken any steps to combat that phenomenon. It was essential for schools to follow up on cases of absenteeism if the problem was to be resolved. Liaison officers and social workers played a vital role in curbing the rate of absenteeism and, by extension, the number of dropouts at the primary and secondary levels.<sup>35</sup>

32. SAFIRE pointed out that a number of alternative or informal schools had been established over the last few years to educate children who had failed in the formal school system. However, the curricula of those schools had yet to be officially validated and recognized by the Ministry of Education. The curricula of those schools must be systematically standardized and officially validated by the Ministry of Education. The academic value of the qualifications awarded by them must be recognized like that of any other qualification.<sup>36</sup>

33. SAFIRE welcomed the steps taken by the Ministry of Education to establish Creole as a language of instruction.<sup>37</sup>

## 8. Persons with disabilities

34. JS indicated that Mauritius had ratified the CRPD in 2010, and in so doing, implemented a UPR recommendation from its first UPR. However, while there was on paper a legal framework protecting the rights of persons with disabilities, their inclusion in all areas of life remained low. This was evident from the fact that, when the Government had drafted the Disability Act and enacted it, they had not held consultations with persons with disabilities and their representative organizations. Many persons with disabilities were unaware of this law and/or of its content.<sup>38</sup>

35. JS stated that there were two residential institutions for children with disabilities, while most lived with their families. There was a high prevalence of sexual abuse by family members, trusted people, close associates, such as bus drivers, neighbours or members of the community. This continued to increase for children and young persons with intellectual disability and deaf persons. The child protection system was lacking effective and urgent response mechanisms to keep children with disabilities safe from abuse, or to investigate, and where appropriate, prosecute perpetrators of abuse. JS recommended that the Government make strict legislation and undertake programmes to prevent abuse and exploitation of children with disabilities by parents or other members of society; and provide necessary measures to assist them in their quest of justice in all ways, including availability of sign language interpreters as well as psychological support for trauma survivors.<sup>39</sup>

36. JS stated that the Constitution of Mauritius restricted the right of persons with disabilities to vote and be elected, containing outdated terminology “persons of unsound mind”, in articles 34 (1) and 43, echoed in the Electoral Law, Local Government Act (1989), Section 29, Rodrigues Regional Assembly Act (2001), Section 5, subsection (2). JS recommended that this terminology be amended.<sup>40</sup> Specific awareness-raising was also needed among election administrators, as well as revision of legislation to ensure that all persons with disabilities enjoy their right to vote and be elected, in accordance with articles 2 and 29 of the CRPD.<sup>41</sup>

37. JS reported that there were no proper statistics concerning employment of persons with disabilities. It had always been considered that persons with disabilities were only suitable for basket-weaving, handicrafts, jewellery and not all sectors of employment. There was a need to offer a diversity of employment to persons with disabilities. JS recommended that the State safeguard and promote the realisation of the right to work, ensuring that persons with disabilities were included in work in all sectors, public and private, according to provisions of the Training and Employment of Disabled Persons Act of 1996.<sup>42</sup>

38. JS indicated that an allowance of US\$ 105, known as Basic Invalid Pension, was given to persons with disabilities between the age of 15–60 years. After 60, the basic invalid pension was stopped and older persons with disabilities were given only old-age pension. Considering that, with age, there were additional requirements for all persons, and

that disability-specific needs did not go away but would sometimes increase, JS considered it unfair for the Government to revoke the basic invalid pension when the person with a disability became old. It was a form of multiple discrimination against older persons with disabilities, who were treated less well than other persons with disabilities in terms of getting the needed support for their disability-specific costs.<sup>43</sup>

39. JS stated that there were two parallel education systems in Mauritius: (1) specialized schools for students with disabilities; and (2) mainstream school. More and more specialized schools were being created, which was counterproductive for integration of children with disabilities. Some children in the mainstream were neglected and forced to leave mainstream education to attend specialized schools. JS recommended that the Government withdraw the reservation on Article 24.2 (b) of the CRPD and provide for inclusive, quality and free primary and secondary education to children with disabilities on an equal basis with other children; and that students with disabilities not be excluded from the general system on the basis of disability.<sup>44</sup>

40. JS reported that persons with disabilities suffered much from lack of accessibility all around Mauritius and in all areas. They were hence deprived of many opportunities and were disadvantaged in education, employment, sports, public services, transportation, communication and information. The public buses were inaccessible, and most schools were two stories high with stairs. Such situation prevented persons with disabilities from being autonomous. In addition, it seriously inhibited their participation in political and public life. JS recommended that the Government withdraw its reservation on Articles 9.2 (d) and 9.2 (e) of the CRPD that included provision of signage in Braille and easy to read formats and provision of live assistance and intermediaries such as sign language interpreters, and seek technical assistance from OHCHR and from countries with good practices on implementing these provisions.<sup>45</sup>

41. JS stated that the rehabilitation services for children with disabilities remained poor, forcing many parents to hire private therapists. There was not medical insurance either that the parents could take to cover the additional expenses of their disabled child. Cost of assistive devices was very high, including hearing aid, wheelchairs, walking or standing frame, etc. The support by the Government was very limited. JS indicated that there was a need for the Government to analyse, in consultation with organizations of persons with disabilities, what had been achieved and what needed to be done to enable persons with disabilities to exercise their rights and have equal opportunity as all citizens of Mauritius.<sup>46</sup>

#### Notes

<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org).

##### *Civil society*

CHRI	Commonwealth Human Rights Initiative, New Delhi, India;
DCI-Mauritius	Defence for Children International – Mauritius, Nouvelle France, Mauritius;
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, United Kingdom;
JS	Joint submission by Federation of Disabled Peoples Organisations (DPO) Mauritius, Forest Side, Mauritius;
SAFIRE	Service d'accompagnement, de formation, d'insertion et réhabilitation de l'enfant, Moka, Mauritius.

<sup>2</sup> CHRI, paras. 6, 7, and 10.a.

<sup>3</sup> JS, pp. 2–3.

<sup>4</sup> SAFIRE, p. 5.

<sup>5</sup> DCI-Mauritius, p. 1.



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- <sup>6</sup> DCI-Mauritius, p. 2.  
<sup>7</sup> JS, p. 3.  
<sup>8</sup> CHRI, paras. 8 and 10.b.  
<sup>9</sup> CHRI, paras. 3 and 4.a.  
<sup>10</sup> JS, p. 5.  
<sup>11</sup> GIEACPC, p. 1.  
<sup>12</sup> GIEACPC, para. 1.2.  
<sup>13</sup> GIEACPC, para. 1.3.  
<sup>14</sup> GIEACPC, para. 2.1.  
<sup>15</sup> GIEACPC, para. 2.3.  
<sup>16</sup> GIEACPC, para. 2.4.  
<sup>17</sup> GIEACPC, p. 1.  
<sup>18</sup> SAFIRE, p. 4.  
<sup>19</sup> SAFIRE, p. 4.  
<sup>20</sup> SAFIRE, p. 5.  
<sup>21</sup> SAFIRE, p. 5.  
<sup>22</sup> CHRI, paras. 21 and 22.  
<sup>23</sup> CHRI, para. 23.  
<sup>24</sup> CHRI, para. 24.  
<sup>25</sup> CHRI, para. 25.  
<sup>26</sup> CHRI, para. 27. a. and b.  
<sup>27</sup> CHRI, paras. 12–13.  
<sup>28</sup> CHRI, paras. 14–15.  
<sup>29</sup> CHRI, para. 17.  
<sup>30</sup> CHRI, para. 19. a.  
<sup>31</sup> SAFIRE, p. 6.  
<sup>32</sup> SAFIRE, p. 5.  
<sup>33</sup> SAFIRE, p. 3.  
<sup>34</sup> SAFIRE, p. 3.  
<sup>35</sup> SAFIRE, p. 3.  
<sup>36</sup> SAFIRE, p. 4.  
<sup>37</sup> SAFIRE, p. 4.  
<sup>38</sup> JS, p. 2.  
<sup>39</sup> JS, pp. 8–9.  
<sup>40</sup> JS, p. 2.  
<sup>41</sup> JS, p. 5.  
<sup>42</sup> JS, p. 10.  
<sup>43</sup> JS, p. 3.  
<sup>44</sup> JS, pp. 7–8.  
<sup>45</sup> JS, p. 6.  
<sup>46</sup> JS, p. 4.
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