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Training Conducted at the Police Training School on Methods of Investigations in relation to Scientifically Based Evidence

S. N	Courses 2016	No. of Participants
1	Continuation Training for SMF (Intake 2014 & 2015)	554
2	Basic Photographic Course	41
3	SMF Foundation Course for Intake 2015	195
4	Inspector's Development Course	173
5	Sergeant's Development Course	380
6	TPCs Foundation Course 1-2016	188
7	Continuation Training for SMF Probationers (Intake 2015)	192
Total		1723
Courses 2017		
1	Awareness Training on PACE	3396
2	SI & CPL Development Courses	88
3	Foundation & Continuation Courses	599
Total		4083
Courses 2018		
1	SMF Continuation Course Batch Two (Intake 1/2016)	67
2	Continuation Course SSU, NCG & Regular Police (Intake 1/2016)	544
3	Cadet Inspector Course	11
4	Talk on Powers or Arrest	213
5	Cadet Officer Course	2
6	Talk on Human Rights & Torture	290
7	Workshop on Human Rights & Ethical Policing	327
8	Course on Criminal Investigation	168
9	Basic Photographic Course	55
Total		1677

Courses 2019		
1	TPC Foundation Course	395
2	SMF Foundation	73
3	Basic Photographic Course	45
4	Station Orderly Course	69
5	Cadet Officers Course 1/2019	25
Total		607
Courses 2020		
1	Refresher Course for CPLs/WCPLs/PCs/WPCs	146
2	One Day Refresher Course on Officer Safety	21
3	Workshop on Enquiry Duties	135
Total		302
Courses 2021		
1	Crime Scene Management Course (FOA & CSM)	263
2	Basic Photographic Course	49
3	Temporary TPCs & TWPCs Foundation Course	447
Total		759
Grand Total		9151

Recap	Foundation/Continuation Courses	3254
	Development/Refresher Courses	825
	Other Courses	5072
Total		9151

Source: Police Training School (September 2021)

Guidelines for manning “The Digital Interview Recording System”

(a) Chief Enquiring Officer

He / She will forward his/her request in writing to the Divisional Commander giving the date and time and nature of case, in which he/she intends to use of the Digital Interview Recording System (DIRS).

(b) Divisional Commander

- The Divisional Commander will make the necessary arrangements and detail a DIRS Operator.
- He will keep a register at his Divisional Headquarters respecting the use of DIRS for the recording of all interviews or interrogations.

(c) DIRS Operator

- The DIRS operator will collect keys of Digital Interview Room (DIR) from the Divisional OPS Room. In Metropolitan Division (South), however, the operator will arrange with OIC CID Metropolitan (South). Diary Book entries will be inserted accordingly.
- Prior to the interview/interrogation, the operator will ensure that DIR is clean, tidy, sitting accommodation provided and the recording system is in good working order.
- The following rules will be observed by the DIRS operator: - DIR is sufficiently lighted for the sake of good quality recording;
 - the door of DIR is properly closed in order to avoid recording of any unnecessary noise;
 - air-conditioners are switched on;
 - no electronic apparatus or device is brought inside DIR that may cause unnecessary interference with the system.

N.B: - All parties involved in the interview or interrogation should be requested to switch off their mobile phones.
- After the system is ready for use, the DIRS operator will notify the Chief Enquiring Officer.
- Victim/suspect/accused and lawyer and any accompanying person will occupy seats as instructed by the Chief Enquiring Officer. N.B: Only four chairs will be placed in the DIR.
- The operator will always ensure that the video cameras fitted in DIR are properly focused; the recording levels of the table omnidirectional microphones are properly set prior to the interview or interrogation.

- The operator will brief the Chief Enquiring Officer on the use of the bookmarking pedal.
 - The operator will input the following information into the system before the conduct of the interview or interrogation: -
 - a) Case Number (OB No.)
 - b) Interviewer Name (Chief Enquiring Officer)
 - c) Department
 - d) Location
 - e) First Name
 - f) Surname
 - g) Personal ID (NIC, Passport, etc)
 - h) Birth Date
 - i) Gender
 - j) Remarks
 - k) Date and Time (auto-generated)
 - l) Confirm Report
- } (Interviewee)
- During the interview or interrogation, the operator will constantly monitor the system and the Chief Enquiring Officer will be immediately notified of any irregularity/problem.
 - Before leaving the room, the operator will ensure that the power of all systems has been switched off (i.e. CPU, monitor, air-conditioner, lights, etc.).
 - The operator will return the key of DIR to the Divisional OPS Room or CID Metropolitan (South), as the case may be. Diary Book entries will be inserted accordingly.

(Source: Mauritius Police Force)

Works done after visit of Preventive Mechanism Team

BBP:

1. Repair beds in Remand Facilities:
 - Dormitories A & B – 28 Units.
 - Dormitories C1 – 2 Units.
 - Pirate Wing – 6 Units.
2. Repaired toilet door in yard No2 – 04 Units.
Repaired toilet in yard No4 – 02 Units.
3. BBP Hospital: suicide preventive cells – 02 Units.
4. BBP reception: 02 computer table, 02 chairs, 01 reception table.

Women Prison:

1. Repaired bed in cells – 40 Units.
2. Fixed beds in cells – 20 Units.
3. Toilet doors ‘wooden’ for detainees: 02 Units.
4. Toilet and bathrooms doors ‘wooden’ for officers: 09 Units.

CYC Girls

1. Manufactured and fixed beds in cells: 04 Units.
2. Manufactured and fixed security grill doors: 01 Unit.

CYC Boys

1. Erection of new yard shelter: Work under progress 70% completed.

RYC Boys

1. Repaired burglarproof: 03 Units.
2. Fixed strong metal door: 04 Units.

RYC Girls

1. Repaired burglarproof: 02 Units.

Women Prison and EHSP

2. Manufacture of face masks – 4500 Units

(Source: Prison Department)

Upgrading works year 2020

S.N	Institutions
	Beau Bassin Prison
1.	<p data-bbox="293 411 786 443"><u>Complete Renovation of Yard No. 02:</u></p> <ul data-bbox="345 489 1360 653" style="list-style-type: none"> • Redecoration of recreational hall. • Redecoration of toilets and bathroom. • Complete renovation of toilets and bathroom (tiles and new window panes). • Upgrading kitchen store (tiles and redecoration). <p data-bbox="293 695 500 726"><u>Welfare Office:</u></p> <ul data-bbox="345 772 857 804" style="list-style-type: none"> • Redecoration works and tiles laying. <p data-bbox="293 846 410 877"><u>Kitchen:</u></p> <ul data-bbox="345 921 959 989" style="list-style-type: none"> • Changing of window panes and broken tiles. • Complete redecoration works. <p data-bbox="293 1031 824 1062"><u>New Facilities: upgrading of dormitories:</u></p> <ul data-bbox="345 1108 656 1176" style="list-style-type: none"> • Sanitary works. • Redecoration works. <p data-bbox="293 1218 396 1249"><u>School:</u></p> <ul data-bbox="345 1295 837 1362" style="list-style-type: none"> • Changing of broken windowpanes. • Redecoration works. <p data-bbox="293 1404 488 1436"><u>Hospital Yard:</u></p> <ul data-bbox="345 1482 1170 1591" style="list-style-type: none"> • Upgrading works. • Enclosure of yard. • New accommodation of dental clinic (Florence Nightingale). <p data-bbox="293 1633 461 1665"><u>Holy Places:</u></p> <ul data-bbox="345 1711 656 1743" style="list-style-type: none"> • Redecoration works.

	<p><u>Reception Office:</u></p> <ul style="list-style-type: none"> • Demolition of burnt Reception Office. • Accommodation of new Reception Office. <p><u>Metal Workshop:</u></p> <ul style="list-style-type: none"> • Construction of new Metal Workshop. <p><u>Block A & Block B:</u></p> <ul style="list-style-type: none"> • Redecoration of cells. <p><u>Nightingale Medical Complex:</u></p> <ul style="list-style-type: none"> • Complete renovation works.
2.	<p><u>Women Prison:</u></p> <ul style="list-style-type: none"> • Complete renovation of toilets and bathroom in detainee's yard. • Covering of staircases in case of rain.
3.	<p><u>New Wing Prison:</u></p> <ul style="list-style-type: none"> • Tiles laying and redecoration works in Induction Unit.
4.	<p><u>PVP:</u></p> <ul style="list-style-type: none"> • Complete renovation of yard B (upgrading toilets and bathroom). • Complete renovation of dormitory D-1. • Complete renovation of yard A (upgrading toilets and bathroom).
5.	<p><u>GRNW:</u></p> <ul style="list-style-type: none"> • Upgrading works (complete renovation of toilets and bathroom in yard B & C).
6.	<p><u>Richelieu Open Prison:</u></p> <ul style="list-style-type: none"> • Renovation of poultry shed. • Complete renovation of dormitories including toilets and bathroom (year 2019 – 2020). • Fixing of panel fence around perimeter wall.

7.	<u>Phoenix Prison:</u> <ul style="list-style-type: none">• Reroofing of residential blocks for detainees.• Complete renovation works.
8.	<u>CYC Boys:</u> <ul style="list-style-type: none">• Construction of new association yard in progress.• Complete upgrading works in toilets and bathroom.
9.	<u>RYC Boys:</u> <ul style="list-style-type: none">• Complete renovation of toilets and bathroom in yard.

(Source: Prison Dept)

Status Report on the Visit of Sub Committee on Prevention of Torture

SN	Recommendations in the Report	Action recommended / Action taken	Status
<p>4. (a)</p>	<p><u>PRISONS</u> Medical screening on entry should include an examination thorough enough to reveal any injuries. It also recommends that the standard medical report be amended to encourage the full recording of any injuries; the report should include spaces for relevant history of violence, skin changes and lesions, and conclusions as to the consistency between the account of violence / ill treatment and injuries.</p>	<ul style="list-style-type: none"> • An Induction Unit has been put in place by the Prisons Department to take care of the screening of detainees on entry. • A proper record keeping system has been resorted to. • On admission all detainees are subject to a full medical screening whereby the Prison Medical officer uses the standard medical admission form which already include Examination both external and physical observation and any form of injury/violence/skin changes; a separate Injury Report Form is used for the recording with all the observations found. <p>In addition:</p> <ul style="list-style-type: none"> • Medical Admission form for minors (Boys and Girls) in the Correctional Youth Centers have been updated with the inclusion of Legal guardian/Substance abuse/Reproductive Health Care. 	<p>The Induction Units for male and female adult detainees have already been put in place at New Wing Prison and Women Prison respectively.</p> <p>The Induction Unit concept was developed in 2006 based on a model in the UK prisons. The idea was to conduct the necessary screenings and assessment at the receiving end and to help detainees on admission to adapt to the new environment and to inform them of their rights and privileges and the services and programs provided in our different prisons. To ensure better service delivery we embarked on the ISO 9001:2008 project in 2012/2013 and the Induction Unit was ISO Certified in 2013 and we are still maintaining the system under the new version ISO9001:2015.</p> <p>A new revised format of medical admission sheet, including a separate sheet for recording any injuries has been worked out jointly since 2010 by the technical staff of the Prisons Department and the Ministry of Health and Wellness.</p> <p>The reproductive health care (menstrual cycle/pregnancy) has been introduced on the Medical Admission Form in Correctional Youth Centers for girls since August 2020.</p>

			<p>Any case of physical violence screened on admission and reported by the detainee/inmate is referred to Police.</p> <p>There has been no case of assault violence/ill treatment and injuries reported.</p> <p>A detainee should be fit for admission. No detainees are allowed to be admitted to Prison if they have been screened with any source of violence/injury. At Prison Level, at the Induction Unit, the detainee is given all facilities to submit his/her complaints, if any.</p>
(b)	A procedure be established, with due consideration for medical confidentiality and the consent of the individual, for all cases of violence/alleged ill treatment documented by doctors to be reported directly to the prison director for referral to the IPCC.	<ul style="list-style-type: none"> • Appropriate procedures for medical screening of prisoners in accordance with international norms are being considered by the Prisons authorities. • A proper pro forma would be designed for that purpose. 	<p>A pro-forma already designed for reporting all cases of violence/alleged ill-treatment to the Commissioner of Prisons since 2010.</p> <p>Any case of physical violence screened on admission and reported by the detainee/inmate is referred to Police</p>
(c)	Non-medical personnel not be involved in filtering requests by prisoners to see a doctor.	<ul style="list-style-type: none"> • Normally requests from detainees to see a doctor are processed by para-medical staff posted at the Prisons. 	<p>The practice of processing request from detainees by para-medical staff enables to provide for time, care and attention as is the practice in our public hospitals.</p>
(d)	Prison healthcare staff be provided with regular refresher courses related to prison healthcare, including medical ethics and human rights.	<ul style="list-style-type: none"> • The Ministry of Health & Quality of Life is liaising with the Prisons Department for the organization of health care refresher courses as well as programmes in Medical Ethics for Prisons Officers. • A Human Rights component has been included in the training of Prisons Officers. 	<p>Prisons healthcare staff are provided with opportunities to attend workshops/seminars/conferences related to their duties organized by the Ministry of Health and Wellness.</p> <p>As at date out of 41 medical staff, 30 staff have been initiated to such courses/workshop.</p>

			<p>Moreover, staff are also released to attend training in Human Rights run at the Prisons Training School presently.</p> <p>With the impact of the COVID-19, more and more courses are directed towards an online system, such as the Civil Service College facilitating online courses.</p> <p>Regular courses are on-going.</p>
(e)	Medical Staff should have direct access to their patients	<ul style="list-style-type: none"> • For security reasons, it would not be appropriate to hand over cell keys to medical staff. However, the Prisons Executive Staff will always open the cells for the medical staff. Medical staff has all liberty to communicate freely with the detainees. • Security is paramount nevertheless; the Prison Medical staff has direct access to detainees/patient under the escort and supervision of Prison Officers. All necessary measures are taken to maintain the confidentiality and dignity of the patient. 	<p>The procedure ensures the security of the medical staff.</p> <p>Instruction has been given in writing for Officers providing the security of the Prison Medical Officer (PMO) to remain outside the consultation area (within sight and not hearing). He shall immediately intervene whenever assistance is summoned by the treating PMO.</p>
(f)	Health information and health promotion programmes be established for prisoners and staff, including on infectious diseases, and of drug dependence programmes extended.	<ul style="list-style-type: none"> • Regular programmes are organized in collaboration with the Ministry of Health & Quality of Life and other GOs &NGOs. 	On-going process.
(g)	Prisoners suffering from serious health conditions and those incurring injuries in	<ul style="list-style-type: none"> • Presently, detainees suffering from serious health problems are referred to outside 	Same process is being maintained. It enables quick access to specialists and specialized care.

	prison should be the subject of rigorous examination and prompt referral to outside facilities when their condition so requires.	hospitals for treatment. Many specialists also regularly visit prisons for specialized treatment to detainees.	
(h)	The healthcare and other provision of care for babies in prison should be reviewed.	<ul style="list-style-type: none"> The assistance of the Ministry of Health & Quality of Life is being sought for the reviewing of the health care programme for babies (and mothers). 	<p>- A day care centre for babies is operational in Beau-Bassin Prison Compound since 24 May 2012.</p> <p>- A new medical complex is already in placed at women prison since 30 March 2016.</p> <p>- Specialized treatment for babies are provided and they are referred to public hospitals as and when necessary.</p> <p style="text-align: center;"><u>Provisions for children in Prison.</u></p> <ol style="list-style-type: none"> 1. Mothers and the children are located at the Mother and Child Care Unit, especially set up to cater for children and keeping them away from other detainees. 2. Milk, Cereals and a balanced diet, which is totally different from the Prison diet are issued to children depending on their age and medical advice. 3. All toiletries, i.e. nappies, perfumes, powder, oil, beauty soap etc. and toys, as well as yoghurt, fruits and pastry cakes are supplied by the prison administration. 4. Round the clock Prison Medical facilities, appointment at the Mont Roches Health Care

			<p>Centre, as well as the Lady Twinning Centre and referral to Public Hospital as and when required. Regular visit by a Pediatrician.</p> <ol style="list-style-type: none"> 5. The child/baby, as from the age of three months, attend the Kids R Kids, a Day Care Centre set up outside the Women Prison and manned by civilian workers of Non-Governmental Organisation - Terre de Paix, during week days, between 0900 hours to 1600 hours and between 0900 hours to 1200 hours on Saturdays. 6. Between 3 years and 5 years the children are allowed to attend the Municipal Pre-Primary School of Mont Roches with appropriate facilities such as uniforms, shoes, school bags, school materials, juice and a pack lunch. They are conveyed daily to school and back in Prison Transport by a female Officer in civilian clothes. They are also allowed to go on outing as and when organized by the School. 7. Special activities are organized for the children during festivals, i.e Mother's Day, Music Day, Christmas, New Year. Their birthdays are celebrated at the Day Care Centre. 8. On application the mothers are given facilities for their rites according to their denomination. (e.g Christening, Circumcision for Muslim faith.) 9. Needful is done by the Welfare officer for the declaration of the child at the Civil Status Office.
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(i)	Policy and practice regarding temporary release of prisoners and release on mercy should be urgently reviewed with respect to terminally ill prisoners.	<ul style="list-style-type: none"> The NHRC has recommended that prisoners who are seriously ill be released after proper medical examination on a case to case basis. The Commission on the Prerogative of Mercy may be called upon to review its policy on this issue. 	<p>This has been a positive development in the issue of reviewing the case of terminally ill detainees. Petitions are addressed to His Excellency the President of the Republic of Mauritius to consider the release on medical ground.</p> <p>Ongoing.</p>
(j)	Each prison develop a policy on managing inter-prisoner violence, including staff training, which should focus on building and maintaining positive relations among prisoners, as well as between staff and prisoners; the dynamic security approach to prison work.	<ul style="list-style-type: none"> A Dynamic Security Support Unit has been introduced recently. With the coming into operation of this Unit, the relations between staff and the detainee will be further strengthened. 	<p>The Dynamic Security Support Unit is in place since 2006 and a positive relation between detainees and staff has been observed to be taking shape.</p> <p>A group of detainees acting as Peer Support has been set up since 2006 to identify detainees who are in difficult situations and to assist officers to organize sport, and substance abuse prevention program.</p> <p>Detainees are allowed to participate in activities organised by several NGOs.(around ten NGOS)</p> <p>A list of GOs/NGOs assisting the Prison Department is at <u>ANNEX D(1)</u>.</p>
(k)	Manager should be seen daily in the prisons and go among staff and prisoners, exercising direct supervision of other staff and checking what is happening in all areas of the prisons; they should lead by example and promote dynamic security, with a view to increasing safety for all and preventing ill-treatment.	<ul style="list-style-type: none"> A Prisons Manual is being prepared. This manual will, inter alia, render inspections and visits more accountable. Pending the finalization of the Prisons Manual, a circular has been issued to managers to be on daily rounds and to carry out proper inspections. 	<p>Daily rounds are being carried out by mid and top managers.</p> <ul style="list-style-type: none"> - CP's circulars are issued as and when the need arise to supplement provision of Prison Standing Orders. - The Commissioner of Prisons chair fortnightly meeting with all Officers in Charge institutions/Units for monitoring and follow-up.
(l)	The deployment of trained prison staff be reviewed with a view to employing other	<ul style="list-style-type: none"> Prison staff formerly involved in administrative and other duties such as driving and/or cooking are gradually being 	<ul style="list-style-type: none"> - Recruitment of Supply and Procurement officers under consideration.

	personnel for certain functions not involving direct work with prisoners.	moved back to their regular duties. These positions are being taken over by civilians.	- Civilian Drivers and Manual Workers have been recruited by the Mauritius Prison Service since 1977 as follows: Prison Security Guard: 03 (since 1977) Cook : 08 Industries Section: 04 Works Section: 22 Civilian Drivers: 11										
(m)	Staff deployment at Beau Bassin be reviewed taking into account the need to ensure health and safety at night.	<ul style="list-style-type: none"> Night roster for duty staff has been reviewed. 	The night roster in place is ensuring the health and safety at night.										
(n)	A greater focus by the prison management on staff support.	<ul style="list-style-type: none"> The Commissioner of Prisons has recommended that appropriate training programmes be run for Prisons Staff. 	<p>- A new training curriculum with a modern approach has been put in place at the Prison Training School which was ISO Certified in June 2016.</p> <table border="1"> <thead> <tr> <th>Period</th> <th>No. of Staff Trained</th> </tr> </thead> <tbody> <tr> <td>January 2018 to December 2018</td> <td>843</td> </tr> <tr> <td>January 2019 to December 2019</td> <td>962</td> </tr> <tr> <td>January 2020 to June 2020</td> <td>282</td> </tr> <tr> <td>July 2020 to May 2021</td> <td>819</td> </tr> </tbody> </table> <p>Note: Details of training is as per <u>ANNEX D (2)</u>.</p> <p>- Training of staff is ongoing.</p>	Period	No. of Staff Trained	January 2018 to December 2018	843	January 2019 to December 2019	962	January 2020 to June 2020	282	July 2020 to May 2021	819
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(o)	The adjudication function be performed by an Independent body whose members are not simultaneously responsible for complaints and independent monitoring.	<ul style="list-style-type: none"> According to the Commissioner of Prisons, the setting up of an independent board would raise some practical difficulties. It might be difficult to operate as it would have to visit the prison daily. 	- The adjudication function is ensured in the prison systems by the Prison Personnel. However, a new procedure with the incorporation of an Adjudication Board comprising of Welfare Officers has been put										

		<ul style="list-style-type: none"> • A proper mechanism would have to be put in place by the way of the prison manual or regulations 	<p>in place. This new procedure ensures objective adjudication.</p> <p>- A Prison Board of Visitors has been constituted and attend to its functions accordingly. The main functions the Board are as follows:</p> <p>(a) To meet at least once every month and on such other occasions as the Minister may direct;</p> <p>(b) To enquire into condition of detention of the detainees;</p> <p>(c) To inquire into and report to the Minister on:</p> <p>(i) any abuse within an institution;</p> <p>(ii) any repair which may be urgently required in an institution; or</p> <p>(iii) any matter which it may consider expedient.</p>
(p)	All occurrences giving rise to disciplinary proceedings and all disciplinary punishments be carefully recorded in special registers, subject to independent monitoring.	<ul style="list-style-type: none"> • Proper formats and procedures would be developed. • A committee has been set up at the level of the Prisons to look into record maintenance. 	The proper formats and procedures have been put in place to help maintaining a standard practice since 2007.
(q)	Prison managers increase oversight neither of incidents and the disciplinary process to ensure that no punishments other than those provided for in law are imposed nor other than by the formal disciplinary process.	<ul style="list-style-type: none"> • A circular has been issued to prison managers. • Sensitization / training programmes on Human Rights are being organized for Prisons Officers. 	<p>All cases of disciplinary offences were adjudicated as per the Reform Institutions Act 1988.</p> <p>The procedures at 4(p) above enhance the viability of resorting to formal disciplinary process.</p>
(r)	All prisoners undergoing punishment should be offered at least one hour of	<ul style="list-style-type: none"> • The Commissioner of Prisons has issued a circular to all Officers in-charge for all 	The practice is well confirmed in administration of punishment in prisons.

	<p>outdoor exercise everyday and granted appropriate reading material.</p>	<p>detainees to be given one hour of exercise daily.</p> <ul style="list-style-type: none"> • Instructions have been issued to Officers in-charge to provide newspapers and magazines to punishment cells. 	<p>Exchange of books to detainees requesting reading materials is done once weekly.</p>																							
(s)	<p>All forms of violence used as punishment constitute ill-treatment and urges that this practice ceases forthwith.</p>	<ul style="list-style-type: none"> • Training in Human Rights is being organized for Prisons Officers. 	<table border="1" data-bbox="1367 412 2051 1114"> <thead> <tr> <th data-bbox="1367 412 1465 526">S/No</th> <th data-bbox="1465 412 1858 526">Particulars</th> <th data-bbox="1858 412 2051 526">No. of participants</th> </tr> </thead> <tbody> <tr> <td data-bbox="1367 526 1465 597">1.</td> <td data-bbox="1465 526 1858 597">Training on Human Rights</td> <td data-bbox="1858 526 2051 597">06</td> </tr> <tr> <td data-bbox="1367 597 1465 669">2.</td> <td data-bbox="1465 597 1858 669">Workshop on human rights in places of detention</td> <td data-bbox="1858 597 2051 669">37</td> </tr> <tr> <td data-bbox="1367 669 1465 782">3.</td> <td data-bbox="1465 669 1858 782">Improving relations between Prison Officers and detainees</td> <td data-bbox="1858 669 2051 782">61</td> </tr> <tr> <td data-bbox="1367 782 1465 854">4.</td> <td data-bbox="1465 782 1858 854">Human Rights in Prisons</td> <td data-bbox="1858 782 2051 854">30</td> </tr> <tr> <td data-bbox="1367 854 1465 967">5.</td> <td data-bbox="1465 854 1858 967">Promotion of Respect for Human Rights in Mauritius and Rodrigues – first batch</td> <td data-bbox="1858 854 2051 967">45</td> </tr> <tr> <td data-bbox="1367 967 1465 1114">6.</td> <td data-bbox="1465 967 1858 1114">Promotion of Respect for Human Rights in Mauritius and Rodrigues –second batch</td> <td data-bbox="1858 967 2051 1114">47</td> </tr> </tbody> </table> <p data-bbox="1367 1149 2051 1256">The Prison Staff is regularly being sensitized on upholding of human rights of detainees as detailed below:</p> <p data-bbox="1367 1295 2051 1403">The National Preventive Mechanism Division of the National Human Rights Commission regularly organises such training for Prison Officers.</p>			S/No	Particulars	No. of participants	1.	Training on Human Rights	06	2.	Workshop on human rights in places of detention	37	3.	Improving relations between Prison Officers and detainees	61	4.	Human Rights in Prisons	30	5.	Promotion of Respect for Human Rights in Mauritius and Rodrigues – first batch	45	6.	Promotion of Respect for Human Rights in Mauritius and Rodrigues –second batch	47
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<p>(t)</p>	<p>Every prisoner at the Central Prison be provided with his own bed and that the facilities in the Segregated Unit be renovated as a matter of urgency; prisoners in the Segregated Units should be provided with a range of activities.</p>	<ul style="list-style-type: none"> • The Segregation Unit is being painted and regular inspection will be made in order to ensure that it is properly maintained. • Every detainee will be provided with proper bedding. 	<p>The S.P.U.s (Segregation and Protection Unit) are being properly maintained and each detainee has been issued with his own bedding.</p> <p>Each Unit is provided with an open yard</p> <p>As at Now, at Central Prison, Beau Bassin, there are three SPUs that are operational as follows:</p> <table border="1" data-bbox="1367 597 2039 786"> <thead> <tr> <th>Sn.</th> <th>SPU</th> <th>Operational Capacity</th> <th>Actual</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>Block C</td> <td>16</td> <td>9</td> </tr> <tr> <td>(ii)</td> <td>Block E</td> <td>16</td> <td>15</td> </tr> <tr> <td>(iii)</td> <td>Block F</td> <td>12</td> <td>6</td> </tr> </tbody> </table> <p>Detainees are kept at the SPU on grounds of Security, such as:</p> <ul style="list-style-type: none"> • are of bad character and might endanger the security of the prison by instigating other detainees to rebel against prison discipline; • are suspected of brewing trouble in the prison where they are located and are thus exercising bad influence on other detainees; • need to be segregated for their own protection because their security cannot be ensured in other prisons; • are suspected of or convicted for having committed serious criminal offence/s and are a constant threat for the public safety; • are involved in high profile cases; 	Sn.	SPU	Operational Capacity	Actual	(i)	Block C	16	9	(ii)	Block E	16	15	(iii)	Block F	12	6
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			<ul style="list-style-type: none"> • may tamper evidence, directly or indirectly, by influencing witnesses or co-accused, in custody, to plead for their cause (as such, request are made by Police or instructions received from Court); • are highly suspected to be indulged in trafficking in prison. • involved in bullying of other detainees or belong to a particular gang. <p>Each Unit is provided with:</p> <ul style="list-style-type: none"> • An open yard for detainees located thereat to do some physical activities after normal assessment made with regard to any physical risk during the time they are out of cell. • toilet and shower facilities • Television set. • The detainees are allowed to buy items on canteen list such as butter, cheese, jam. They can also obtain personal pocket radio and telephone cards on visits. • They can enjoy their normal visits • Indoor games are also provided. • They are provided with same meal facilities as those in the mainstream. • In case of foreigners, NGOs and their respective embassy/consulates can visit them.
(u)	The placement of prisoners at Phoenix should be subject to appeal.	<ul style="list-style-type: none"> • The Phoenix Prison is a Category 1 prison. Procedures are being put in place to review all cases on a yearly basis or whenever an appeal is made by a detainee. 	<p>A review of cases is done every six months, as per the Standard Operating Procedure (SOP).</p> <p>Each case is examined at headquarters level under the chairmanship of a Deputy Commissioner of Prisons who submit any recommendation to the</p>

			Commissioner of Prisons for approval. (An extract of the SOP is annexed).
(v)	The placement of prisoners at Phoenix under isolation and other extreme restrictions should be reviewed regularly with a view to moving them to progressively less restrictive custody; all prisoners, regardless of their security classification, should have at least one hour of outdoor exercise every day.	<ul style="list-style-type: none"> • All detainees at Phoenix Prison are now allowed one hour of exercise daily. • Three association yards have been constructed at the Phoenix Prison and they have been provided with necessary amenities. 	Detainees are allowed outdoor exercises in the association yards at least one hour daily.
(w)	Special training should be provided to Prisons Officers to enable them to work constructively in the difficult environment of high security prisons such as Phoenix Prison.	<ul style="list-style-type: none"> • A training programme is being mounted for general duty Officers has been made by the Commissioner of Prisons and is currently being considered by the Prime Minister's Office. 	<p>The training programme is in place now to enable officials to working constructively in difficult situation.</p> <p>A new training curriculum has been designed for all ranks and it includes management of difficult detainees.</p> <p>Officers posted to the Phoenix Prison are those who have undergone special training in the escort of high profile detainees, intervention techniques and officers who possess high standard of professionalism and integrity.</p> <p>Some 100 Officers have undergone such training.</p>
(x)	The PSS should not be involved in any action relating to women prisoners as a matter of official policy.	<ul style="list-style-type: none"> • The recommendation has been retained by the Commissioner of Prisons. 	Recommendation is being complied with.

			<p>For example, Watch Tower which was previously manned by male PSS Officers is now manned by Women Prison Officer.</p>
<p>(y)</p>	<p>There should be a thorough review of special interventions in response to prison incidents. The review should include: rotation of staff deployed in that function; providing training in the use of force in conformity with human rights principles; increasing oversight by prison managers of prison incidents; strictly regulating deployment of staff for interventions; and introducing independent monitoring of the resort to, and the operation of, such interventions.</p>	<ul style="list-style-type: none"> • An arrangement has been put in place for rotating staff from Prisons Security Squad to general duties and vice versa. • However, training needs to be imparted to all Officers. • The Commissioner of Prisons is of the view that it would not be possible to have independent monitoring on interventions. However, instructions may be given for a detailed report on each intervention. Enquiry may be carried out by an independent body thereafter. 	<p>Rotation of staff is an on-going process. Training, too, has started since 11 May 2009 to batches of Officers.</p> <p>The Correctional Emergency Response Team (CERT) was set up since May 2011 for outdoors escorts of high-risk detainees and for rapid intervention in case of untoward events within the prisons. It comprises a team of 41 Officers headed by an Assistant Superintendent of Prisons.</p> <p>The Officers followed intensive training with the GIPM, SSU, SMF, VIPSU, Police Armoury and Information Room covering the following fields: Escort of high-risk detainees, Intervention techniques, Searching, Hostage situation, Self-defence, Unarmed combat, Rappelling/Rope climbing, Anti-Riot drill, Physical training and Firing Practice.</p> <p>The duties of the CERT include the following:</p> <ul style="list-style-type: none"> • Escort of high-risk detainees/pirates to Public Hospitals & inter-institution and view dead bodies of detainees relatives • Anti-riot squad • Patrol to Outer Stations • Armourers • Trainers • To act as quick response team.

(z)	The practice of shackling prisoners escorted to, and within, hospitals be discontinued.	<ul style="list-style-type: none"> • Proper procedures would be put in place so that only dangerous detainees be handcuffed during escorts. • A risk assessment would, in such cases, be carried out by the Officer in-charge and the escorting Officers. • Leg and hand chains would be used only in special circumstances when the detainee is considered as being very dangerous and for security reasons. 	Only very dangerous and high security detainees are subject to being leg chained and handcuffed.
(aa)	Special registers be properly maintained to record in detail the use of segregation and isolation, the use of force, interventions and the use of restraints (including dates, duration, reasons, and authorization).	<ul style="list-style-type: none"> • Instructions have been issued to Officers in-charge of different Prisons to maintain such records. 	The records are being maintained and are up to date.
(ab)	The authorities ensure adequate provision of water for prisoners for drinking, washing and sanitation.	<ul style="list-style-type: none"> • Water problems have been solved. 	<p>Since year 2009, the Plumbing Network in all institutions have been upgraded to ensure continuous distribution of water and it is ongoing.</p> <p>Furthermore, in time of acute shortage of water, the Prisons Department has recourse to the Central Water Authority and Mauritius Fire and Rescue Services.</p> <p>Additional water tanks have been provided. Around year, 2009, 5 additional tanks of 30,000L capacity have been installed.</p> <p>Regular maintenance is carried out by the Prison Plumbing Section.</p>

			The Plumbing Officers ensure the daily distribution of water for detainees in all Prisons. Cleaning of water tanks are carried out each six months as per recommendation of the Central Water Authority.																		
(ac)	Materials conditions in prisons be the subject of urgent review, including the use of the space currently available and programmes of refurbishment and renovation.	<ul style="list-style-type: none"> • Upon completion of the new Melrose prison, all the old prisons would have to be renovated. • In the meantime, all Officers in-charge and Deputy Commissioners of Prisons have been instructed to carry out regular and proper inspections regarding renovation works required. • Remedial action is being taken as and when required. 	<p>Remedial action is regularly being taken when need of refurbishment is felt.</p> <p>Maintenance and upgrading works is ongoing in all Prisons by Prison Trades Section and private contractors.</p> <p>New projects are also entertained under the Capital Projects</p> <p>Details of fund allocated to the Prison Service for Maintenance and Upgrading of Prisons:</p> <table border="1"> <thead> <tr> <th>Financial Year</th> <th>Rs. (M)</th> </tr> </thead> <tbody> <tr> <td>2014-2015</td> <td>14.0</td> </tr> <tr> <td>2015-2016</td> <td>15.5</td> </tr> <tr> <td>2016-2017</td> <td>5.5</td> </tr> <tr> <td>2017-2018</td> <td>13.5</td> </tr> <tr> <td>2018-2019</td> <td>13.3</td> </tr> <tr> <td>2019-2020</td> <td>16.25</td> </tr> <tr> <td>2020-2021</td> <td>14.15</td> </tr> <tr> <td>2021-2022</td> <td>27.90</td> </tr> </tbody> </table>	Financial Year	Rs. (M)	2014-2015	14.0	2015-2016	15.5	2016-2017	5.5	2017-2018	13.5	2018-2019	13.3	2019-2020	16.25	2020-2021	14.15	2021-2022	27.90
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(ad)	The authorities review the provision of food and the timetable of the prison day.	<ul style="list-style-type: none"> • The issue is being reviewed by the Officers in-charge and the Deputy Commissioners of Prisons. 	Food counters are available in all Prisons.																		

		<ul style="list-style-type: none"> The possibility of putting into place new food counters which would enable some extra time to be given to detainees is being looked into. 	<p>A CP’s circular has been issued concerning standard diet for detainees taking into account the health conditions of detainees (since October 2017).</p> <p>Detainees are provided with meal as follows:</p> <ul style="list-style-type: none"> - Breakfast (as from 0700 hours) - Morning meal (as from 1030 hours) - Tea Break (as from 1300 hours) - Evening Meal (as from 1530 hours) <p>The above schedule may differ slightly from Prison to Prison depending on the population size, number of activities carried out in the Prison and the timely supervision of unlock and lock up during day light.</p>
(ae)	The authorities reinstate the activities outside the perimeter at Central Prison Beau Bassin, with staff exercising proper supervision.		<ul style="list-style-type: none"> - Outdoor labour by detainees under supervision of staff is ongoing. - Furthermore, with the implementation of our Pay Back Mauritius, increasing number of detainees are allowed to participate in outdoor activities & community work. However, it should be noted that during the outbreak of Covid-19, this activity was temporarily suspended.
(af)	Every effort be made to provide programmes and activities for all prisoners including those on remand.	<ul style="list-style-type: none"> With the introduction of Dynamic Security Support Unit in all prisons, good relations between Officers and detainees are being promoted. Peer Educators are being selected to work with trained staff. 	<ul style="list-style-type: none"> Dynamic Security Support Unit is functioning in all institutions. The MITD courses are ongoing. Activities are also extended to remand detainees, such as: tailoring, recreational activities, housekeeping, etc.

		<ul style="list-style-type: none"> • The Prisons Department is currently conducting 27 MITD courses in different fields. • The development of space for workshop and recreational activities is being looked into. • The creation of a small gymnasium within the New Wing Prison for remand detainees is under consideration. 	<ul style="list-style-type: none"> • Religious activities are held on a weekly basis • Sport and recreational activities are organised on a daily basis for both convicted and remand detainees • Governmental Organisations and Non-Government Organisations also assist in providing purposeful activities to detainees.
(ag)	The presumption should be in favour of open visits for all prisoners, with closed visits reserved exceptionally for those individuals posing identified risks.	<ul style="list-style-type: none"> • Improvements have been made to visiting rooms of Beau Bassin Prison, Women Prison, New Wing Prison and Richelieu Open Prison. • Open visits are given to certain categories of prisoners. • Consideration is being given to making more space available for open visits at Beau Bassin Prison, Grand River North West Remand Prison and Women Prison. • New procedures for open visit are being worked out. 	<p>Ongoing.</p> <p>Open visit facilities are available at the following institutions:</p> <ul style="list-style-type: none"> • New Wing Prison • Women Prison • Open Prison for Women • Richelieu Open Prison • Correctional Youth Centre for Boys • Correctional Youth Centre for Girls
(ah)	Prisoner's correspondence should not be systematically censored.	<ul style="list-style-type: none"> • Only 10% of correspondence is censored on a random basis. 	Comply
(ai)	Prisoners' access to telephones be improved generally; special provision should be made	<ul style="list-style-type: none"> • Access to telephone facilities is provided to detainees except for those at Phoenix Prison. 	<ul style="list-style-type: none"> • Procedures have been put in place for use of telephone by detainees. - Skype calls are allowed to foreign detainees.

	<p>to compensate for the disadvantage experienced by foreign national prisoners.</p>	<ul style="list-style-type: none"> • Procedures for provision of telephone facilities to detainees are being reviewed. 	<ul style="list-style-type: none"> • Telephone and Skype facilities are available for both convicted and remand detainees including foreigners • Foreign detainees receiving no visit and family support are allowed to purchase telephone cards from their Earning
<p>(aj)</p>	<p>The authorities ensure that there is an effective, confidential and independent complaints system in operation.</p>	<ul style="list-style-type: none"> • The Commissioner of Prisons has arranged that complaint boxes are placed for detainees in all prisons. The Commissioner of Prisons personally attends to complaints made to him. • Complaints addressed to the Ombudsman and the NHRC are forwarded to these institutions. 	<p>The Complaint Boxes Mechanism, which is personally attended to by the Commissioner of Prisons, is well integrated in the culture of the Service.</p> <p>Detainees willing to address their complaints to Human Rights Commission, Ombudspersons, Prison Visitors Board are facilitated with all administrative procedures respected.</p> <p>Report on detainees’ requests and complaints attended by Welfare Officers are regularly submitted on a weekly basis to Officer in Charge Prison.</p> <p>A Detainee’s Council is set up to attend to detainees’ grievances once monthly and a follow up Committee is set up to look into the grievances.</p> <p>Note: A Citizen Support Unit (CSU) platform allow for complaints from public. Only one complaint was received from an Officer regarding her request for Transfer to Rodrigues Prison.</p>

Organisations assisting MPS in running rehabilitation activities

SN	Organisation	Details of Activities
Government Organisations		
1	AIDS Unit from the Ministry of Health and Wellness	Information Education and Communication Campaigns on HIV/AIDS
2	Mauritius Institute of Training and Development (MITD)	Provide technical support in the setting up of vocational training
3	Food and Agricultural Research & Extension Institute (FAREI)	Provide technical support in Agriculture
4	Ministry of Environment, Sustainable Development and Disaster and Beach Management	Nursery Project/Payback Mauritius Scheme
5	Ministry of Social Integration, Social Security and National Solidarity	To collaborate with National Social Inclusion Foundation (NSIF) and National Empowerment Foundation (NEF) to monitor and promote rehabilitation and resettlement of detainees including drug addicts
Non-Government Organisations		
1	Brahma Kumaris World Spiritual University	Human Values, Positive thinking & Meditation.
	NGO Association Kinouété	Psychological Support to detainees (Pre-Release and Post Release Scheme)
2	Groupe Elan	Psychological Support to detainees (Pre-Release and Post Release Scheme)
3	Prison Fellowship International	Pastoral Care/Bereavement Programme/ Angel Tree / ALPHA Course
	NGO 'Not a Number'	Training course in Masonry under the CSR project of Holcim Lafarge
4	Action Familiale	Family life Education
5	Befrienders	Counselling with detainees having suicidal and self-harm tendencies.
6	PILS	Psycho-Social support for detainees living with HIV/AIDS
8	HOPE	Psycho-Social support to foreign nationals in prisons
9	Association les Mains Ouvertes	Counselling and Pastoral Care
10	ARPEGES	Music Class

Annex D (1)

SN	Organisation	Details of Activities
11	Peace and Well Being Association	Peace Education Programme to detainees
13	Caritas	Functional Education (Numeracy & Literacy)

(Source: Prison Department)

Courses held at the Mauritius Prison Training School

(a) From January to December 2018

Courses	No. of Participants
Development Course for Lead Prison Officer	51
Intervention and hostage Release Cadre by GIPM	22
Mid Managers Course	29
Awareness Health Campaign by Pranalife	55
Preservation of DNA Evidence by FSL	64
Basic Life Support – SAMU Emergency Services	30
Bio Farming Course by Food Agricultural Research Extension institute	12
Improving clinical outcomes for management of chronic relapsing treatment resistant heroin users using sustained Naltrexone implications for Mauritius	30
Live Firing Practice with caliber 0.38mm	142
Live Firing Practice with caliber 0.357mm	146
Training of Prisons staff from East African Community on technology Applications on Security within the Prisons Setting	12
Training on Human Rights by National Preventive Mechanism Division	06
Capacity building Programme to End Gender Based Violence	98
Training on Substance Abuse	146
Total	843

(Source: Prison Dept)

(b) From January 2019 to December 2019

Courses	No. of Participants
Stress Management Programme	30
Training on Cybercrime	104
Training on Departmental Orderly Room Procedures	39
Self-defense training	249
Workshop on Human Rights in Places of Detention	37
Lecture by Transparency Mauritius	74
Drug Awareness Training	78
Stress Management Programme	30
HIV/AIDS Awareness Training	78
Weapon Training .38 (Theory) + Live Firing Training Practice .38	78
Hand To Hand Training Weapons Disarming and Restraining	49
First Aid Course	77
Training on Departmental Orderly Room Procedures	39
Total	962

(Source: Prison Dept)

(c) **From January to June 2020**

S/N.	Courses	No. of Participants
1.	Self-defense training	99
2.	Improving relations between Prison Officers and Detainees	61
3.	Six months Induction training Programme for newly recruited Officers	19
4.	Workshop on Information Highway	29
5.	Lecture on Transparency Mauritius	74
	Total	282

(Source: Prison Dept)

From July 2020 to May 2021

S/N	Names of Events	No of Participants
1.	Workshop on Fire Safety Awareness	17
2.	Development of Prison Based Rehabilitation Programme	60
3.	Sensitization on Drugs Programme	42
4.	Training on Working with Juveniles	34
5.	Training on Excavator Loader	05
6.	Training on Juvenile Delinquency	35
7.	Self-Awareness& Reflective Practice with Youth	35
8.	<i>Comment aborder l'éducation sexuelle à votre enfant</i>	33
9.	Building Confidence through Games	23
10.	Life Skill Training Programme (5 days)	25
11.	Training in Court Procedures	30
12.	Train the Trainers Course 2020 (5 days) Module 1: Drill Instructors Course	17
13.	Training on Cyber Crime	26

14.	Defensive Driving Course: (2 days) Pamplemousses Police Station	06
15.	Training on Cyber Crime	20
16.	Training on Recording of Statement	35
17.	Lecture: The Impact of Alcohol Abuse on Professional & Personal Life	46
18.	Workshop on Drug Prevention	26
19.	Workshop on HIV, Hepatitis and Tuberculosis	35
20.	Integrated Training of the Trainer Course Programme (Video Conference Call)	03
21.	Operation Plan for HIV and Aids (National Aids Secretariat) Three days workshop	21
22.	Virtual Regional Workshop to develop pre-deployment Training Packages	04
23.	Substance Abuse: Three days workshop (National Drug Secretariat)	67
24.	Substance Abuse: Three days workshop (National Drug Secretariat)	55
25.	Full Day Workshop: Health and Medical Issues (National Drug Secretariat)	27
26.	Promotion of Respect for Human Rights in Mauritius and Rodrigues – first batch	45
27.	Promotion of Respect for Human Rights in Mauritius and Rodrigues –second batch	47
	Total	819

(Source: Prison Dept)

**List of Domesticated Legislations for the Convention Against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

CAT provision	Domestic legislation
<p>Article 1</p> <p>1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.</p> <p>2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.</p>	<p><u>Section 78 of the Criminal Code</u></p> <p>78. Torture by public official</p> <p>(1) Subject to subsection (3), where—</p> <p>(a) any person who is a public official, or is otherwise acting in an official capacity; or</p> <p>(b) any person, at the instigation of, or with the acquiescence of, a public official or a person otherwise acting in an official capacity, intentionally inflicts severe pain or suffering, whether physical or mental, on any other person—</p> <p>(i) to obtain a confession or other information from that other person, or a third person;</p> <p>(ii) to punish that other person for an act which that other person or a third person has committed, or is suspected of having committed;</p> <p>(iii) to intimidate or coerce that other or a third person; or</p> <p>(iv) for any reason based on discrimination of any kind,</p> <p>he shall commit the offence of torture and shall, on conviction, be liable to a fine not exceeding 150,000 rupees and to imprisonment for a term not exceeding 10 years.</p> <p>(3) Subsection (1) shall not apply to any pain or suffering arising only from, or inherent in, or incidental to, a lawful sanction.</p>
<p>Article 2</p> <p>1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.</p>	<p><u>Section 7(1) of the Constitution</u></p> <p>7. Protection from inhuman treatment</p> <p>(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.</p>

CAT provision	Domestic legislation
<p>2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.</p> <p>3. An order from a superior officer or a public authority may not be invoked as a justification of torture.</p>	<p>(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11 March 1964.</p> <p><u>Section 78 of the Criminal Code</u> [...]</p> <p>(2) Where the act constituting an offence under subsection (1) has been committed outside Mauritius and —</p> <p>(a) the victim is a citizen of Mauritius; (b) the alleged offender is in Mauritius; or (c) the alleged offender is in Mauritius, and Mauritius does not extradite him,</p> <p>a Court shall have jurisdiction to try the offence and inflict the penalties specified in subsection (1). [,,]</p> <p>(4) It shall not be a defence for a person charged with an offence under subsection (1) to prove that he acted by order of his superior.</p> <p><u>Sections 3, 4, 5 and 16 of the Independent Police Complaint Commission Act</u></p> <p>3. The Commission</p> <p>(1) (a) There is established for the purposes of this Act a Commission to be known as the Independent Police Complaints Commission.</p> <p>(b) The Commission shall be a body corporate.</p> <p>(2) The Commission shall not, in the discharge of its functions and exercise of its powers, be subject to the direction or control of any person or authority.</p> <p>4. Functions of Commission</p> <p>Without prejudice to the jurisdiction of the Courts or the powers conferred on the</p>

CAT provision	Domestic legislation
	<p>Director of Public Prosecutions, the Ombudsman or the Disciplined Forces Service Commission, the Commission shall –</p> <p>(a) investigate into any complaint made by any person or on his behalf against any act, conduct or omission of a police officer in the discharge of his functions, other than a complaint of an act of corruption or a money laundering offence;</p> <p>(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;</p> <p>(c) advise on ways in which any police misconduct may be addressed and eliminated;</p> <p>(d) promote better relations between the public and the Police; and</p> <p>(e) perform such other functions as may be conferred to it by any other enactment.</p> <p>5. Powers of Commission</p> <p>(1) Subject to subsection (2), the Commission may, in the discharge of its functions under this Act –</p> <p>(a) summon any person to appear before it on such date and at such time as may be specified in the summons, or require any person in writing –</p> <p>(i) to answer any question or provide any information which the Commission considers necessary in connection with any investigation;</p> <p>(ii) to produce any article, or any book, record, accounts, report, data, stored electronically or otherwise, or any other document;</p> <p>(iii) to verify, or otherwise ascertain by oral examination of the person making the complaint, any fact, matter or document relating to a complaint;</p>

CAT provision	Domestic legislation
	<p>(b) visit any police station, prison or other place of detention for the purpose of an investigation under this Act;</p> <p>(c) where it considers appropriate, work in cooperation or consultation with any person or body, whether public or private.</p> <p>(2) A person may refuse to answer any question, to provide any information, or to produce any article or document, which would incriminate him.</p> <p>16. Completion of investigation</p> <p>(1) On the completion of an investigation, the Commission –</p> <p>(a) shall make an assessment and form an opinion as to whether or not the subject matter of a complaint has or may have occurred; and</p> <p>(b) may, where appropriate, refer the matter to –</p> <p>(i) the Director of Public Prosecutions, with a recommendation that the police officer be prosecuted for a criminal offence;</p> <p>(ii) the Disciplined Forces Service Commission, with a recommendation that disciplinary proceedings, or such other action as the Commission considers desirable, be taken against the police officer;</p> <p>(iii) the Attorney-General, with a recommendation that the complainant or his representative be paid such compensation or granted such relief as the Attorney-General may deem appropriate;</p> <p>(c) shall transmit a certified copy of the record of the investigation, together with its observations and recommendations, to the relevant authority;</p> <p>(d) shall inform the complainant of the outcome of the investigation, including such recommendation as may have been made under paragraph (b).</p>

CAT provision	Domestic legislation
	<p>(2) Where the relevant authority agrees with the recommendation of the Commission, it shall –</p> <p>(a) initiate appropriate action for the implementation of the recommendation within 3 months from the date of the recommendation;</p> <p>(b) within 6 months, inform the Commission of the action taken.</p> <p>(3) Where the relevant authority does not agree with the recommendation of the Commission, it shall inform the Commission of its decision at the earliest opportunity.</p> <p>(4) In this section –</p> <p>“relevant authority” means the Attorney-General or Disciplined Forces Service Commission, as the case may be.</p> <p><u>Sections 3, 3A, 4 and 11 of the Protection of Human Rights Act</u></p> <p>3. Establishment of Commission and setting up of Divisions</p> <p>(1) There is established for the purposes of this Act a National Human Rights Commission, which shall be a body corporate.</p> <p>[...]</p> <p>(3) There shall be within the Commission —</p> <p>(a) a Human Rights Division;</p> <p>(b) -</p> <p>(c) a National Preventive Mechanism Division.</p> <p>3A. Functions of the Commission</p> <p>The Commission shall —</p> <p>(a) promote and protect human rights;</p>

CAT provision	Domestic legislation
	<p>(b) review the safeguard provided by or under any enactment for the protection of human rights;</p> <p>(c) review the factors or difficulties that inhibit the enjoyment of human rights;</p> <p>(d) submit to the Minister any opinion, recommendation, proposal or report on any matter concerning the promotion and protection of human rights;</p> <p>(e) prepare reports on the national situation with regard to human rights in general, and on more specific matters;</p> <p>(f) inform the Minister of situations of violation of human rights and advise on ways in which such situations can be ended;</p> <p>(g) promote and ensure the harmonisation of national legislation and practices with the international human rights instruments to which Mauritius is a party, and their effective implementation;</p> <p>(h) encourage ratification or accession to the instruments referred to in paragraph (g), and ensure their implementation;</p> <p>(i) contribute to the reports which Mauritius is required to submit to United Nations bodies and committees, and to regional institutions, pursuant to its treaty obligations and, where necessary, to express an opinion on the subject, with due respect for its independence;</p> <p>(j) cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;</p> <p>(k) assist in the formulation of programmes for the teaching of, and research into, human rights and take part in their execution in schools, universities and professional circles;</p> <p>(l) publicise human rights and efforts to combat all forms of discrimination by increasing public awareness, especially through information and education and by making use of all press organs;</p> <p>(m) exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.</p>

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	<p>4. Functions of the Human Rights Division</p> <p>(1) Subject to subsection (2), the Human Rights Division may, without prejudice to the jurisdiction of the Courts or the powers conferred on the Director of Public Prosecutions or the appropriate Service Commission —</p> <p>(a) enquire into any written complaint from any person alleging that any if his human rights has been, is being or is likely to be violated by the act or omission of any other person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public body;</p> <p>(b) - (c) where it has reason to believe that an act or omission such as is referred to in paragraph (a) has occurred, is occurring or is likely to occur, of its own motion enquire into the matter.</p> <p>(d) - (g) –</p> <p>(2) (a) The Human Rights Division shall not enquire into any matter after the expiry of 2 years from the date on which the act or omission which is the subject of a complaint is alleged to have occurred.</p> <p>(b) The Human Rights Division shall not exercise its functions and powers in relation to any of the officers and authorities specified in the proviso to section 97(2) of the Constitution.</p> <p>(c) In the exercise of its functions under subsection (1) (a) or (c), the Human Rights Division may, where appropriate, refer the matter to the National Preventive Mechanism Division to enquire into the case.</p> <p>(3) The Human Rights Division shall, in the first place, attempt to resolve any complaint, or any matter which is the subject of an enquiry pursuant to subsection (1)(c), by a conciliatory procedure.</p> <p>(4) Where the Human Rights Division has not been able to resolve a matter through</p>

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	<p>conciliation, it shall, on the completion of its enquiry —</p> <p>(a) where the enquiry discloses a violation of human rights or negligence in the prevention of such violation, refer the matter to —</p> <p>(i) the Director of Public Prosecutions where it appears that an offence may have been committed;</p> <p>(ii) the appropriate Service Commission where it appears that disciplinary procedures may be warranted;</p> <p>(iii) to the chief executive officer of the appropriate public body where it appears that disciplinary action is warranted against an employee of a public body who is not within the jurisdiction of a Service Commission;</p> <p>(b) recommend the grant of such relief to the complainant or to such other person as the Human Rights Division may determine;</p> <p>(c) inform the complainant, if any, of any action taken under this subsection.</p> <p>(5) The Human Rights Division shall, on the completion of its enquiry, send a written communication setting out its conclusion and any recommendation to the Minister who shall, as soon as practicable, report to the Commission the action taken or proposed to be taken.</p> <p>(6) –</p> <p>11. Reports of the Commission</p> <p>(1) The Commission shall, not later than 31 March in each year, submit a report on its activities and those of its Divisions during the preceding year to the President and may, at any other time, submit a special report on any matter which, in its opinion, is of such urgency or importance that it should not be deferred until submission of the annual report.</p> <p>(2) The President shall cause every report of the Commission to be laid before the</p>

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	<p>Assembly within one month of its submission.</p> <p><u>Sections 3, 4 and 5 of the National Preventative Mechanism Division Act</u></p> <p>3. National Preventive Mechanism Division</p> <p>(1) There shall be for the purposes of this Act a National Preventive Mechanism Division which shall be a Division of the Commission.</p> <p>(2) The National Preventive Mechanism Division shall for the purposes of Part IV of the Optional Protocol be the National Preventive Mechanism.</p> <p>[...]</p> <p>4. Functions of Division</p> <p>The functions of the Division shall be –</p> <p>(a) to visit places of detention on a regular basis so as to examine the treatment of persons deprived of their liberty with a view to ensuring their protection against torture and inhuman or degrading treatment or punishment;</p> <p>(b) to investigate any complaint which may be made by a detainee and, where the detainee so requests, investigate the complaint privately;</p> <p>(c) to make to the Minister recommendations regarding the improvement of the treatment and conditions of persons deprived of their liberty in places of detention, taking into consideration the relevant norms of the United Nations;</p> <p>(d) to submit to the Minister and other relevant authorities proposals and observations concerning legislation relating to places of detention and the treatment of persons deprived of their liberty;</p>

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	<p>(e) to work, where appropriate, in co-operation or consultation with any person or body, whether public or private, in connection with the discharge of any of its functions under this Act and the Optional Protocol.</p> <p>5. Powers of Division</p> <p>(1) The Division shall have such powers as may be necessary to effectively discharge its functions under this Act and the Optional Protocol.</p> <p>(2) Without prejudice to the generality of its powers under subsection (1), the Division shall, notwithstanding any other enactment, be given –</p> <p>(a) full access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;</p> <p>(b) access to all information referring to the treatment of those persons as well as their conditions of detention;</p> <p>(c) access to any place of detention and its installations and facilities;</p> <p>(d) the opportunity to have private interviews with persons deprived of their liberty, personally or with a translator where necessary, as well as with any other person whom they have reason to believe may supply relevant information;</p> <p>(e) the freedom to choose the places they want to visit and the persons they want to interview;</p> <p>(f) the freedom to determine its own procedures, including its programmes of visits;</p> <p>(g) the freedom for its members to be accompanied, if needed, by such expert with the relevant professional expertise,</p>

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	<p>experience and knowledge as the Chairperson may determine, on visits to detention centres;</p> <p>(h) the right to have contacts with the Subcommittee and to exchange information with it.</p> <p><i>Sections 2, 3, 4, 5, 6 and Schedule to the International Criminal Court Act</i></p> <p>2. Interpretation</p> <p>In this Act –</p> <p>“ancillary offence” –</p> <p>(a) in relation to an offence under section 4(1), means an attempt, a conspiracy or an act of complicity;</p> <p>(b) includes an offence under section 4(2);</p> <p>“crime against humanity” has the same meaning as in the Statute and in Part I of the Schedule;</p> <p>...</p> <p>“international crime” means the crime of genocide, a crime against humanity or a war crime, and includes an ancillary offence;</p> <p>...</p> <p>“Statute” means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court on 17 July 1998 and ratified by Mauritius on 5 March 2002;</p> <p>...</p> <p>“war crime” has the same meaning as in the Statute and in Part III of the Schedule.</p> <p>3. Status of Statute and application of Act</p> <p>(1) Notwithstanding any other enactment, the Statute shall have force of law in Mauritius.</p> <p>(2) This Act shall bind the State.</p>

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	<p>4. International crimes</p> <p>(1) Notwithstanding any other enactment, any person who commits –</p> <p>(a) a crime against humanity;</p> <p>(b) genocide; or</p> <p>(c) a war crime,</p> <p>shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 45 years.</p> <p>(2) Any person who –</p> <p>(a) directly and publicly incites others to commit genocide; or</p> <p>(b) contributes to the commission of an international crime by a group of persons acting with a common purpose, where such contribution is intentional and is either –</p> <p>(i) made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the International Criminal Court; or</p> <p>(ii) made in the knowledge of the intention of the group to commit the crime, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 45 years.</p> <p>(3) Where a person commits an international crime outside Mauritius, he shall be deemed to have committed the crime in Mauritius if he –</p> <p>(a) is a citizen of Mauritius;</p> <p>(b) is not a citizen of Mauritius but is ordinarily resident in Mauritius;</p> <p>(c) is present in Mauritius after the commission of the crime; or</p> <p>(d) has committed the crime against a citizen of Mauritius or against a person who is ordinarily resident in Mauritius.</p>

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	<p>5. Responsibility of commanders and superiors</p> <p>(1) It shall not be a defence for a person charged with an international crime to plead that he had no responsibility for the crime if the crime was committed by forces under his effective command and control, or, as the case may be, his effective authority and control, as military commander, or a person effectively acting as a military commander, and there was a failure to exercise proper control over those forces where –</p> <p>(a) he knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit the offence; and</p> <p>(b) he failed to take all necessary and reasonable measures within his power to prevent or repress its commission or to submit the matter to the competent authorities for investigation and prosecution.</p> <p>(2) It shall not be a defence for a person, other than a person referred to in subsection (1), to plead that he had no responsibility for the crime if the crime was committed by subordinates under his effective authority and control as a superior, and there was a failure to exercise proper control over those subordinates where –</p> <p>(a) he knew, or consciously disregarded information which clearly indicated, that his subordinates were committing or about to commit the offence;</p> <p>(b) the offence concerned activities that were within his effective responsibility and control; and</p> <p>(c) he failed to take all necessary and reasonable measures within his power to prevent or repress its commission or to submit the matter to the competent authorities for investigation and prosecution.</p> <p>(3) Nothing in this section shall be read as restricting or excluding any liability of the commander or superior under any other</p>

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	<p>enactment or the liability of persons other than the commander or superior.</p> <p>6. Official capacity and superior's orders</p> <p>(1) It shall not be a defence to an offence under section 4 nor a ground for a reduction of sentence for a person convicted of an offence under that section to plead that he is or was Head of State, a member of a Government or Parliament, an elected representative or a government official of a foreign State.</p> <p>(2) (a) It shall not be a defence to an offence under section 4 nor a ground for a reduction of sentence for a person convicted of an offence under that section to plead that he did the act constituting such offence in obedience to, or in conformity with, the law in force at the time, or pursuant to an order by a Government or a superior, whether military or civilian, unless –</p> <p>(i) the person was under a legal obligation to obey the order of the Government or the superior in question;</p> <p>(ii) the person did not know that the order was unlawful; and</p> <p>(iii) the order was not manifestly unlawful.</p> <p>(b) For the purposes of paragraph (a), orders to commit genocide or a crime against humanity shall be regarded as being manifestly unlawful.</p> <p>SCHEDULE [Section 2] PART I CRIME AGAINST HUMANITY</p> <p>1. “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack –</p> <p>(a) deportation or forcible transfer of population;</p>

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	<p>(b) enforced disappearance of persons;</p> <p>(c) enslavement;</p> <p>(d) extermination;</p> <p>(e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;</p> <p>(f) murder;</p> <p>(g) persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law in connection with any act referred to in this paragraph or any crime within the jurisdiction of the International Criminal Court;</p> <p>(h) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;</p> <p>(i) the crime of apartheid;</p> <p>(j) torture;</p> <p>(k) any other inhumane act of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.</p> <p>2. For the purpose of paragraph 1 –</p> <p>“attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit the attack;</p> <p>“deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;</p> <p>“enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or</p>

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	<p>to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time;</p> <p>“enslavement” means the exercise of any power attaching to the right of ownership over a person and includes the exercise of that power in the course of trafficking in persons, in particular women and children;</p> <p>“extermination” includes the intentional infliction of conditions of life, such as the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;</p> <p>“forced pregnancy” means, subject to the domestic law of a State relating to pregnancy, the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law;</p> <p>“persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;</p> <p>“the crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;</p> <p>“torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in one’s custody or under one’s control but shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.</p> <p>3. For the purposes of paragraphs 1 and 2, “gender” refers to both sexes, male and female, within the context of society and does not indicate any different meaning.</p>

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	<p>PART II</p> <p>GENOCIDE</p> <p>“genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, by –</p> <p>(a) causing serious bodily or mental harm to members of the group;</p> <p>(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;</p> <p>(c) imposing measures intended to prevent births within the group;</p> <p>(d) killing members of the group;</p> <p>(e) forcibly transferring children of the group to another group.</p> <p>PART III</p> <p>WAR CRIME</p> <p>“war crime” means –</p> <p>(a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention –</p> <p>(i) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;</p> <p>(ii) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;</p> <p>(iii) taking of hostages;</p> <p>(iv) torture or inhuman treatment, including biological experiments;</p> <p>(v) unlawful deportation or transfer or unlawful confinement;</p> <p>(vi) wilful killing;</p>

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	<p>(vii) wilfully causing great suffering, or serious injury to body or health;</p> <p>(viii) wilfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial;</p> <p>(b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts –</p> <p>(i) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;</p> <p>(ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;</p> <p>...</p> <p>(c) in the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed <i>hors de combat</i> by sickness, wounds, detention or any other cause –</p> <p>(i) committing outrages upon personal dignity, in particular humiliating and degrading treatment;</p> <p>(ii) taking hostages;</p> <p>(iii) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all judicial guarantees which are generally recognised as indispensable;</p> <p>(iv) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;</p> <p>(d) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts –</p>

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	<p>(i) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2(f) of the Statute, enforced sterilisation, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions; [...]</p> <p><u>Geneva Conventions Act</u></p> <p><u>Note:</u> In Mauritius, the aforementioned Act gives effect to the Geneva Conventions and Protocols which establish the standards of international law for humanitarian treatment in war. A breach of any of the Geneva Conventions or Protocols is an offence under the Act.</p> <p><u>Combating of Trafficking in Persons Act</u></p> <p>Section 11 relating to trafficking in persons provides for the following offence: (1) (a) Any person who trafficks another person or allows another person to be trafficked shall commit an offence</p> <p>Section 2 of the aforementioned Act provides for the following definitions:</p> <p>“exploitation” includes—</p> <ul style="list-style-type: none"> (a) all forms of slavery or practices similar to slavery, including forced marriage; (b) sexual exploitation; (c) forced labour; and (d) the illegal removal of body organs; <p>“forced labour” means labour or services obtained or maintained through threats, the use of force, intimidation or other forms of coercion, or physical restraint;</p> <p>“sexual exploitation” means obtaining financial or other benefits through the involvement of another person in prostitution or in other kinds of sexual services, including pornographic acts or the production of</p>

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	<p>pornographic materials, as a result of subjecting another person to one of the means listed in paragraph (a) of the definition of “trafficking”;</p> <p>“slavery” means the exercise of any or all of the powers attaching to the right of ownership over a person</p> <p>“trafficking” means—</p> <p>(a) the recruitment, sale, supply, procurement, capture, removal, transportation, transfer, harbouring or receipt of a person—</p> <p>(i) by the use of threat, force, intimidation, coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability; or</p> <p>(ii) by the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or</p> <p>(b) the adoption of a person facilitated or secured through illegal means, for the purpose of exploitation;</p> <p><u>Child Protection Act</u></p> <p>The aforementioned Act prohibits the ill-treatment of a child (section 13), child trafficking (section 13A), abandonment (section 13B) and abduction (section 13C) of a child, sexual offences against children (section 14), indecent photographs of children (section 15) and causing or allowing any child under his care to beg (section 17).</p> <p><u>Children’s Act (not in operation)</u></p> <p>The new Children’s Act prohibits forcing or causing a child to be married (section 12), ill-treatment of a child (section 13), Corporal or humiliating punishment on child (section 14), Abandonment of child (section 15), Abduction of child by parent (section 16), Abduction of child by other person (section 17), Removal of child from place of safety (section 18), Causing, inciting or allowing child to be sexually abused (section 19),</p>

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	<p>Child prostitution and access to brothel (section 20) and Child pornography (section 21).</p> <p>Under section 29(1) on ‘Aggravating circumstances’, for the purpose of sentencing under this Act, the Court shall have regard to the existence of aggravating circumstances surrounding the commission of the offence against the child, for example, inter alia, the child has, as a consequence of an offence, become mutilated or lame or medications, drugs or weapons were used in the commission of the offence.</p> <p>Under section 29(2), any person who is convicted of an offence under Sub-part A shall, where an aggravating circumstance exists, be liable to penal servitude for a term not exceeding 30 years.</p> <p><u>Workers’ Rights Act 2019</u></p> <p>Section 61(2)(a) provides that worker may claim that his agreement has been terminated by his employer where the worker is ill-treated by the employer.</p>
<p>Article 3</p> <p>1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.</p> <p>2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.</p>	<p><u>Section 8 of the Extradition Act</u></p> <p>8. Protection of human rights</p> <p>A request for the extradition of a person by a foreign State shall not be favourably considered where, in the opinion of the Attorney-General, there are substantial grounds to believe that the person sought –</p> <p>(a) is likely to be prosecuted or punished in that State on account of his race, religion, nationality, ethnic origin or political opinions;</p> <p>(b) is likely to be subjected in that State to torture or cruel, inhuman or degrading treatment or punishment;</p> <p>(c) is not likely to receive the minimum fair trial guaranteed in criminal proceedings in that State;</p> <p>(d) is liable to be tried or sentenced in that State by an extraordinary or ad hoc court or</p>

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	<p>tribunal, unless that State gives assurances which, in the opinion of the Attorney-General, are sufficient to ensure that the judgment will be passed by a court which is empowered under the rules of judicial administration of that State to try criminal offences.</p> <p><u>Deportation Act</u></p> <p><u>Note:</u> The existence of “substantial grounds for believing that he would be in danger of being subjected to torture” is not mentioned as being a ground or consideration for not deporting a person not belonging to Mauritius</p> <p><u>Combating of Trafficking in Persons Act</u></p> <p>8. Repatriation of victims of trafficking</p> <p>(1) No victim of trafficking, who is a non-citizen, may, unless he agrees to the proposed course of action, be returned to his country of origin or the country from which he has been trafficked without due consideration being given to—</p> <p style="padding-left: 40px;">(a) his safety during the repatriation process;</p> <p style="padding-left: 40px;">(b) his safety in the country to which he is to be returned; and</p> <p style="padding-left: 40px;">(c) the possibility that he may be harmed, killed or trafficked again.</p>
<p>Article 4</p> <p>1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.</p> <p>2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.</p>	<p><u>Section 78 of the Criminal Code (above)</u></p> <p><u>Section 45 of the Interpretation and General Clauses Act</u></p> <p>45. Accomplices and attempts</p> <p>Every accomplice and any person who attempts to commit an offence shall commit an offence and shall, on conviction, be liable to the penalty provided for the principal or completed offence, as the case may be.</p>

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	<p data-bbox="807 230 1347 264"><u>Sections 37 and 38 of the Criminal Code</u></p> <p data-bbox="807 304 1027 338">37. Accomplices</p> <p data-bbox="807 378 1390 629">Except where otherwise provided in any enactment, the accomplices in a crime or misdemeanor shall be punished with the same kind of punishment, or one of the punishments applicable to the crime or misdemeanor, for the time that shall be fixed by the sentence.</p> <p data-bbox="807 669 1390 741">38. Giving instructions and aiding and abetting</p> <p data-bbox="807 781 1390 994">(1) Any person who, by gift, promise, abuse of authority or power, machination or culpable artifice instigates, or gives any instruction for, the commission of a crime or misdemeanour shall be punished as an accomplice in the crime or misdemeanour.</p> <p data-bbox="807 1034 1390 1218">(2) Any person who procures arms, instruments, or any other means used in the commission of a crime or misdemeanour, knowing that they were to be so used, shall be deemed an accomplice.</p> <p data-bbox="807 1258 1390 1727">(3) Any person who knowingly aids and abets the author of any crime or misdemeanour in the means of preparing, facilitating or perpetrating the crime or misdemeanour, shall be deemed an accomplice, without prejudice to the punishments specially provided by law against the authors of plots or of instigations to offences affecting the internal or external safety of the State, even in cases where the crime which was the object of the conspirators or instigators has not been committed.</p>
<p data-bbox="204 1771 320 1805">Article 5</p> <p data-bbox="204 1845 783 1984">1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:</p>	<p data-bbox="807 1771 1275 1805"><u>Section 78(2) of the Criminal Code</u></p> <p data-bbox="807 1845 1390 1946">(2) Where the act constituting an offence under subsection (1) has been committed outside Mauritius and—</p> <p data-bbox="903 1986 1390 2058">(a) the victim is a citizen of Mauritius;</p>

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<p>(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;</p> <p>(b) When the alleged offender is a national of that State;</p> <p>(c) When the victim is a national of that State if that State considers it appropriate.</p> <p>2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.</p> <p>3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.</p>	<p>(b) the alleged offender is in Mauritius; or</p> <p>(c) the alleged offender is in Mauritius, and Mauritius does not extradite him,</p> <p>a Court shall have jurisdiction to try the offence and inflict the penalties specified in subsection (1).</p> <p>Note: Subsection (1) refers to the offence of torture by public official.</p> <p><u>Sections 80B and 112 of the Courts Act</u></p> <p>80B. Criminal Division of Intermediate Court</p> <p>There shall be a Criminal Division of the Intermediate Court which shall have jurisdiction to try any criminal matter which the Director of Public Prosecutions may refer to it pursuant to section 112.</p> <p>112. Criminal jurisdiction of Intermediate Court</p> <p>The Intermediate Court shall have jurisdiction to try any of the following criminal matters which the Director of Public Prosecutions may refer to it –</p> <p>(a) any offence which a District Magistrate has jurisdiction to try;</p> <p>(b) any offence triable in Rodrigues or any island under the jurisdiction of the State of Mauritius other than the Island of Mauritius;</p> <p>...</p> <p>(e) any offence declared triable by the Intermediate Court under any other enactment.</p> <p><u>Sections 6 and 3 of the Maritime Zones Act</u></p> <p>6. Legal status of territorial sea and internal, historic and archipelagic waters</p> <p>(1) The sovereignty of Mauritius—</p>

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	<p>(a) extends and has always extended to—</p> <ol style="list-style-type: none"> (i) the territorial sea; (ii) its internal waters; (iii) its archipelagic waters; (iv) its historic waters; <p>(b) also extends to the air space over the archipelagic waters, the historic waters, the internal waters and the territorial sea as well as to their beds and subsoil, and the resources contained in them.</p> <p>(2) Unless otherwise expressly provided, any law in force in Mauritius shall extend to its maritime zones.</p> <p>3. UNCLOS to have force of law in Mauritius Notwithstanding any other enactment, UNCLOS shall have force of law in Mauritius.</p> <p>Article 94 UNCLOS</p> <p>Article 94</p> <p>Duties of the flag State</p> <ol style="list-style-type: none"> 1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. 2. In particular every State shall: <ol style="list-style-type: none"> (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship. 3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

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	<p>(a) the construction, equipment and seaworthiness of ships;</p> <p>(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;</p> <p>(c) the use of signals, the maintenance of communications and the prevention of collisions.</p> <p>4. Such measures shall include those necessary to ensure:</p> <p>(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;</p> <p>(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;</p> <p>(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.</p> <p>5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.</p> <p>6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.</p>

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	<p>7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.</p> <p><u>Section 10 of the Civil Aviation Act</u></p> <p>10. Jurisdiction</p> <p>(1) Any act or omission which takes place outside Mauritius in an aircraft registered in Mauritius shall be deemed, for the purposes of civil and criminal jurisdiction, to have taken place in the district of Port Louis and the law of Mauritius shall have effect in relation to that act or omission as if it had taken place in Mauritius.</p> <p>(2) Notwithstanding the provisions of—</p> <p>(a) section 114 of the Courts Act; and</p> <p>(b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,</p> <p>a Magistrate shall have jurisdiction to try all offences and to impose all penalties provided for under this Act.</p> <p><u>Section 78(2) of the Criminal Code (above)</u></p> <p><u>Section 26(a) of the Extradition Act</u></p> <p>26. Extradition or related request</p> <p>The Attorney-General may make a request to a foreign State –</p> <p>(a) for the extradition of a person for the purpose of prosecuting an offence, or</p>

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	<p>imposing or executing a sentence in respect of an offence, over which Mauritius has jurisdiction. [...]</p> <p><u>Section 25 of the Extradition Act</u></p> <p>25. Prosecution of person sought</p> <p>Where an act committed outside Mauritius by a person sought constitutes an offence under the laws of Mauritius, the Director of Public Prosecutions may, where the person sought is not extradited, and notwithstanding any other enactment, institute proceedings against that person as if that act has been committed in Mauritius.</p>
<p>Article 6</p> <p>1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.</p> <p>2. Such State shall immediately make a preliminary inquiry into the facts.</p> <p>3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.</p> <p>4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which</p>	<p><u>The Extradition Act</u></p> <p>14. Application for arrest prior to extradition application</p> <p>(1) The Attorney-General may, pursuant to a request for the arrest of a person from a foreign State, apply to a Magistrate for an order for the arrest of the person pending an application under section 18(1), where he is satisfied that the requirements of the relevant extradition treaty are met and there are reasonable grounds to believe that –</p> <p>(a) the person sought is in, or is on his way or routinely travels to, Mauritius;</p> <p>(b) the request relates to an extraditable offence;</p> <p>(c) the other requirements under this Act are met; and</p> <p>(d) the State will submit a request for extradition in accordance with the relevant extradition treaty or, in any case, within 3 months from the date of the request.</p> <p>(2) The Magistrate shall order the arrest of the person sought where he is satisfied that the requirements of the relevant extradition</p>

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<p>makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.</p>	<p>treaty are met and there are reasonable grounds to believe that –</p> <p>(a) a warrant for that person's arrest or an order of a similar nature has been issued in the requesting State, or the person has been convicted in that State or is unlawfully at large in Mauritius;</p> <p>(b) the information available would have justified the issue of an arrest warrant if the person were accused of the relevant offence in Mauritius; and</p> <p>(c) it is necessary to arrest that person in the public interest or prevent him from escaping or committing an offence.</p> <p>(3) The arrest of the person sought shall be ordered by means of a warrant issued by the Magistrate which shall include the name of the requesting State, the date of the request, any relevant information regarding that person and the offence in respect of which arrest was requested.</p> <p>(4) A person who is arrested pursuant to subsection (2) shall be discharged where –</p> <p>(a) (i) the arrest was requested pursuant to an extradition treaty that provides for a period after the date of arrest within which a request for extradition should be made and the requesting State has not made a request for extradition within that period; or</p> <p>(ii) the requesting State has made a request for extradition within the period specified in subparagraph (i) but the Attorney-General has not applied for an order under section 18(1) within 21 days after the expiry of that period; or</p> <p>(b) (i) the arrest was not requested pursuant to an extradition treaty or was requested under an extradition treaty which does not provide for a period within which a request for extradition shall be made and the requesting State has not made a request for</p>

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	<p>extradition within 3 months after the date of the arrest; or</p> <p>(ii) the requesting State has made a request for extradition within the period specified in subparagraph (i) but the Attorney-General has not applied for an order under section 18(1) within 21 days after the expiry of that period.</p> <p>(5) The discharge of a person pursuant to subsection (4) shall not prevent his re-arrest where a request for extradition is subsequently made by a requesting State or a fresh examination of the request is made pursuant to section 13.</p> <p>15. Application for arrest after extradition application</p> <p>(1) Where the Attorney-General has made an application under section 18(1), he may, unless the person sought has already been arrested, apply to the Magistrate for an order for the arrest of that person.</p> <p>(2) The Magistrate shall order the arrest of the person sought where he is satisfied that the requirements of the relevant extradition treaty are met and that there are reasonable grounds to believe that –</p> <p>(a) a warrant for that person's arrest or an order of a similar nature has been issued in the requesting State, or the person has been convicted in that State or is unlawfully at large in Mauritius;</p> <p>(b) the information available would have justified the issue of an arrest warrant if the person were accused of the relevant offence in Mauritius; and</p> <p>(c) it is necessary to arrest that person in the public interest or prevent him from escaping or committing an offence.</p> <p>(3) The arrest of the person sought shall be ordered by means of an extradition arrest</p>

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	<p>warrant issued by the Magistrate which shall contain the information referred to in section 14(3).</p> <p>16. Proceedings after arrest A person arrested pursuant to section 14 or 15 shall be brought without undue delay before the Magistrate who shall –</p> <p>(a) order the detention of the person in custody or admit him to bail; and</p> <p>(b) set a date for the extradition hearing.</p> <p>17. Search and seizure</p> <p>(1) A Magistrate may, after a person sought has been arrested pursuant to section 14 or 15, order that the premises in which that person was found be searched and all property found in his possession at the time of arrest or discovered subsequently be seized or otherwise secured in Mauritius, where he is satisfied that there are reasonable grounds to believe that the property –</p> <p>(a) has been acquired as a result of, or been used in the commission of, the offence for which the application for arrest, or the request for extradition, was made; or</p> <p>(b) may be required as evidence in proving the offence referred to in paragraph (a).</p> <p>(2) (a) The Attorney-General may, at the request of the requesting State, order that any property referred to in subsection (1) be surrendered to the requesting State.</p> <p>(b) Where the laws of Mauritius and the rights of bona fide third parties so require, the Attorney-General shall not order the surrender of any property referred to in subsection (1) unless the requesting State has given assurances which, in his opinion, are sufficient to ensure that the property shall be returned to Mauritius free of charge as soon as the criminal proceedings in that State have been completed.</p>

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	<p><u>Note</u>: Mauritius is also a party to the Vienna Convention on Consular Relations, 1963 and article 36 relating to <i>Communication and contact with nationals of the sending State provides as follows</i>:</p> <p>1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:</p> <p>(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;</p> <p>(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;</p> <p>(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.</p> <p>They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.</p>

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	<p>2.The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.</p> <p><u>The <i>Section 16(1) of the Extradition Act</i></u> requires information regarding the offence concerned to be submitted to the Attorney General at the time of the request and unless a person consents to his extradition, the Attorney General must seek an order from a Magistrate that the person sought is eligible for extradition, including whether “in case extradition is requested for the purpose of prosecution in the requesting State, there is admissible evidence considered sufficient to justify the committal of the person sought for trial for the relevant offence if that offence had been committed in Mauritius;” and whether the requirement specified in the Act are met</p>
<p><i>Article 7</i></p> <p>1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.</p> <p>2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.</p> <p>3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be</p>	<p><u><i>Section 25 of the Extradition Act (above).</i></u></p> <p><u><i>Section 10 of the Constitution:</i></u></p> <p><i>10. Provisions to secure protection of law</i></p> <p>(1) Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.</p> <p>(2) Every person who is charged with a criminal offence—</p> <p>(a) shall be presumed to be innocent until he is proved or has pleaded guilty;</p> <p>(b) shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;</p> <p>(c) shall be given adequate time and facilities for the preparation of his defence;</p> <p>(d) shall be permitted to defend himself in person or, at his own expense, by a legal</p>

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<p>guaranteed fair treatment at all stages of the proceedings.</p>	<p>representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;</p> <p>(e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any Court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that Court on the same conditions as those applying to witnesses called by the prosecution; and</p> <p>(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,</p> <p>and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the Court has ordered him to be removed and the trial to proceed in his absence.</p> <p>[...]</p> <p>(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.</p> <p>(5) No person who shows that he has been tried by a competent Court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, except upon the order of a superior Court in the course of appeal or review proceedings relating to the conviction or acquittal.</p> <p>(6) No person shall be tried for a criminal offence if he shows that he has been granted</p>

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	<p>a pardon, by competent authority, for that offence.</p> <p>(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.</p> <p>(8) Any Court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a Court or other authority, the case shall be given a fair hearing within a reasonable time.</p> <p>(9) Except with the agreement of all the parties, all proceedings of every Court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the Court or other authority, shall be held in public.</p> <p>[...]</p> <p>(12) In this section, “criminal offence” means a crime, misdemeanour or contravention punishable under the law of Mauritius.</p>
<p>Article 8</p> <p>1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p>2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall</p>	<p><u>Section 5(1)(a) of the Extradition Act</u></p> <p>5. Offences punishable under laws of Mauritius</p> <p>(1) (a) An offence shall be an extraditable offence where –</p> <p>(i) it is punishable under the laws of the requesting State by imprisonment or other deprivation of liberty for a term of not less than 2 years; and</p> <p>(ii) the act which constitutes the offence would, if committed in Mauritius, constitute an offence which is punishable under the laws of Mauritius by imprisonment or any</p>

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<p>be subject to the other conditions provided by the law of the requested State.</p> <p>3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.</p> <p>4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.</p>	<p>other deprivation of liberty for a term of not less than 2 years.</p> <p>Note: According to section 78(1) of the Criminal Code, a person found guilty of the offence of torture may be liable to a fine not exceeding Rs 150, 000 and to imprisonment for a term not exceeding <u>10 years</u>.</p> <p>In light of the above, torture would be considered to be an extraditable offence under the Extradition Act.</p>
<p>Article 9</p> <p>1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.</p> <p>2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.</p>	<p><u>The Mutual Assistance in Criminal and Related Matters Act</u></p> <p>Section 2 defines ‘serious offence’: “serious offence” - (a) means – (i) an offence against a law of Mauritius, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months; or (ii) an offence against a law of a foreign State for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months; (b) includes an international criminal tribunal offence.</p> <p>Section 5(1):</p> <p>5. Request to Mauritius</p> <p>(1) A foreign State may, in relation to a serious offence, and an international criminal tribunal may, in relation to an international criminal tribunal offence, make a request for assistance to the Central Authority in any proceedings commenced in the foreign State or before the international criminal tribunal, as the case may be.</p>

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	<p data-bbox="807 230 1385 297"><u>Part III of the Act deals with Forms of Mutual Assistance:</u></p> <p data-bbox="807 342 1385 409">6. Procedure for an evidence-gathering order or a search warrant</p> <p data-bbox="807 454 1385 701">(1) Notwithstanding any other enactment, where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to obtain evidence or a search warrant in Mauritius, the Central Authority may apply to a Judge in Chambers for –</p> <p data-bbox="807 745 1385 925">(a) an evidence-gathering order; or (b) a search warrant for the search of a person or premises, and removal or seizure of any document or article.</p> <p data-bbox="807 969 1385 1037">7. Foreign request for a virtual evidence-gathering order</p> <p data-bbox="807 1081 1385 1440">(1) Where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to order a person to give evidence by means of technology that permits the virtual presence of the person in the territory over which the foreign State has jurisdiction or in the International Criminal Tribunal, it may apply to a Judge in Chambers for an order for the taking of the virtual evidence of the person.</p> <p data-bbox="807 1485 1385 1518">11. Foreign request for restraining order</p> <p data-bbox="807 1563 1385 1597">(1) Where-</p> <p data-bbox="807 1641 1385 1809">(a) a foreign State or an international criminal tribunal requests the Central Authority to obtain the issue of a restraining order against the proceeds of crime which are believed to be located in Mauritius; and</p> <p data-bbox="807 1854 1385 2056">(b) proceedings relating to the proceeds of crime have commenced in the foreign State, or before the international criminal tribunal, and there are reasonable grounds to believe that the proceeds of the crime are located in Mauritius, the Central Authority may apply</p>

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	<p>to a Judge in Chambers for a restraining order under this section.</p> <p>12. Foreign request for enforcement of foreign restraining order or confiscation</p> <p>(1) Notwithstanding any other enactment, where a foreign State, or an international criminal tribunal, requests that necessary measures be taken for the enforcement of-</p> <p>(a) a foreign restraining order; or (b) a foreign confiscation order, the Central Authority may apply to the Supreme Court for registration of the order.</p> <p>15. Foreign request for the location of the proceeds of crime</p> <p>(1) Where-</p> <p>(a) a foreign State requests the Central Authority to assist in locating property believed to be the proceeds of a serious crime committed in that State; or (b) an international criminal tribunal requests the Central Authority to assist in locating property believed to be the proceeds of an international criminal tribunal offence, the Central Authority may apply to a Judge in Chambers for an order –</p> <p>(i) that any information relevant to - (A) identifying, locating or quantifying any property; or (B) identifying or locating any document necessary for the transfer of any property, belonging to, or in the possession or under the control of that person be delivered forthwith to the Central Authority; or</p> <p>(ii) that a bank or financial institution forthwith produces to the Central Authority all information obtained by it about any business transaction relating to the property for such period before or after the date of the order as the Judge may direct.</p>

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<p>Article 10</p> <p>1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.</p> <p>2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.</p>	<p>No specific legislations but code of ethics and manuals exist.</p>
<p>Article 11</p> <p>Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.</p>	
<p>Article 12</p> <p>Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.</p>	
<p>Article 13</p> <p>Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.</p>	<p><u>Section 24 of the Independent Police Complaints Commission Act</u></p> <p>24. Offences</p> <p>Any person who –</p> <p>...</p> <p>(d) procures the false testimony of a witness, or interferes with a witness on account of his testimony, before the Commission;</p> <p>...</p>

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	<p>shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.</p> <p><i>Section 13 of the Protection of Human Rights Act</i></p> <p>13. Offences</p> <p>Any person who —</p> <p>...</p> <p>(e) procures the false testimony of a witness, or interferes with a witness on account of his testimony, before the Human Rights Division;</p> <p>...</p> <p>shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.</p>
<p><i>Article 14</i></p> <p>1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.</p> <p>2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.</p>	<p>There is no specific legislation providing for compensation in cases of torture.</p> <p>However, victims or the relatives of deceased victims can enter a civil case for damages as compensation for the torture suffered by them.</p>
<p><i>Article 15</i></p> <p>Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.</p>	<p>As per the law of evidence and case law in Mauritius, where an accused is threatened or induced or oppressed into making a confession, that confession will be excluded if it is shown that at the time of making it, his free will had been nullified.</p>

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<p>Article 16</p> <p>1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.</p> <p>2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.</p>	<p>Book III, Chapter II of the Criminal Code</p> <p>Chapter II caters for offences by public officers, and acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture may be prosecuted thereunder (excluding section 78).</p>

(Source: Attorney General's Office)

**Judgement in the case of: Director of Public Prosecutions v Jagdawoo V. & Ors
2016 SCJ 100**

IN THE SUPREME COURT OF MAURITIUS

SCR No. 7793

In the matter of:

The Director of Public Prosecutions

Appellant

v.

V. Jagdawoo & Ors

Respondents

JUDGMENT

This is an appeal by the Director of Public Prosecutions against a judgment of the Magistrates of the Intermediate Court dismissing the 2 counts of an information brought against the respondents.

Respondent No. 2 having passed away, the appeal now lies only against respondents nos. 1,3 and 4.

The appeal is against the dismissal by the Court of the charge brought under count I of the information which was for an offence of “abuse of authority by public officers” in breach of Section 77 of the Criminal Code.

The respondents, who were all police officers, were charged for having, on 12 January 2006 at Line Barracks Port Louis, wilfully and unlawfully committed an arbitrary act prejudicial to the Constitution of Mauritius in that they subjected one Ramdoolar Ramlogun, who was in police custody as a suspect in a murder case, to inhuman and degrading treatment contrary to section 7 of the Constitution. The inhuman and degrading treatment was particularised as “*physical abuse*”.

It is not in dispute that on 12 January 2006 Ramlogun was arrested by the police in connection with a murder case, he was detained at the Line Barracks Detention Centre and on 14 January 2006 he passed away whilst still in police custody.

An initial question of law arose at the outset of the appeal concerning the scope of application of section 77 of the Criminal Code. The issue is whether Section 77 would apply to the prosecution of an offence in respect of the breach of the Constitution of Mauritius as alleged in the present matter.

Section 77 of the Criminal Code reads as follows:

“77. Abuse of authority by public officer

Subject to section 78, where a public functionary, an agent of, or person appointed by the Government, orders or commits any arbitrary act, prejudicial either to individual liberty, or to the civic rights of one or more individuals, or to the Constitution of Mauritius, and does

not prove that he acted by order of his superior, in matters within the competency of the latter, he shall be condemned.”

Section 7(1) of the Constitution provides that *“No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment”*.

There are 3 different ways in which an offence may be committed under section 77. An offence is committed where the person commits an *“acte arbitraire”* or *“attentatoire”*, which is described in the English version of the offence as any arbitrary act prejudicial either to (i) individual liberty; or (ii) the civic rights of one or more individuals or (iii) the Constitution of Mauritius.

It was submitted on behalf of the respondents that there is an offence against an individual only under (i) and (ii) whereas an offence would lie under (iii), only where there is an attack against the Constitution itself. Counsel added that it is therefore highly questionable whether an offence would lie under (iii), where the act complained of does not constitute an attack upon the Constitution of Mauritius but is only prejudicial to an individual right in breach of section 7 of the Constitution.

Section 77 of our Criminal Code has been borrowed from Article 114 of the French Code Penal which, prior to its amendment in France, was couched in identical terms. It is apposite to refer to the following comments made by Garçon in his **Code Pénal Annoté, livre III, Chapitre II** which explain the application of Article 114 of the French Code Pénal:

1. *“L’art 114 prévoit certains actes arbitraires commis par les fonctionnaires publics, agents ou préposés du Gouvernement. Il garantit particulièrement la liberté individuelle contre les abus de pouvoir des agents de l’autorité.*

2. *Ce texte n’incrimine pas les actes arbitraires quelconques, mais seulement ceux qui portent atteinte aux droits qu’il énumère limitativement ; en autres termes, la loi prévoit et punit trois sortes d’abus de pouvoir: 1^o les actes attentatoires à la liberté individuelle; 2^o ceux attentatoires aux droits civiques des citoyens; 3^o enfin, ceux attentatoires à la Constitution.*

... ..

4. *Les actes arbitraires et attentatoires aux droits civiques des citoyens sont, dans le sens strict de cette expression, les actes par lesquels il est porté atteinte aux droits politiques des citoyens, à leurs droits de vote et d’éligibilité.*

5. *L’art. 114 punit aussi les actes arbitraires et attentatoires à la Constitution. Presque tous les auteurs considèrent que cette disposition est trop large et trop vague pour pouvoir être appliquée et la commentent à peine. Enfin, on décide généralement que l’art. 114 ne punit les actes des agents de l’autorité violant la Constitution que s’ils causent un préjudice à un particulier.*

6. *Nous pensons autrement. Le texte prévoit la violation de la Constitution d’une manière générale et n’exige point que les intérêts ou les droits d’un particulier aient été spécialement violés. Sans doute si les actes des fonctionnaires avaient eu pour but de détruire ou de renverser la Constitution, il y aurait attentat;*

7. *Mais il faut, peut-être, aller beaucoup plus loin et décider que l'art. 114 est une disposition générale qui protège toutes les libertés qu'on appelle aujourd'hui, en droit constitutionnel, les droits individuels.*"

The scope of application of Article 114 of the French Penal Code with regard to a breach of the Constitution is also given full consideration by Garraud in **Traité du Droit Pénal Français, Tome Troisième at para. 32**. The relevant extract which deals specifically with the 3rd limb in relation to any arbitrary act prejudicial to the Constitution, lays down the following:

"La troisième vise les actes contraire à la constitution, c'est-à-dire les actes qui portent atteinte aux droits et aux libertés que la constitution reconnaît et garantit. Ce texte constitue, en quelque sorte, une sanction générale des droits constitutionnels, contre les excès ou abus de pouvoir des représentants de l'Etat. Il est clair que de pareilles dispositions, par cela même qu'elles sont illimitées, sont purement comminatoires, et, tout en établissant un principe général de répression, elles ne répriment, en réalité, aucun acte précis et déterminé."

The learned author goes on to state the following:

"Qu'est-ce en effet, qu'un acte attentatoire à la constitution? Le législateur n'entend certainement pas, par les termes dont il se sert, un acte qui a pour but de détruire ou de changer la constitution, puisque les faits de cette nature rentrent dans les dispositions du titre premier, qui punit les crimes et délits contre la sûreté de l'Etat. D'ailleurs, il s'agit, dans l'article 114, de faits qui causent unpréjudice à un individu. Ce texte s'applique donc aux actes qui portent atteinteaux droits et libertés que la constitution reconnaît et garantit aux citoyens commeaux étrangers" (Emphasis added)

It is clear from the above that one cannot take a restrictive view of the application of section 77 of the Criminal Code to the breach of any of the constitutional rights entrenched in the Constitution for the protection of an individual person. Its application would thus extend to a breach of any of the fundamental rights guaranteed under the Constitution. A breach of section 7 of the Constitution which affords protection against torture or any other form of inhuman or degrading treatment would clearly fall within the purview of an offence under section 77 of the Criminal Code.

We shall now turn to the grounds of appeal of the appellant.

There were initially 19 grounds of appeal but grounds 17, 18 and 19 were dropped. The remaining grounds read as follows:-

1. The learned Magistrates misapprehended the evidence and drew unreasonable conclusions when they stated that because Ramlogun did not make any complaint to any person in authority, he could not therefore have been assaulted by the four accused on the 12 January 2006.
2. The learned Magistrates failed to appreciate the unrebutted evidence of witness Seedeer and were plainly wrong not to act on such evidence.

3. The learned Magistrates' decision to dismiss Count 1 of the information on the ground that on "13th January 2006 Ramlogun was well, could walk properly and appeared before the District Court to Flacq without the evidence showing that he made any complaint" was simply unreasonable in the circumstances.
4. The learned Magistrates failed to appreciate the unrebutted evidence of Dr. Gujjalu to the effect that "a person who is given such a blow would not be affected on the spot".
5. The learned Magistrates misapprehended the testimony of Dr. Gujjalu and drew unreasonable conclusions when they stated that "... *Ramlogun could have received a blow even before his arrest as he started showing signs of drowsiness in the afternoon of 13 January 2006.*"
6. The learned Magistrates misdirected themselves and failed, when analyzing the evidence adduced by the Prosecution, to make the distinction between direct and circumstantial evidence.
7. The learned Magistrates misdirected themselves on the nature of the evidence adduced by the Prosecution when they stated that "the evidence adduced by the Prosecution shows that during the interview and until Ramlogun was taken away by other Police officers to be detained at the Detention Centre, no violence was used on him by the four accused or any of them."
8. The learned Magistrates failed to take relevant evidence into account and shut their eyes to the obvious inasmuch as they utterly failed to address their mind to the unrebutted testimony of witness Arnasala when they referred to the trip from the MCIT Office to the Detention Centre.
9. The complete failure of the learned Magistrates to address their mind to the testimony of witness Arnasala when deciding what happened during the 38 minutes constitutes a serious mistake especially in view of their findings to the effect that during the interview and until Ramlogun was taken away to be detained, no violence was used on him by the four accused or any of them.
10. The learned Magistrates' findings to the effect that the 38 minutes trip from the MCIT Office to the Detention Centre has remained unexplained, are in the circumstances, perverse and unreasonable.
11. The learned Magistrates have erred in their appreciation of facts and were plainly wrong when they concluded that the trip from the MCIT Office to the Detention Centre took 38 minutes.
12. The learned Magistrates were wrong and acted in breach of procedural fairness when they refused the motion of the Prosecution to add the name of PC Manaroo to the list of witnesses and to conclude subsequently in their judgment that "*the mystery remains as to the 38 minutes trip from the MCIT Office to the Detention Centre*".
13. The learned Magistrates failed to address their mind and appreciate the relevance of Document "U" which was material.

14. The learned Magistrates failed to appreciate the evidence which revealed that only the four accused were permanently in company of Ramlogun for the purpose of questioning him.

15. The learned Magistrates failed to appreciate the evidence of witness Koo Wen Cheung and formed the wrong impression that Ramlogun had only a small red mark on his cheek when he was brought to the Detention Centre on 12 January 2006.

16. The learned Magistrates were wrong, in the light of all the evidence adduced by the Prosecution, to take irrelevant matters into account namely that the Court record of Flacq Court was not produced before the Court and the doctor who examined Ramlogun on 13 January 2006 was not called to give evidence.

All the grounds of appeal question essentially the appreciation of the evidence by the learned Magistrates. It was submitted by learned Counsel for the appellant that the trial Court had erred in its appreciation of the facts and made findings which amount to misdirections. He added that the learned Magistrates took irrelevant matters into account and closed their eyes to the obvious. Counsel went on to submit that for the appellate Court to determine whether the trial Court misapprehended the evidence and erred in its analysis and assessment of the evidence, it is necessary to review the whole of the evidence which was adduced at the trial. Counsel referred to the decision of the Judicial Committee in **Dosoruth v The State of Mauritius** [2004 MR 230] in support of his contention that, by virtue of section 96(1) of the

District and Intermediate Courts (Criminal Jurisdiction) Act, it is necessary for the determination of such an appeal that the appellate Court should go over the whole of the evidence which was placed before the trial Court.

It is not in dispute that there was no direct evidence to incriminate any of the three respondents and that the case for the prosecution rested solely upon circumstantial evidence. It is submitted under grounds 1, 6 and 7 as well as under grounds 13 to 16 that had the circumstantial evidence been properly considered, analysed and appreciated by the Court, it would have led to the irresistible conclusion that on 12 January 2006 Ramlogun was subjected to inhuman and degrading treatment by the respondents. Counsel went on to submit that the learned Magistrates clearly misdirected themselves as to the nature of the evidence adduced before them, failed to give due consideration to crucial aspects of the evidence and consequently drew the wrong conclusions. It was submitted, under ground 1, that the learned Magistrates failed to appreciate that in the circumstances of the case no one would have expected Ramlogun to complain to the police and that it was unreasonable for the Magistrates to conclude that because Ramlogun did not make any complaint when he appeared before the Magistrate, he could not therefore have been assaulted by the respondents.

It was further submitted under grounds 6, 7, 13, 14, 15 and 16 that the Magistrates failed to distinguish between direct and circumstantial evidence. They further misdirected themselves when they concluded that *“the evidence adduced by the prosecution shows that during the interview and until Ramlogun was taken away by other police officers to be detained at the Detention Centre, no violence was used on him by the four accused or any of them”*.

It is also the contention of the appellant that the learned Magistrates drew the wrong conclusions by misapprehending and failing to appreciate the medical evidence (Grounds 3, 4 and 5), by misconstruing the testimony of witness Seedeer (Ground 2), witness Arnasala (Grounds 8 and 9) and witness Cheung (Ground 15). Learned Counsel for the appellant also

laid much stress, under grounds 8 to 12, on the failure of the learned Magistrates to give due consideration to the testimony of witness Arnasala and their misapprehension of the evidence relating to the trip from the MCIT office to the detention centre immediately after Ramlogun had been interviewed by the respondents.

It is essential in order to determine the grounds of appeal raised on behalf of the appellant, to set out at this juncture all the salient features of the evidence which were placed before the trial Court.

The facts

On 12 January 2006, the Major Crime and Investigation Unit (“MCIT”) headed by late

SP Radhooa was enquiring into the murder of two sisters, Indira and Asha Jhurry. Sergeant Jagdawoo, the Respondent No. 1, who was in charge of the enquiry, led a team of MCIT officers to Lallmatie to enquire into the case.

At about 15.00 hours on 12 January 2006, Ramdoolar Ramlogun was arrested in connection with the case and was brought to Lallmatie police station along with one Leckraj Ramgottee. Ramlogun remained in the police van whilst a statement was being recorded from Ramgottee at Lallmatie police station. Ramgottee was released following the recording of the statement. Ramlogun was brought to the MCIT office at Line Barracks for interview at about 17.00 hours. His interrogation started at about 18.30 hours. Ramlogun was being questioned by Sergeant Jagdawoo respondent no. 1, late CPL Madarbux respondent no. 2, as well as by PC Potié and PC Levasseur, respondents nos. 3 and 4 respectively.

At about 19.00 hours PC Arnasala and PC Manaroo, who were present at the MCIT office, left the office in order to buy food. Ramlogun was left alone with the respondents for questioning. There was a break in the questioning of Ramlogun from 20.00 hours to 20.30 hours in order to allow him to have some food and refreshment. The interview ended at 21.45 hours. Ramlogun had declined to give a written statement after he had been duly cautioned by PS Jagdawoo. At 22.15 hours, Ramlogun was committed to police cell for detention. He was brought to the Line Barracks Detention Centre (detention centre) in a police van in which there were police officers Arnasala, Manaroo and Lutchmun. It took them 2 to 3 minutes to travel from the MCIT office to the detention centre. Ramlogun was handed over to PC Cheung at the detention centre at 22.53 hours.

PC Cheung explained that Ramlogun was searched by PC Soumarie. A pair of glasses were secured from him before he was taken to cell. On being informed by PC Soumarie that there were marks on the face of Ramlogun, P.C Cheung noticed a small circle-shaped and red colour mark at the temple region on the left side of Ramlogun’s face. He questioned Ramlogun as to the presence of the mark. He answered “*non correct ça*”, by which PC Cheung understood that everything was all right with him. Ramlogun did not make any complaint. PC Cheung added that there was no need in such circumstances to strip search Ramlogun in order to ascertain whether he had any marks or injuries on his body. Ramlogun walked on his own to the first floor where he was placed in cell no. 9.

PC Soumarie did not depose as a witness as he passed away before the trial.

PC Cheung described the conditions in which detainees are kept at the detention centre. There are sentry officers who are placed at three different posts in order to keep permanent watch over detainees at all times. The sentry officers would also walk up and down the corridor in

order to keep an eye over the detainees whilst they are in the cells. There is an hourly cell visit during the day and there is a visit at an interval of every 30 minutes at night. No one is given access to the cell. The detainees are released from 7.30 hours to 8.30 hours in the morning and from 15.30 hours to 16.30 hours in the afternoon to allow them to take their meals in the corridor. During these two hours the detainees may take a shower and they have the opportunity to meet each other, but always in the presence of the sentry officers.

PC Rookmin took over charge as station orderly from PC Cheung as from 23.15 hours on 12 January 2006 until 7.30 hours on 13 January 2006 when he was replaced as station orderly by CPL Noormamode. He however continued on sentry duty until 15.30 hours. Regular checks were carried out every 30 minutes by PC Rookmin throughout the night of 12 January 2006. He did not notice anything unusual in cell no. 9 and Ramlogun did not make any complaint to him.

PC Rookmin added that Ramlogun was removed from cell on 13 January 2006 at 7.30 hours in order to have breakfast in the corridor. He was taken back to cell at 8.30 hours.

At 9.30 hours Police officers Auckloo and Manaroo took Ramlogun to Flacq Court. At about 13.00 hours on the same day Ramlogun was brought back from Court to the detention centre by

PC Auckloo and PC Manaroo and was again placed in cell. Apart from a scratch mark on his left cheek, PC Rookmin did not notice any injury. Ramlogun was walking without any difficulty and did not appear to suffer from any injury. He added that Ramlogun had that scratch mark before he left for Court. When PC Rookmin was confronted with photos marked **H11**, **H12** and **H18**, his answer was that he did not see any of the bruises or marks which appear on Ramlogun in these photographs.

PC Jogeedoo also performed sentry at the detention centre on the night of 12 January 2006 from 23.00 hours until 7.30 hours on the following day. He was working on the same shift as PC Rookmin. He checked the cell of Ramlogun at regular intervals every half an hour. Ramlogun was sleeping and PC Jogeedoo could not see his face as Ramlogun was facing the wall. He was relieved by PC Dookhoo in the morning of 13 January 2006.

When PC Jogeedoo resumed duty at 15.00 hours on 13 January 2006, he found Ramlogun sleeping on a mattress on the floor of cell no. 4 where Ramlogun had been transferred. PC Jogeedoo opened the cell at 15.30 hours and asked Ramlogun to come out for his meal. He was still lying on his mattress. He opened his eyes and shook his head. PC Jogeedoo left the door of the cell open. But Ramlogun continued sleeping and did not have his meal. At about 20.00 hours PC Jogeedoo asked PC Khodaboccus, the station orderly to check on Ramlogun. PC Khodaboccus bent down and spoke to Ramlogun whilst he was still lying on the mattress on the floor. He asked Ramlogun whether he was feeling sick and whether he wanted to go to hospital. Ramlogun indicated that he wanted to have medical treatment as he was not feeling well. PC Khodaboccus did the needful for MCIT officers to take Ramlogun to hospital. Ramlogun was so weak that he could not stand properly on his feet. He could not move out of the cell on his own. He had to be helped by MCIT officers PC Potié, respondent No. 4 and PC Auckloo, as well as by officers Potiegadoo and Khodaboccus in order to be taken to hospital. PC Jogeedoo noticed that his face was swollen and he had a small scratch mark on his left cheekbone.

PC Jogeedoo saw Ramlogun again at about 23 00 hours when the MCIT officers brought him back from hospital to the detention centre. Ramlogun could not stand on his own. He was very weak and had to be carried into his cell with the help of the MCIT officers. Ramlogun was so weak that he could not sign the entries in the diary book. PC Jogeedoo maintained that throughout the whole of the period that he was on duty both on 12 January 2006 and on 13 January 2006, no other persons had access to Ramlogun. When he was shown some photographs which were taken during the post-mortem examination of Ramlogun, he stated that he had not noticed any of the injuries which appear in these photographs.

PC Khodaboccus was also on duty at the detention centre when Ramlogun was brought in by police officers Arnasala and Manaroo at 22.53 hours, on 12 January 2006. He did not notice anything significant as he ended his shift at 23.30 hours. He resumed duty at 15.00 hours on 13 January 2006 and checked the cell of Ramlogun. Ramlogun was lying on a mattress and when PC Khodaboccus asked him “*Mr Ramlogun correct la*” (whether he was all right) he made no reply but simply raised his hand. At about 20.30 hours, he was informed by a police officer that Ramlogun was unwell. When he went to see Ramlogun, the latter informed him that he wanted to be medically treated. He contacted the CCID and later MCIT officers, PC Potié, PC Auckloo and PC Mariemootoo took Ramlogun to Hospital. Ramlogun was so weak that he had to be helped by them in order to move from his cell to the police car. He was still weak and sleepy when he was brought back to the detention centre by the MCIT officers at about 23.00 hours. PC Khodaboccus left at about 23.30 hours.

Police officer Dookhoo was on duty in company of PC Rookmin on 13 January 2006. At 7.30 hours he opened the cell door of Ramlogun who was in cell no. 9. Ramlogun walked out of his cell and went downstairs on his own in order to have breakfast. The officer admitted having previously stated in his statement that Ramlogun was a “*bit disturbed*”. He explained in Court that by “*disturbed*” he meant that Ramlogun was not in his normal state. He was worried and looked troubled because he had been arrested in connection with the case. He was taken to Court and came back in the afternoon. He was then placed in cell no. 4 on the ground floor. He saw a red scratch mark on the left cheek of Ramlogun. He saw that mark on his face when Ramlogun was leaving for Court. He left duty at 15.30 hours on 13 January 2006 resumed at 7.30 hours on the following morning, on 14 January 2006. When he opened the cell door, he found that Ramlogun was still sleeping. He tried to wake him up but he did not get up and remained in his cell. At about 8.30 hours, the station orderly, CPL Noormamode went to see Ramlogun in his cell. As he appeared to be sick he called the MCIT officers who arrived at around 10.00 hours. Ramlogun was taken to hospital at about 10.10 hours. He had to be carried in a blanket by the police officers. According to PC Dookhoo, Ramlogun had not been subjected to any form of violence whilst he was on duty. He did not notice any injuries on him except for the mark on his left cheek.

PC Seesurn was also on duty at the detention centre from 7.00 hours to 15.15 hours on 13 January 2006. He found Ramlogun to be walking normally when he went for tea. He appeared to be normal both before he left for Court and after returning from Court. He did not observe any mark of violence on Ramlogun’s face and he appeared to be in good health.

Witness PS Ramdoyal was the head of the Special Supporting Unit (SSU) team who was responsible for escorting Ramlogun to Flacq Court. Ramlogun was handed over to him by MCIT officers outside their office in line Barracks at 9.40 hours on 13 January 2006. In company of other SSU officers, they proceeded to Flacq Court in a SSU vehicle. They reached Flacq Court at 11.00 hours. They waited for 15 minutes until the case was called and Ramlogun

put up an appearance before the Magistrate. After the case they returned to Line Barracks in the same vehicle and Ramlogun was handed over to an MCIT officer who had followed them to Flacq in a different vehicle.

From the time that he took charge of Ramlogun, PS Ramdoyal did not notice any mark of violence on him. Nothing happened to him on the way to and from Flacq District Court. When the case was called, Ramlogun did not make any complaint or statement to the Magistrate. He was able to walk on his own without any help and looked visibly fine.

Witness CPL Noormamode was the station orderly at the detention centre from 7.15 hours to 15.30 hours on 13 January 2006. At 9.30 hours MCIT officers Auckloo and Manaroo came to take Ramlogun to Flacq Court and he was searched before he left for Flacq. Ramlogun made no complaint and did not give any indication that he could be suffering. He was given his spectacles. He could walk on his own, unaided, as he left the detention centre in company of the MCIT officers. Witness Noormamode did not see him again on 13 January 2006 as he was not present when Ramlogun came back from Court.

Witness Noormamode resumed duty as station orderly in the morning of 14 January 2006. He found out that Ramlogun was still sleeping when food was being served at 7.30 hours. He tried to wake him up but he continued sleeping. He immediately informed the MCIT officers who conveyed Ramlogun to hospital.

Witness PC Nepal and CPL Manuel were on the last shift duty at the detention centre from 23.00 hours on 13 January 2006 until 7.00 hours on 14 January 2006. Ramlogun was in cell no. 4 after he had returned from hospital. He was sleeping on a mattress placed on the floor. Witness Nepal had the keys of the cell and he stated that nobody had access to Ramlogun during his shift. He did not provide any medication to Ramlogun. Both witnesses Nepal and Manuel stated that they received no complaint from Ramlogun on that night.

Witness Manoovaloo was part of the MCIT team led by PS Jagdawoo, respondent No. 1, who proceeded to Lallmatie on 12 January 2006 to investigate into the murder case. The team also consisted of WPC Provence, PC Mariemootoo and PC Auckloo. The MCIT officers, after having gathered information during the day, proceeded to the place of Leckraj Ramgotee in order to carry out a search. During the search Ramgotee produced a set of knives and indicated 2 spots where some materials had been burnt. Ramlogun was at that time standing on a balcony on the first floor of the house. Respondent No. 1 went to speak to him. Both Ramgotee and Ramlogun were then brought to Lallmatie Police Station. Ramlogun was kept in the police van. Ramgotee was released after he had given a statement. Respondent no. 1 decided that Ramlogun should be brought to the MCIT office in Line Barracks for questioning. Ramlogun appeared calm and normal and they reached the MCIT office at about 17.00 hours. PC Manoovaloo was in the company of Ramlogun in the vehicle which brought them from Lallmatie to the MCIT office in Port Louis. At no moment was any verbal pressure, force or violence exerted upon him.

Ramlogun was brought to the front office and he was in the company of respondents no. 1 and 3. Witness Manoovaloo left for refreshments and when he returned he found out that Ramlogun was being interviewed by the respondents and Maudarbux. Since he was not involved in the interview he went to attend to his work in an adjoining office. The two rooms were separated by a "plywood" partitioning which did not reach up to the ceiling. Whilst he was in the office, he could hear the voices when Ramlogun was being interrogated. There was no shouting or threat nor any sound of any violence being exerted on Ramlogun during the

course of his interview by respondents and Madarbux. He saw Ramlogun at around 20.00 hours. He was having bread and refreshments. His interview started anew after the break. At about 22.30 hours, respondent no. 1 gave instructions that Ramlogun should be detained at the detention centre. Manoovaloo saw Ramlogun leaving for the detention centre. He did not bear any sign of ill-treatment and he did not limp or moan.

Witness Manoovaloo stayed at the MCIT office. Neither witness Manoovaloo nor any of the MCIT officers who interviewed him formed part of the team of officers who conveyed Ramlogun to the detention centre.

On 12 January 2006, PC Mariemootoo formed part of the MCIT team which proceeded to Lallmatie to investigate into the murder case. They carried out a search at the place of Ramgotee in the course of which some exhibits were secured. They then proceeded to the place of Ramlogun. Respondent no. 1 informed Ramlogun that there were reasonable grounds to suspect him. Ramlogun was first brought to Lallmatie police station and then to the MCIT office. PC Mariemootoo stated at no moment was any force or violence exerted upon Ramlogun. PC Mariemootoo attended to his work in another room and he remained at the MCIT office until 23.15 hours. Ramlogun was being interviewed by the then 4 accused parties in an adjacent room and the two rooms were separated by a 'plywood' partitioning which did not go up to the ceiling. Witness Mariemootoo added there was no physical or verbal pressure which was exerted upon Ramlogun. He did not see Ramlogun leaving for the detention centre.

Witness Manoovaloo resumed duty at 8.00 hours on 13 January 2006. Ramlogun was to be taken to Flacq Court. PC Manoovaloo drove the van which took him from the detention centre to the MCIT office. He was brought into the vehicle by PC Manaroo and PC Auckloo. He could walk normally and got into the vehicle without any difficulty. PC Manoovaloo did not notice any injury nor any sign of violence on him. When he was brought from the detention centre to the MCIT office which was found on the first floor, he could walk up the stairs without any difficulty.

PC Manoovaloo accompanied by PC Manaroo and PC Auckloo followed Ramlogun and the SSU escort to Flacq Court in another vehicle. They followed Ramlogun into the Court room after he had alighted from the SSU vehicle. He could get down the van and could walk up the steps into Flacq Court without any difficulty. PC Manoovaloo did not notice any visible sign of injury or violence on Ramlogun who could walk freely and climb the stairs on his own, unaided. Ramlogun looked quite normal. PC Manoovaloo did not see any person exercising any form of verbal or physical pressure upon Ramlogun. Ramlogun was provisionally charged with murder. He did not make any complaint to the Magistrate or at any other stage. Ramlogun was brought back to the detention centre by the SSU escort team in the SSU vehicle. PC Manoovaloo was driving the vehicle which followed them to the detention centre. None of the respondents went to Flacq Court on 13 January 2006. According to Manoovaloo, the MCIT office is about 250-300 metres from the detention centre.

When witness Mariemootoo resumed duty at about 20.30 hours on 13 January 2006, he was informed that Ramlogun was sick and needed medical attention. He proceeded to the detention centre in company of PC Auckloo, PC Potié (respondent no. 3) and PC Ramcharan. Ramlogun was brought to the vehicle in a weak and drowsy condition. They had to help him to get into the vehicle. He was conveyed to Dr Jeetoo Hospital where he was examined at the Casualty by Dr Esoof. Witness Mariemootoo did not see anybody exercising any form of violence whatsoever on the person of Ramlogun.

The examination and treatment at the hospital lasted for about 1 1/2 hours. Ramlogun was then brought back to the detention centre in the same vehicle driven by PC Mariemootoo who stated that Ramlogun was not subjected to any physical violence from the time he was taken to hospital until his return to the detention centre.

Witness PC Arnasala was on duty at the MCIT from 7.00 hours to 23.30 hours on

12 January 2006. He first saw Ramlogun when he was brought into the MCIT office at about 17.00 hours. When Ramlogun was being interrogated by the respondents, he could overhear the interrogation from an adjoining room which was separated only by a plywood partitioning. Everything appeared normal as he did not hear anything suspicious, like for example, any sound of screaming or the sound of a person being subjected to violence. At about 19.00 hours he went out to buy food in company of PC Manaroo and came back at about 21.00 hours. He remained in the rear office where he had his food. At about 22.00 hours he went outside to the toilet and remained in the yard until he saw PC Manaroo coming down the stairs with Ramlogun at about 22.40 hours.

Ramlogun went to the toilet for about 5 minutes. He appeared to be normal as he walked freely to the toilet. After he came out from the toilet he was taken to the detention centre in a van driven by PC Lutchmun. He accompanied PC Manaroo and Ramlogun in the van during the trip to the detention centre which lasted for about 2 to 3 minutes. Ramlogun was brought to the detention centre at 22.53 hours where Ramlogun was searched upon his arrival. PC Arnasala noticed a little red mark on his cheek which looked like a mosquito bite. There were no other injuries on his face or body and there was no bleeding at or near his ear.

On 13 January 2006 he received the provisional charge which was to be lodged at Flacq District Court against Ramlogun. It was signed by SP Lollbeeharry. He went to Flacq Court in a car which followed the SSU vehicle which was taking Ramlogun to Court. PC Arnasala was not present in Court when the case was called. On 13 January 2006, he did not see any other marks or sign of injury Ramlogun's face.

At 9.45 hours on 14 January 2006 he went to the detention centre in company of other police officers in order to take Ramlogun to hospital. Ramlogun was lying unconscious on the floor of his cell. His face was swollen. PC Arnasala added that Ramlogun was a completely different person from the one he had seen on the previous day. His condition had severely deteriorated. He was very weak and was not able to speak. Since he could not walk he had to be placed in a blanket in order to be taken to hospital.

Following X-Ray examination, Ramlogun was immediately admitted. He passed away on the same day. According to PC Arnasala, no one used any violence on Ramlogun on any of the three days that he was in police custody from 12 to 14 January 2006.

On 12 January 2006, Seedeer was being detained at the detention centre in connection with a driving case. Ramlogun was brought in and placed in a cell opposite to Seedeer's cell. During the morning tea break on 13 January 2006, Seedeer tried to speak to Ramlogun. At first, Ramlogun remained mute, but later Ramlogun told Seedeer that he felt pain. He showed his left cheek and stated that he had been beaten by police officers. Seedeer noticed that his face was swollen.

In the afternoon of 13 January 2006, after Ramlogun returned from Court, he lay on his mattress in his cell. Seedeer informed the police officers that Ramlogun was not well. Some CID officers came into his cell and kicked him as they asked him to get up. They finally placed him in a blanket in order to take him to hospital. Ramlogun returned to his cell some 30 minutes later. He walked into his cell and slept on the mattress.

Ramlogun did not get up on the following morning i.e on 14 January 2006. Some CID officers came at the request of the inspector in charge and took him again to hospital. He later learnt that Ramlogun had passed away.

Seedeer stated that he did not see Ramlogun being subjected to any violence whilst he was in his cell. He added that the officers at the detention centre treated him well. Seedeer also stated that he saw Ramlogun walking normally on 13 January 2006 and he did not appear to have any injuries on his face.

Dr Bholah examined Ramlogun at Dr Jeetoo hospital on 14 January 2006. Ramlogun was inert, had no response to pain and had a neurological problem. He found him to be in a state of coma. His face appeared flushed and puffy. He was of the view that the cause of the coma was an intracerebral problem. He organized for an urgent scan which would in the circumstances help to determine the cause of the coma. Dr Bholah explained that an intracranial lesion means that the brain could have suffered from bleeding, thrombosis, trauma or an infection. Dr Bholah later learnt that Ramlogun had passed away. He was referred for a postmortem examination.

Following the request of Dr Bholah for a scan, Dr Ori immediately took Ramlogun to City Clinic where a CT scan was done. The condition of Ramlogun deteriorated significantly when he was taken out of the CT scan. Despite all efforts to resuscitate him, he passed away at about 13.30 hours. Dr Ori added that Ramlogun's feet were covered with dirt. He did not pay attention to injuries which could have been sustained by Ramlogun since he was mainly concerned with the major abnormality which was affecting Ramlogun and the appropriate medical treatment which was urgently required at that particular moment in order to save Ramlogun.

A postmortem examination was carried out by Dr Gungadin on 14 January 2006 in presence of Dr Gujjalu whose services had been retained by the relatives of Ramlogun.

Dr Gujjalu produced his report and photographs of the injuries which he took during the post-mortem examination. He gave a description of the injuries to both soles which consisted of deep bruising. Ramlogun was also injured at the left side of his face and lower temple. More importantly, he had a large intra-cerebral haemorrhage of the right side of the brain and a haemorrhagic contusion of the right temporal brain. Dr Gujjalu was of the view that Ramlogun must have received a severe blow on the left side of the face and head which resulted in a shaking movement of the head with shearing and tearing of the right brain. There was a slow bleeding on the right which finally led to a compression of the brain and which caused his death.

He added that the injuries to the brain with early necrosis and brain compression must have been sustained by Ramlogun between 24-48 hours prior to his death.

He explained in court that there were haemorrhage, more particularly on the right side of the brain. They were due to traumatic injuries sustained to the left side of head and face leading to haemorrhage to the right side of the brain following a shaking movement of the head from

left to right and a twisting movement of the brain within the skull. The shaking movement of the head caused the brain within the skull to hit the right side of the cranium thus damaging the right side of the brain with bleeding and compression. According to him, the thrusting movement of the brain led to the rotation of the brain within the skull damaging other parts of the brain.

Dr Gujjalu also explained why according to him the fatal blow must have been inflicted some 24 to 48 hours prior to death. In such circumstances, there is slow bleeding which leads to the compression of the brain. Everything depends on the amount of blood collected in the brain as a result of the bleeding. In case of slow bleeding it takes 24 – 48 hours. Someone who receives such a blow would not be immediately affected. It is after a certain amount of blood accumulated in the skull and starts causing compression of the brain that the condition of the person would deteriorate and the signs of deterioration of health would become apparent.

The statements to the police given by the respondents were also produced by the prosecution. All the respondents denied having inflicted any form of violence or pressure on Ramlogun.

The appellant challenged the judgment for the reasons which are embodied in the various grounds of appeal.

The thrust of the appellant's arguments is that the learned Magistrates should have, on the basis of the circumstantial evidence, drawn the irresistible conclusion that the respondents subjected Ramlogun to inhuman and degrading treatment whilst they were questioning him at the MCIT office from 17.00 hours to about 22.15 hours on 12 January 2006. The Prosecution relied on circumstantial evidence, which it submitted, had not been properly considered, analysed and appreciated by the trial Court. It is the prosecution's case that the offence had been committed whilst Ramlogun was being interviewed by the respondents at the MCIT office on 12 January 2006.

The prosecution's case was based solely on circumstantial evidence since there was no direct evidence of any physical abuse or any degrading or inhuman treatment which was meted out to Ramlogun by any of the respondents.

In contrast to direct evidence, circumstantial evidence is evidence of "*relevant facts*" from which the existence or non-existence of facts in issue may be inferred. Circumstantial evidence "*works by cumulatively, in geometrical progression, eliminating other possibilities*" (**DPP v Kilbourne [1973] AC 729 at p. 758**). However, although the weight to be attached to circumstantial evidence is not in any way less than that attached to direct evidence, "*It must always be narrowly examined It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference*" (**Teper v Queen [1952] AC 480 at p. 489**).

Furthermore, it is highlighted in the Australian case of **Hillier[2007] 233 ALR 634 (22 March 2007)** that there is an imperative need to avoid a piecemeal consideration of the evidence in a circumstantial case. "*It is of critical importance to recognise, however, that in considering a circumstantial case, all of the circumstances established by the evidence are to be considered and weighed*" [para. 46]. "*All the circumstances of the case must be weighed in judging whether there is evidence upon which a jury may reasonably be satisfied beyond reasonable doubt of the commission of the crime charged.*" [para. 48].

There is therefore an imperative need to have a holistic picture of the case based on circumstantial evidence before turning to the individual grounds of appeal which deal with various aspects of the evidence in isolation from, and independently of, each other.

The prosecution's case which was based wholly on circumstantial evidence focused essentially on a combination of the following circumstances –

- 1) Ramlogun was in company of the 3 respondents and late Madarbux when he was being interviewed by them following his arrest on 12 January 2006 until about 22.15 hours before he was taken from MCIT office to the Line Barracks detention centre. That was the occasion during which he must have been subjected to physical abuse by the respondents which caused him to sustain injuries eventually leading to his death on 14 January 2006.
- 2) The medical evidence of Dr Gujjalu which was to the effect that the injuries to the brain must have been sustained by Ramlogun between 24 to 48 hours prior to his death which occurred at about 13.35 hours on 14 January 2006.

One of the striking features which emerge from a comprehensive review of the whole of the evidence is that the prosecution's case by far fails to meet the *Teper's* threshold which would justify a conclusive finding of guilt based on circumstantial evidence. There are indeed other co-existing circumstances which carry such overwhelming force which would weaken or even destroy any inference of guilt against the respondents:

1. Ramlogun had been in the company of the respondents only from 17.00 hours to about 22.15 hours on 12 January 2006.
2. Prior to that, on 12 January 2006 he had been in the company of other police officers which included Manoovaloo, Mariemootoo and Auckloo following his arrest at 15.00 hours until he was brought to MCIT office at 17.00 hours.
3. Subsequent to the interview by the respondents on 12 January 2006 which ended at about 22.15 hours, he was never again in the company of the respondents until he passed away on 14 January 2006.
4. The evidence led by the prosecution itself, which formed an integral part of the prosecution's case, tend to confirm that Ramlogun was not subjected to any physical abuse or degrading treatment during the period of his interrogation by the respondents.
5. Prosecution witnesses Manoovaloo, Mariemootoo and Arnasala who were working in an adjoining room separated by a "Plywood" partitioning, never heard any shouting or threats or any sound which would indicate that Ramlogun might have been subjected to any physical abuse during that crucial period.
6. Both prosecution witnesses Arnasala and Manoovaloo saw Ramlogun immediately following his interview by the respondents on 12.01.2006. Ramlogun appeared normal. He could walk without any difficulty down the stairs and went to the toilet. He did not bear any injury. It was when he was brought to the detention centre that PC Arnasala noticed a small red mark on his cheek which looked like a mosquito bite.

7. There is indeed no evidence from any of the prosecution's witnesses of any injury nor of any mark of violence appearing on Ramlogun subsequent to his interview by the respondents. All the police officers on duty at the detention centre as well as the officers who escorted Ramlogun to and from Flacq Court on 13 January 2006 did not notice any injury. He was all the time able to walk normally on his own and looked visibly fine to all those who kept watch over him or escorted him. He could walk unaided in order to proceed to Flacq Court or to have his meals at the detention centre on 13 January 2006.

8. Ramlogun never made any complaint about any ill-treatment to any police officer or to the Magistrate when he appeared before Flacq Court on 13 January 2006.

9. Ramlogun first complained of ill-health at about 20.30 hours on 13 January 2006.

There had in fact been more than 20 other police officers who were involved at one stage or another with Ramlogun from the time he had left the MCIT office on 12 January 2006 following his interview by the respondents until he passed away on 14 January 2006. He was first taken to the detention centre in a police vehicle by police officers Arnasala, Manaroo and Lutchmun. At the detention centre he had been under the custody and control of the police officers working on the various shifts on 12, 13 and 14 January 2006 and which included *inter alia* police officers Cheung, Rookmin, Jogeedoo, Dookhoo, Khodaboccus, Soumarie, Seesurn, Noormamode, Manoovaloo and Mauriemootoo. On 13 January 2006, he was escorted by MCIT officers Auckloo and Manaroo as well as by PS Ramdoyal and a team of SSU officers from Line Barracks to Flacq Court before returning to Line Barracks, Port Louis. Ramlogun was alone with PS Ramdoyal and the 5 or 6 other SSU officers in the SSU van which brought him to Flacq District Court and brought him back to Line Barracks on 13 January 2006.

The learned Magistrates surveyed meticulously the whole of the sequence of events from the time of Ramlogun's arrest until he was taken ill in the afternoon of 13 January 2006 and subsequently passed away at about 13.30 hours on 14 January 2006. After having reviewed the evidence it is abundantly plain that the combination of circumstances upon which the prosecution was relying could not raise more than a suspicion as regards the respondents and would not raise any sufficiently strong or reliable inference of guilt in respect of the offence with which the respondents were charged. The respondents were only involved with Ramlogun for the limited period of the interview on 12 January 2006. The circumstantial evidence led by the prosecution itself would destroy any inference of guilt inasmuch as there were many other officers who dealt with Ramlogun, or with whom Ramlogun was left in custody, following his interview by the respondents until he passed away 2 days later. According to all prosecution witnesses, Ramlogun appeared to be in a normal state following his encounter with the respondents. In other words the circumstantial evidence emanating from the prosecution's witnesses not only fell dramatically short of establishing that the respondents perpetrated any physical abuse upon Ramlogun at the material time but on the contrary appears to disculpate the respondents. The evidence of the prosecution's witnesses is indeed totally inconsistent with any guilt on the part of the respondents. None of the prosecution's witnesses noticed any injury or mark of violence nor was there any complaint which would be consistent with the inflicting of any physical abuse during the interview by the respondents which took place between 17.00 hours and 22.15 hours on 12 January 2006.

All these irreconcilable and contradictory features of the prosecution's case, emanating from its own witnesses, do not present a combination of circumstances from which the trial court could draw any reasonable inference that Ramlogun was subjected to physical abuse by the respondents when he was interviewed by them in the MCIT office between 17.00 hours and 22.15 hours on 12 January 2006. The learned Magistrates carried out an elaborate analysis of the whole of the evidence, taking into account all the relevant facts. We see no reason to interfere with their findings which are amply borne out by the evidence. For all the above reasons, the complaints of the appellant under Grounds 6,7,13,14,15 and 16 which question the appreciation of the circumstantial evidence by the learned Magistrates would fail.

We find no merit in ground 1 either. There was no misapprehension of evidence by the Magistrates since Ramlogun never made any complaint including to the District Magistrate on 13 January 2006. Besides, this was merely one of the many factors which was legitimately considered by the Magistrates in the course of their analysis of the whole of the evidence. But their ultimate conclusion to discard any inference of guilt was only reached following an examination of all the crucial aspects of the evidence led by the prosecution. Ground 1 accordingly fails.

The complaint under ground 2 is that the Magistrates erred in failing to act upon the evidence of witness Seedeer. Seedeer was a detainee at the detention centre to whom Ramlogun allegedly stated that he had been beaten by police officers. The learned Magistrates cannot be faulted for having omitted to act upon his evidence which amounted to hearsay and which in any event did not incriminate any of the respondents. There is accordingly no merit in Ground 2.

Grounds 3, 4 and 5 were argued together. Learned Counsel for the appellant referred essentially to the evidence of Dr Gujjalu which was to the effect that the nature of the internal injuries sustained by Ramlogun was such that signs of deterioration of his health may well start to appear 24 to 48 hours later. It was argued that the learned Magistrates failed to take into account that the deterioration in Ramlogun's condition started late on 13 January 2006. According to Dr Gujjalu, Ramlogun could have received a blow 24 to 48 hours before he would start showing any signs of illness as described by witnesses Seedeer, Khodaboccus and Jogeedoo. It was therefore submitted that the learned Magistrates failed to carry out a proper analysis of Dr Gujjalu's evidence and that on the basis of Dr Gujjalu's evidence, they ought to have concluded that Ramlogun sustained the injuries on 12 January 2006 whilst he was in the custody of the respondents.

The learned Magistrates considered fully the whole of the medical evidence including the version of Dr Gujjalu. According to Dr Gujjalu, Ramlogun could have received a blow 24 to 48 hours before he would start to show any signs of illness. Since the first signs of illness started to appear in the afternoon of 13 January 2006, it was therefore legitimate for the Magistrates to express the view that Ramlogun could have received a blow even before his arrest which was effected at about 15.00 hours on 12 January 2006. An analysis of the sequence of events plainly indicate that the learned Magistrates could not on the basis of the opinion expressed by Dr Gujjalu conclusively infer that Ramlogun had sustained blows inflicted by the respondents between 17.00 hours and 22.15 hours on 12 January 2006. This remains at best one of the possibilities in view of the wide span of 24 to 48 hours mentioned by Dr Gujjalu. No safe inference can be drawn as to the guilt of the respondents on the basis of Dr Gujjalu's opinion in view of the numerous alternative possibilities which cannot be eliminated with regard to the precise time at which Ramlogun could have suffered the injuries. During that

time range of 24 to 48 hours, Ramlogun was moving from one place to another and was at different times in the custody or under the control of several other officers.

Furthermore, the medical evidence of another prosecution witness, Dr Bholah is not on all fours with the opinion expressed by Dr Gujjalu. Dr Bholah had the added advantage of examining Ramlogun when he was brought to Jeetoo hospital at about 10.20 hours on 14 January 2006. Dr Bholah found him to be “*comatose*”. He was of the view that the cause of the coma was an intra-cerebral problem. There was a large haemorrhage in the right temporal region. He could not say whether the trauma was recent or not. He added however that as a result of such an intra-cerebral haemorrhage Ramlogun would not be in a lucid state. This goes against the opinion expressed by Dr Gujjalu that Ramlogun could have received a blow 24 to 48 hours before the manifestation of any sign of illness. Most of the witnesses who saw Ramlogun after his encounter with the respondents on 12 January 2006 in fact found him to be in a perfectly normal state. Witnesses Arnasala and Manoovaloo who saw him immediately after his interview by the respondents confirmed that Ramlogun indeed appeared normal and was moving on his own quite independently and normally. PC Cheung saw Ramlogun at 22.53 hours on 12 January 2006 when he arrived at the detention centre. PC Cheung stated that Ramlogun appeared normal and walked on his own into the centre and up the steps to cell no. 9. PC Khodaboccus also stated that Ramlogun was physically fit on 12. January 2006. This is again confirmed by PC Seesurn who saw Ramlogun at breakfast time on 13 January 2006. To him “*he appeared physically fit and was normal*”. PC Dookhoo who went to open the cell in the morning of 13 January 2006 found that “*Ramlogun was up and ready to come out when I opened cell at nine, up and ready, fit and well. He walked out and went downstairs*”. PS Ramdoyal, who was in charge of the SSU escort team stated that on his return from Flacq District Court on 13 January 2006, “*Mr Ramlogun was in the same health state as he was in the morning I left the detention centre.*”

There is an additional disturbing feature which weakens the prosecution’s medical evidence in support of its case against the respondents. The post mortem report (**Doc. AA**) and the evidence of Dr Gujjalu mention various external injuries, more particularly to Ramlogun’s soles and the left side of his face and lower temple. These are amply depicted in photos H12 and H13. Yet none of these injuries have been noticed by any of the prosecution’s witnesses who saw Ramlogun as from 12 January 2006. They noticed only the small red mark on the cheek which looked like a mosquito bite. Dr Gujjalu explicitly pointed out that the injuries to the soles were such that it would be difficult for Ramlogun to walk. Yet practically all the prosecution’s witnesses who saw Ramlogun after he left the MCIT office following his interview by the respondents on the evening of 12 January 2006 confirmed that he was walking normally and without any difficulty. It was only at about 20.00 hours on 13 January 2006 that Ramlogun felt sick and was taken to hospital. He was examined at the casualty by Dr Essoof. The medical examination of Ramlogun at such a critical point in time was of vital importance as it would have provided independent medical evidence concerning the state of health of Ramlogun and, in particular, any injuries sustained by him. Yet there is no reason to explain why such crucial medical evidence was never available and the doctor who examined Ramlogun on 13 January 2006 was never called to give evidence. This is also the case for Dr Gungadin, the police medical officer who carried out the post mortem examination in presence of Dr Gujjalu. He was never called to give evidence.

For all the above reasons we consider that the Magistrates' appreciation of the medical evidence and findings do not suffer from any misdirection or defect. Since there is no merit in any of the arguments put forward by the appellant, Grounds 3, 4 and 5 accordingly fail.

Grounds 8,9,10,11 and 12 were argued together. All the grounds are in relation to the trip which brought Ramlogun from the MCIT office to the detention centre following his interview by the respondents on 12 January 2006.

It was submitted that the Magistrates misconstrued the evidence of witness Arnasala and erred in reaching the conclusion that:

- (1) the trip from the MCIT office to the detention centre took 38 minutes;
- (2) the trip which took 38 minutes has remained unexplained.

It was also argued that the learned Magistrates were wrong to have refused the motion of the prosecution to add the name of PC Manaroo to the list of witnesses as his testimony was important in order to explain what had taken place at that juncture.

Any criticism of the learned Magistrates' findings and appreciation of the evidence with regard to the trip which brought Ramlogun from the MCIT office to the detention centre is devoid of any merit.

(1) Firstly, because the prosecution itself had failed to come up with any clear and precise version as to the time taken for the trip. There was an entry in the diary book of the MCIT produced by witness Rengasamy which indicated that Ramlogun was committed to police cell at 22.15 hours on 12 January 2006 and another entry in the diary book of the detention centre confirmed by PC Cheung which indicated that Ramlogun reached the detention centre at 22.53 hours.

(2) Witness Arnasala before mentioning that "*It was about 10.40 hrs*" that they left the MCIT office, stated that "*I do not recollect exact time*".

(3) Witness Arnasala further stated that it took them 2 to 3 minutes to reach the detention centre.

(4) It was also part of the prosecution's case that according to the enquiring officer ASP Ramasawmy "*they took 38 minutes to reach the detention centre from MCIT*"

(5) Another enquiring officer, witness Rengasamy explained that according to the entry made by PC Manaroo, it took them 38 minutes to reach the detention centre.

The evidence further showed that both the detention centre and the MCIT office are found within the Line Barracks compound at a distance of about 250 metres from each other. In view of the evidence led by the prosecution, the learned Magistrates were fully justified in making the following observations:

"It is true that the trip from the MCIT Office to the Detention Centre took 38 minutes when it should have taken only a few minutes. There has been no attempt to explain this delay."

"The mystery remains as to the 38 minutes trip from the MCIT Office to the Detention Centre".

The complaint that the learned Magistrates failed to address their mind to crucial aspects of witness Arnasala's testimony is also unjustified. The learned Magistrates in fact carried out an extensive assessment of his evidence which quite significantly failed to support the prosecution's case against the respondents in several material respects. Whilst Ramlogun was being interviewed by the respondents at the MCIT office, PC Arnasala was in an adjoining room which was only separated by a "plywood" partition and from where he could easily overhear what was taking place during the interview. He did not hear any sound of beating or any shouts or screams emanating from Ramlogun. He saw Ramlogun immediately after his interview by the respondents. Except for the small red mark which he described as a mosquito bite, he did not notice any injury on Ramlogun's face or body. He added that Ramlogun appeared to be normal and could walk freely without any difficulty.

To use his own words when he saw him immediately after his interview by the respondents "*Ramlogun looked normal just as when I saw him upon his arrival at 5. p.m*", which would be prior to Ramlogun's encounter with the respondents. It was only when he saw him 2 days later on 14 January 2006 that his condition had completely deteriorated and he could not walk or talk. According to him "*He was a completely different person from the one I saw on the eve*". PC Arnasala's evidence did not in any way support the prosecution's case against the respondents and there is absolutely no merit in the argument that the Magistrates wrongly construed PC Arnasala's evidence.

It was also submitted by learned Counsel for the appellant that it was unreasonable and unfair for the Court to refuse the motion of the prosecution to add the name of PC Manaroo to its list of witnesses. According to Counsel, this would have helped to enlighten the Court as to what took place during the 38 minutes which followed the interview of Ramlogun by the respondents. Counsel referred to Section 61 of the Criminal Procedure Act, Section 168 of the Courts Act and to the case of **The State v Parvatkar [1997 SCJ 90]** in support of his argument that the Court was wrong to have disallowed the motion. It was also submitted that PC Manaroo's evidence would have assisted the Court in determining the truth and the Court should have in the interest of justice, exercised its discretion in favour of the prosecution.

The Court in **State v Parvatkar (Supra)**, pointed out that although an information may be amended in the absence of any "*mala fides*" at any stage of the trial, this can only be done provided that there is no "*likelihood of prejudice being caused to the accused party*" and "*so long as accused's right to a fair trial is not affected*".

In the present matter the information was lodged on 5 September 2006. An amendment was made by the prosecution on 12 June 2008 to add the name of 8 new witnesses. However, it was only on 29 August 2009, after all the prosecution's witnesses had been examined and cross-examined by the defence that the prosecution moved to amend its information in order to add PC Manaroo as its witness. The prosecution was aware from the outset of the tenor of the evidence of PC Manaroo and its significance to its case which was based essentially on circumstantial evidence. There is no reason to explain why his name was omitted from the list of witnesses for such a long time. The hearing of the long list of prosecution's witnesses which had spanned over more than 2 years had raised complex factual issues which had already been fully canvassed both by way of examination and cross-examination on the assumption that PC Manaroo would not be called as a witness. There is no reason to justify why the motion came at such a late stage and in circumstances which would inevitably affect the fairness of the trial and be prejudicial to the accused parties in the conduct of their defence. We consider therefore

that the learned Magistrates were fully justified in rejecting the motion of the prosecution to add the name of PC Manaroo at such a late stage.

We find no merit in any of the issues which has been raised by the appellant under Grounds 8 to 12 which must accordingly fail.

All the grounds of appeal having failed, the appeal is dismissed.

We feel bound however to raise some matters of grave concern which the crude facts of this case have brought to light in connection with the treatment of persons detained by the police. Ramlogun was in good health and condition prior to his arrest and detention by the police. Although the evidence fell short of establishing, in accordance with the legal standards of proof, the infliction of any inhuman and degrading treatment by the particular police officers who were charged with an offence under section 77 of the Criminal Code, it is beyond dispute that Ramlogun was subjected to physical abuse and was killed whilst in police custody. Those responsible remain unpunished.

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.

The treatment of detainees who are placed in a vulnerable position is a matter of even greater concern when it comes to protection of these human rights. The detainee is virtually cut off from the outside world and is placed in a situation of weakness and vulnerability being left to a considerable extent to the mercy of police or prison officials.

The State has positive obligations to afford security and protection of the law and human rights to all categories of its citizens. The State has a duty to secure and not to violate the right to life and the right to protection from torture and inhuman treatment. The more so, in respect of its more vulnerable citizens.

We say so because the infliction of torture or inhuman treatment and the killing of a person in such circumstances cannot be treated with levity. 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.

When the State kills one of its citizens in police custody, it constitutes an intolerable violation of the human rights of the individual. But when the State kills with impunity, it rocks the very foundation upon which a democratic state rests i.e the Rule of Law.

Annex F
A. Caunhye
Judge

R. Teelock
Judge

16 March 2016

Judgment delivered by Hon. A. Caunhye, Judge

For Appellant : **Chief State Attorney**
 Mr R. Ahmine, Senior Assistant Director of Public
 Prosecution together with Mr P. Bissoon, State Counsel

For Respondent No. 3: **Mrs Attorney A.**
 Jeewa Mr G.
 Glover, SC

For Respondents nos 1 & 4: **Mrs Attorney A. Jeewa**

Training Courses conducted by IJLS for period 2017 to 2019 and for year 2021

SN	Date	Course	Judges	Magistrates	Law Practitioners
Year 2017					
1	8 Mar	Human Trafficking & Gender-Based Violence			√
2	26 May	Strengthening Judicial Response to Domestic Violence		√	
3	31 Jul	Judicial Training – Interaction with Supreme Court Judges	√		
4	1 Aug	Bail Law – Art.5 of the ECHR – The Right to Personal Liberty			√
5	2 Aug	Judicial Training Interaction with Magistrates – Functioning of European Court of Human Rights & Art.6 – Right to A Fair Trial		√	
6	9 Aug	International Humanitarian Law		√	√
7	28 Nov	Panel Discussion on Child Sexual Abuse seen from a psycho-socio-legal perspective		√	√
8	7 Dec	Victim centric approach to Human Trafficking- an analysis of international & national laws relating to TIP			√
Year 2018					
9	30 Jan	State reporting to UN Treaty Bodies			√
10	7 Feb	Convention on the Elimination of All Forms of Discrimination Against Women			√
11	15 Feb	The Human Rights Situation in Eritrea- rule law & crimes against Humanity			√
12	20 Mar	Human Rights, HIV & the Law: a decade later, where do we stand.			√
13	13 Apr	Bail through constitutional Provisions: Principles and Challenges			√

14	3 May	La reparation des violations de droits de l'homme		√	√
15	10 May	The Origins of Criminality – Evil Mind			√
16	16 Oct	An Overview of the CERD- The Convention on the Elimination of All Forms of Racial Discrimination			√
Year 2019					
17	24 Jan	Vulnerabilite et acces a la justice			√
18	13 Feb	International Good Practices in Combatting Gender-Based Violence and Sexual Violence		√	√
19	13 Mar	Mandate of the UK National Preventive Mechanism- An Overview of the UK PACE 1984			√
20	19 Mar	An Overview of the Convention on the Rights of the Child			√
21	26 Mar	Public Interest Litigation in India			√
22	28 Mar	Interpretation of Fundamental Human Rights in the Indian Constitution			√
23	29 Mar	Judicial Activism of Supreme court in respect to the interpretation of basic Human rights & the Challenges faced by the Indian Judiciary		√	
Year 2021					
24	6 Mar	Training for Barristers and Attorneys to raise Awareness on Gender Base violence issues Whole day workshop (9 to 17 hrs)			√
25	2 Sep	The Children's Act – Une nouvelle ere pour Les enfants (3 hours) part 1			√
26	23 Sep	The application of International conventions in the justice system			√
27	19 Oct	The Children's Act – Une nouvelle ere pour Les enfants (3 hours) part 2			√
28	29 Oct	Whole day workshop on the Children's Act		√	

(Source: IJLS)

Harassment cases involving Police Officers at work place for period 2018 to 2021

SN.	Division / Branch	Year				Particulars of cases	Status of Enquiry
		2018	2019	2020	2021 (as at 08.07.2021)		
1	Northern	1	0	0	0	OB 989 / 18 CCID – Sexual Harassment	<ul style="list-style-type: none"> • DPP advised disciplinary actions vs the accused. • DOR held on 10.02.21 vs accused for Discreditable Conduct (2 Counts) and Oppressive Conduct (2 Counts) • Accused was severely reprimanded (4 counts).
2	Southern	1	0	0	0	OB 1488 / 18 R. Belle – Breach ICTA	Case under enquiry.
3	Metro (North)	0	0	0	1	OB 1843 / 21 Abercrombie – Harassment	Case under enquiry.
4	CCID	1	0	2	0	Cases transcribed from Divisions to CCID for enquiry: -	
						Western Div.: 2020(1) – OB 184/20 Coromandel – Sexual Harassment	Case referred to DPP on 21.06.21 Advice awaited.
						Eastern Div.: 2020(1) – OB 1345/20 Q. Militaire – Alleged Harassment	Enquiry is still underway.
						Southern Div.: 2018(1) – OB 1113/18 R/Belle – Sexual Harassment	DPP advised disciplinary actions against the Police Officer for Discreditable Conduct. Subsequently on 30.12.19, a warning administered to him.
Total		3	0	2	1	-	-

Recapitulation

Under enquiry	-	3
Awaiting advice DPP	-	1
DOR completed	-	2

(Source: Mauritius Police Force)