

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 / 441 05 06, Fax: (220) 441 05 04 E-mail: au-banjul@africa-union.org ; Web www.achpr.org		

Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights

Concluding Observations and Recommendations on 6th to 8th Combined Report of the Republic of Mauritius on the Implementation of the African Charter on Human and Peoples' Rights

I. INTRODUCTION

1. The Republic of Mauritius (Mauritius) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified the same on 19 June 1992.
2. Mauritius presented its 2nd, 3rd, 4th and 5th Combined Periodic Report (November 1996 - May 2009) at the 45th Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission), which was held from 13 to 27 May 2009, in Banjul, The Gambia.
3. The present Report, submitted to the Commission on 28 April 2016, is the 6th to 8th Combined Report, encompassing the period between May 2009 and December 2015.
4. The Commission considered the present Report during its 59th Ordinary Session, which was held in Banjul, Islamic Republic of The Gambia, from 21 October to 04 November 2016.
5. The Report was presented to the Commission by the Delegation from Mauritius, led by Mr. Om Kumar Dabidin, Permanent Secretary in the Prime Minister's Office. The following were part of the Delegation:
 - Mrs. Chittoo, Acting Assistant Solicitor General;
 - Mrs. Pillay-Nababsing, State Counsel.
6. The Report highlights developments which have taken place in the area of the promotion and protection of human and peoples' rights, in addition to the legislative, administrative and other measures put in place to comply with the country's obligations under the African Charter.
7. The present Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern based

on the content of the Report and information given during consideration of the Report. Finally, the Commission makes recommendations on measures needed to strengthen the enjoyment of human rights as guaranteed by the African Charter, as well as other relevant regional and international human rights instruments.

8. The Commission commends the Delegation for its constructive dialogue during the presentation of the Report, in addition to the comprehensive presentation of the Report and additional information provided which responded to the concerns raised by Members of the Commission.

II. POSITIVE ASPECTS

The Commission:

9. Commends the efforts made by Mauritius in preparing and presenting its Periodic Report, in accordance with the provisions of Article 62 of the African Charter and the Commission's Guidelines for National Periodic Reports;
10. Takes note of the information provided on the participation of civil society organizations in a consultative meeting on the draft Periodic Report, which was held on 10 December 2015;
11. Commends the inclusion of information in the Present Report on the implementation of the Commission's recommendations contained in the Concluding Observations and Recommendations on the 2nd, 3rd, 4th and 5th Periodic Reports of the Republic of Mauritius;
12. Commends the inclusion of a section on 'duties' under the African Charter;
13. Takes note of the information provided on the measures taken to implement the recommendations contained in the Commission's Promotion Mission Report of 2006;
14. Notes that Mauritius has ratified or acceded to a number of relevant regional and international instruments on the promotion and protection of human rights, including:
 - The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol);
 - The African Charter on the Rights and Welfare of the Child;
 - The African Youth Charter;
 - The International Covenant on Civil and Political Rights;
 - The Optional Protocol to the International Covenant on Civil and Political Rights;
 - The International Covenant on Economic, Social and Cultural Rights;
 - The International Convention on the Elimination of all Forms of Racial Discrimination;

- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);
 - The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women;
 - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - The Convention on the Rights of the Child;
 - The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
 - The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and
 - The Convention on the Rights of Persons with Disabilities (CRPD);
 - The Rome Statute of the International Criminal Court.
15. Notes that Mauritius has enacted laws to promote and protect human rights, including:
- The Combating of Trafficking in Persons Act, 30 July 2009;
 - The International Criminal Court Act, 15 January 2012;
 - The Equal Opportunities Act, 01 January 2012;
 - The Protection of Human Rights (Amendment) Act, in 2012;
 - The Police Complaints Act, in 2012;
 - The National Preventive Mechanism Act, in 2012;
 - The Legal Aid and Legal Assistance Act, in 2012.
16. Welcomes the amendment of the following laws:
- The Criminal Code, amended in 2012 to provide for the termination of pregnancies in specified circumstances;
 - The Criminal Appeal Act, amended in 2013 to enable referral of convictions of accused parties, in specific cases, to the Court of Criminal Appeal for a review of the proceedings relating to the conviction;
 - The Criminal Procedure Act, amended in 2007 to allow persons convicted of mandatory minimum sentences to apply for a review of their sentence before the Supreme Court;
17. Commends the establishment of the following institutions to ensure the promotion and protection of human rights:
- The National Human Rights Commission (NHRC), following enactment of the law in 2012;
 - The Equal Opportunities Commission, established on 24 April 2012;
 - The Truth and Justice Commission, which came into operation on 20 March 2009.

18. Welcomes the adoption of the National Human Rights Action Plan 2012-2020, in addition to the database of human rights indicators, which enables Government Ministries and departments monitor progress on implementation of recommendations made by the various Human Rights Committees;
19. Takes note of the adoption of the National Gender Policy Framework to oversee, coordinate, monitor and evaluate the gender mainstreaming policies, strategies and programs at the national level, in addition to the National Steering Committee on Gender Mainstreaming to monitor implementation of the policy framework;
20. Welcomes establishment of a National Preventive Mechanism Division, within the NHRC, which conducts prisons visits, sensitizes Prison officers and conducts investigations into allegations of violations against detainees;
21. Commends the establishment of an Inter-Ministerial Committee to ensure a concerted response to human trafficking;
22. Welcomes the establishment, within the NHRC, of a Police Complaints Division to investigate complaints made against members of the Police Force;
23. Takes note of the establishment of the Mother and Child Care Unit in the Women's prison, which caters for the needs of female prisoners with children and pregnant inmates;
24. Commends the provision of four meals a day to inmates;
25. Welcomes the existence of recreational and rehabilitation programs and facilities for inmates, including music and painting classes, craftsmanship, carpentry, cooking and gardening, in addition to the possibility of distance learning;
26. Notes the setting up of specialized divisions of the Supreme Court, to ensure the right to be tried with minimum delay;
27. Welcomes the establishment of the Bail and Remand Court, which has exclusive jurisdiction with regard to remand or release of persons charged with an offence, which also operates on weekends and public holidays;
28. Takes note of the development and implementation of an electronic filing of cases and case management system;
29. Welcomes the establishment of the Institute for Judicial and Legal Studies, to promote efficiency among law practitioners;
30. Commends the amendment to Article 23 of the Constitution to provide that any parent who is a citizen of Mauritius can confer his/her citizenship to a child born in Mauritius;

31. Notes that the enjoyment of the right of freedom of association extends to migrant workers, as provided in the Employment Relations Act, which provides for the right of migrant workers to be members of a trade union and to participate in trade union activities;
32. Welcomes the creation of the Ministry of Social Integration and Economic Empowerment with the main objective to eradicate absolute poverty;
33. Takes note of the implementation of the second National Plan of Action on Nutrition in 2015;
34. Takes note of the establishment of a policy with the overall objective of mandating registered companies to pay 2% of their profit towards programs that contribute to the social and environmental development of the country;
35. Welcomes the three-pronged strategy adopted to eradicate poverty, which includes three main programs, namely the Social Housing and Community Empowerment, Child Development and Family Welfare, and Training and Placement, in addition to the establishment of a Monitoring and Evaluation Unit to evaluate the impact of these programs;
36. Notes the measures put in place to ensure that the entire population has access to piped potable water;
37. Commends the efforts by the Government to increase the ownership of housing among the economically and socially disadvantaged members of the population, in addition to the 'Rights to Buy Policy' to enable the sale of State Land to Mauritians;
38. Takes note of the establishment of a Truth and Justice Commission, which came into operation on 20 March 2009, established to conduct inquiries on, *inter alia*, complaints made by persons aggrieved by dispossession or prescription of any land in which they claim to have an interest, in addition to setting up a Land Research and Mediation Unit to research on possible dispossession of land;
39. Commends the provision of free health services to the entire population;
40. Welcomes the provision of free sexual and reproductive health services, which are available in all hospitals;
41. Commends the efforts undertaken by the Government to achieve Millennium Development Goal 6, that is to halt and begin to reverse the trend of the HIV epidemic, which has resulted in reduction of the transmission of HIV;
42. Welcomes the provision of free education from pre-primary to tertiary level, in addition to free transport facilities to and from educational institutions;

43. Takes note of the measures undertaken to include and integrate children with special needs into the education system;
44. Commends the implementation of the Human Rights Education Program in all youth centres, developed by the Prime Minister's Office in collaboration with the Ministry of Youth and Sports;
45. Welcomes the efforts undertaken to address violence against women, including establishing the National Coalition against Domestic Violence Committee and the National Action Plan to End Gender-Based Violence, in addition to establishing an Advisory Committee, in the Ministry of Gender Equality, Child Development and Family Welfare, which makes recommendations on measures to reinforce the framework for the protection of women against domestic violence;
46. Commends the prohibition of corporal punishment in schools;
47. Welcomes the measures put in place by the Police, in collaboration with the Ministry of Social Security, National Solidarity and Reform Institutions, to combat the commercial exploitation of children;
48. Welcomes the enactment of laws which promote the rights of persons with disabilities, including: the Training and Employment of Disabled Persons Act in 2012; the Building Control Act in 2012 which provides for enhanced accessibility for all categories of persons with disabilities to public infrastructure; the amendment to the Excise Act which came into operation on 31 July 2014, to provide for duty exemptions for the purchase of a motor car to parents of children with disabilities; and the Copyright Act which came into force on 25 October 2013, and provides for blind persons to have access to published works in an accessible format;
49. Welcomes the enactment of the Protection of Elderly Persons Act, in addition to the establishment of the Protection of the Elderly Network, an Elderly Persons Protection Unit, and an Elderly Watch in every region;
50. Takes note of the provision of a Universal Basic Retirement Pension to all elderly persons aged 60 and above, in addition to provision of other allowances under the Social Aid Act;
51. Takes note of the measures undertaken by the Government to provide assistance to Chagossians who were evicted from the Chagos Archipelago, including donation of land for the construction of houses, and the establishment of the Chagossian Welfare Fund Act;
52. Notes the establishment of a National Climate Change Adaption Policy Framework, to foster the development of policies, strategies, plans and processes to avoid, minimize and adapt to the negative impacts of climate change;

53. Commends the re-accreditation of the NHRC with Status A in 2008 and 2014, following restructuring to align its functions with the Paris Principles, in addition to broadening and strengthening of its powers;

III. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

54. Mauritius has enjoyed sustained political stability and economic growth, which has contributed to the promotion and protection of human rights, in addition to achievement of many of the Millennium Development Goals. However, the Government is still facing challenges in achieving gender equality, which negatively affects the rights of women in the country.

55. Furthermore, the Commission notes that despite the efforts by the Government to address poverty, the country has been facing increasing inequality in recent years with the income of the bottom 40% of the population growing at a slower pace than the rest of the population.

IV. AREAS OF CONCERN

While recognising the significant efforts made by the Government to promote and protect human rights, the Commission is however concerned about the following:

Submission of Periodic Reports

56. The 6th to 8th Combined Periodic Report, which was submitted in accordance with the Article 62 of the African Charter, was overdue;

Ratification and domestication of international instruments

57. The non-domestication and incorporation of the African Charter within the domestic legal system;

58. The non-ratification of the following regional and international human rights instruments:

- The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol);
- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
- The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention);
- The African Charter on Democracy, Elections and Governance;
- The African Union Convention on Preventing and Combating Corruption;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

59. The existing reservations on Articles 29(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Articles 9(2)(d), 11, 24(2)(b) of the Convention on the Rights of Persons with Disabilities (CRPD), which have effect of curtailing the rights contained in these human rights instruments;
60. The Government has not made the declaration under Article 34(6) of the Court Protocol accepting the jurisdiction of the Court to hear cases brought by individuals and NGOs;

Adoption of legislative or other measures to give effect to the African Charter

61. The delay in reviewing and enacting the following legislation and policies:

- The Sexual Offences Bill;
- The Prison Bill;
- The Disability Bill;
- The Child Protection and Care Bill;
- The Juvenile Justice Bill;
- The Climate Change Bill;
- The National Heritage Fund Bill;
- The Police and Criminal Evidence Bill;
- The Protection of Elderly Persons Act;

Equality and Non-Discrimination

62. The provision in Article 16(4) of the Constitution, which provides for an exemption to the prohibition on discrimination with regards to personal status law, including adoption, marriage, divorce, burial and devolution of property on death, which may be discriminatory towards women;
63. Despite the efforts of the Government, it is noted that the country is ranked 106 out of 142 countries in gender ranking (WEF 2014), which is illustrated by the fact that out of the 70 members of the National Assembly, only 8 women were elected in the last elections;

Right to security of persons, right to life and the death penalty

64. In spite the enactment of the Abolition of Death Penalty Act, the Constitutional provision on the imposition of the death penalty has not been repealed or amended;
65. The lack of information on the legal or policies measures put in place to prevent extra-judicial and arbitrary killings;

Prohibition of torture, cruel, inhuman and degrading treatment

66. The lack of a regulatory framework on torture which: specifically criminalizes torture; prohibits the admission of evidence obtained through torture; ensures that victims of torture and other ill-treatment, their families, witnesses, those conducting investigations etc. are protected; and guarantees the right of victims of torture and

other ill-treatment to redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;

67. The centres for victims of human trafficking, stipulated under the Combating of Trafficking in Persons Act, have not yet been established;

Right to liberty and security of person, conditions of prisons and detention centres

68. The lack of information on the existence of training manuals for law enforcement officers which specifically include or reference the African Charter, the Guidelines and Measures on the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment (the Robben Island Guidelines) and the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial detention in Africa (the Luanda Guidelines);

69. Following the enactment of the Independent Police Complaints Act in 2016, the delay in the establishment of the Independent Police Complaints Commission;

70. The high number of inmates in pre-trial detention, which is presently 37.52% of the prison population;

71. The provision of special cells and dormitories for inmates with HIV, which may result in discrimination against the inmates with HIV;

72. In spite of the information provided on the number of prisoners in the country, the Report does not include information on the capacity of the respective prisons and centers of detention, which would enable the Commission to make a determination on the issue of prison overcrowding;

Freedom of expression and access to information

73. The criminalization of defamation, sedition, insult and publishing false news, which have the effect of curtailing the right of freedom of expression;

74. The delay in drafting a law on access to information;

75. The absence of legislation or policy which provides for the safety of journalists;

Refugees and internally displaced persons

76. The absence of legislation or policy on refugees, internally displaced persons and stateless persons, which would ensure protection of the rights of these vulnerable groups;

Protection of the rights of persons living with HIV/AIDS

77. Provision is only made for the free distribution of condoms to female sex workers;

Protection of the rights of women and children

78. It is noted in the Report that the number of domestic violence cases have been increasing, with cases of tragic deaths of women victims of domestic violence in 2014;

79. The existence of the provision in Article 242 of the Criminal Code, which provides that “Manslaughter committed by any person on his spouse, as well as on his accomplice, at the very moment he finds them in the act of adultery is excusable;”
80. The failure to amend the Criminal Code to provide that marital rape is an offence, as stipulated in the amendment to the Protection from Domestic Violence Act;
81. In spite the establishment of the Office of the Ombudsperson for Children, it is noted in the Report that its recommendations are not implemented, in addition to a lack of awareness on the Office;
82. The existence of an exception to the minimum age for marriage in Article 144, Title V of the Civil Code, which provides that a person of sixteen (16) years can get married with the consent of his or her parents or legal guardian;

Protection of the rights of older persons

83. In spite of the measures put in place to protect the elderly, it is noted in the Report that 7,533 cases of abuses against the elderly were reported to the Ministry of Social Security, National Solidarity and Reform Institutions since 2006;

Extractive Industries, environment and human rights violations

84. The absence of specific legislation or policy to ensure that that the Mauritian population benefit from the extraction of natural resources, in light of the bi-lateral treaties between the Republics of Mauritius and Seychelles to explore and exploit the marine resources in the joint extended continental shelf area of the Mascarene Plateau region;
85. The lack of information on the existing legal framework which ensures that multi-national corporations are taxed for the activities they have undertaken in the country;
86. The lack of finalization of the Seabed Mineral Resource Bill which will establish a legal framework for the extraction of seabed minerals;
87. The absence of information in the Report on the measures to be taken by the Government in order to reverse the reported environmental and biodiversity loss;

V. RECOMMENDATIONS

Submission of Periodic Reports

- i. Ensure that Periodic Reports are submitted every two years, in a timely manner;

Ratification and domestication of international instruments

- ii. Ensure domestication of the African Charter within the legal system;
- iii. Expedite the ratification and domestication of all relevant and international human rights instruments;
- iv. Consider the expeditious withdrawal of all the reservations to CEDAW and CRPD;
- v. Make the declaration under Article 34(6) of the Court Protocol accepting the jurisdiction of the Court to hear cases brought by individuals and NGOs;

Adoption of legislative or other measures to give effect to the African Charter

- vi. Expedite the revision and enactment of the various legislation which will have the effect of enhancing enjoyment of human rights;

Equality and Non-Discrimination

- vii. Amend Article 16(4) of the Constitution which provides an exemption to the prohibition on discrimination on personal status law, which is discriminatory towards women;
- viii. Take measures to address the issue of gender inequality, including the low level of representation of women in the National Assembly, in all levels of public sphere/decisions making positions;

Right to security of persons, right to life and the death penalty

- ix. Repeal the Constitutional provision which provides for imposition of the death penalty;
- x. In the next Periodic Report include information on the legal or policies measures put in place to prevent extra-judicial and arbitrary killings;

Prohibition of torture, cruel, inhuman and degrading treatment

- xi. Enact a regulatory framework on torture providing for: criminalization of torture; prohibition of admission of evidence obtained through torture; protection for victims of torture and other ill-treatment, their families, witnesses, those conducting investigations etc.; the right of victims of torture and other ill-treatment to redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- xii. Urgently take measures to ensure establishment of the centres for victims of human trafficking, which are provided for in the Combating of Trafficking in Persons Act;

Right to liberty and security of person, conditions of prisons and detention centres

- xiii. Develop training manuals for law enforcement officers which specifically include or reference the African Charter, the Robben Island Guidelines and the Luanda Guidelines;
- xiv. Expedite the establishment of the Independent Police Complaints Commission;
- xv. Take the necessary measures to reduce the number of pre-trial detainees;
- xvi. Urges the State to do away with use of cells and dormitories specifically for inmates with HIV, which may contribute to discrimination against inmates with HIV;
- xvii. In the next Periodic Report, include information on the capacity of each prison and center of detention, in addition to the number of prisoners in the respective prisons, to enable the Commission make a determination on the issue of prison overcrowding;

Freedom of expression and access to information

- xviii. Revise the laws which criminalize defamation, sedition, insult and publishing false news, in line with the Commission's Resolution on Repealing Criminal Defamation Laws in Africa¹ which calls on State Parties to repeal criminal defamation laws or

¹ ACHPR/Res.169 (XLVIII)10, Adopted by the Commission during its 48th Ordinary Session, held in Banjul, The Gambia, November 2010

- insult laws which impede freedom of speech, in addition to Principle XII of the Declaration of Principles on Freedom of Expression in Africa;
- xix. Expedite the process of drafting and enacting a law on access to information, in accordance with the Commission's Model Law on Access to Information in Africa;
 - xx. Establish a regulatory framework to ensure the safety of journalists;

Refugees and internally displaced persons

- xxi. Enact laws and establish policies to ensure protection of the rights of refugees, internally displaced persons and stateless persons;

Protection of the rights of persons living with HIV/AIDS

- xxii. Put measures in place to ensure the free distribution of condoms;

Protection of the rights of women and children

- xxiii. Intensify efforts to address all forms of violence against women, in addition to ensuring effective monitoring and evaluation of the different mechanisms established to address violence against women;
- xxiv. Urgently repeal Article 242 of the Criminal Code;
- xxv. Amend the Criminal Code in line with the amendment to the Protection from Domestic Violence Act, to provide that marital rape is an offence;
- xxvi. Establish measures to raise awareness on the Office of the Ombudsperson for Children, in addition to enacting legal requirement to ensure implementation of its recommendations;
- xxvii. Repeal the section in Article 144, Title V of the Civil Code which provides an exception to minimum age of consent for marriage;

Protection of the rights of older persons

- xxviii. Adopt laws and policies to ensure protection of elderly, and ensure prosecution of the perpetrators and redress for the victims;

Extractive Industries, environment and human rights violations

- xxix. Adopt a regulatory framework to ensure that the Mauritian population benefit from the extraction of natural resources;
- xxx. Expedite enactment of the Seabed Mineral Resource Bill;
- xxxi. Include in the next Periodic Report, information on the measures to be taken by the Government to reverse the reported environmental and biodiversity loss;

Information to be included in the next Periodic Report

- xxxii. Inform the Commission on the measures which have been taken to implement the recommendations of the present Concluding Observations in the next Report;
- xxxiii. Comply with the Commission's State Party reporting guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (the Tunis Reporting Guidelines);
- xxxiv. Comply with the recommendations of the Commission in the following Guidelines:

- The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, 2008;
- The Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, 2011;
- The Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, 2015;
- The Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 2017.

Adopted at the 60th Ordinary Session of the African Commission on Human and Peoples' Rights, held from 08 to 22 May 2017, in Niamey, Republic of Niger