

HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Fourth periodic report

MAURITIUS*

[27 May 2004]

* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

GE.04-42345 (E) 140904

1. The Human Rights Committee considered the third periodic report of Mauritius at its 1476th and 1478th meetings on 19 and 20 March 1996. The present report, which is the fourth periodic report of Mauritius, proposes to address the progress made since the last report in the enjoyment of the rights recognized by the Covenant on Civil and Political Rights.

2. The developments which have intervened since the presentation of the third periodic report are dealt with under Parts 2 and 3. The present report also provides information taking into account the concluding observations of the Human Rights Committee in April 1996.

3. It is necessary at this stage to note that the period since the third periodic report till presently has been particularly fruitful in terms of progress made in the field of human rights protection. New legislation has been enacted to ensure the enjoyment of the Covenant's rights; new institutions have been set up to ensure the protection of the rights; decisions of our Courts have come to strengthen already existing protection. We may note the following:

(a) The National Assembly enacted the Protection of Human Rights Act 1998 to reinforce the existing safeguards for the protection of human rights in Mauritius. The Act provides for the establishment of a National Human Rights Commission under the Chairmanship of a retired Judge of the Supreme Court. The Commission was set up in April 2001. The main functions of the Commission are:

- (i) To enquire into alleged violations of human rights;
- (ii) To enquire into written complaints from any person against an act or omission of a member of the police force in relation to him;
- (iii) Visit any police station, prison or other place of detention under the control of the State to study the living conditions of the detainees and the treatment afforded to them;
- (iv) Review the safeguards provided for the protection of human rights;
- (v) Review the factors or difficulties that inhibit the enjoyment of human rights.

(b) In its concluding remarks to the third periodic report, the Committee had expressed its concern with respect to the problem of domestic violence. Since then, the Protection from Domestic Violence Act 1997 has been enacted and provides for a number of remedies including protection orders and occupation orders.

(c) A Complaints Investigation Bureau was set up in 1999 for the referral of all complaints against the police. In this respect, too the National Human Rights Commission is informed of all complaints made and is empowered to review the investigations carried.

(d) The protection of the child has been on the forefront of development. The Child Protection Act was enacted to bring different forms of protection to the child, with 'child' being defined as 'any unmarried person under the age of 18'. In November 2003, the Ombudsperson

For Children Act 2003 was assented to by the President. The Act provides for the establishment of an office of Ombudsperson for Children to promote the rights and interests of children.

(e) Our Courts have shown their readiness to intervene in matters of breach of rights. In 2001, an application was made in all urgency to a Judge in Chambers to order a police officer responsible for a murder enquiry not to violate the applicants' rights (*Isabelle Maigrot and Ors v. The Commissioner of Police*). The Court, in granting the application, made the following observations:

“The fundamental rights of the individual are sacred and it is the importance of those rights that, when enshrined therein, make of the Constitution the supreme law of the country. It would surely undermine the guarantees afforded to those rights if access to what is considered to be the swiftest way of obtaining relief in matters of urgency, which the jurisdiction of the Judge in Chambers for, is refused to a person who seeks immediate protection against violation of those very rights”.

(f) To combat the scourge of corruption, the National Assembly enacted the Prevention of Corruption Act in 2002. The Act provides for the creation of an Independent Commission Against Corruption to detect and investigate corruption offences and better educate the public on the evils of corruption. The Commission has been operational since June 2002, and its independence is safeguarded under the Act, which stipulates that the Commissioner shall not be under the control or direction of any person or authority. In 2002 still, the Financial Intelligence and Anti-Money Laundering Act was enacted.

(g) In accordance with its obligations under the United Nations Security Council resolution 1373 (2001), Mauritius enacted the Prevention of Terrorism Act 2002 to provide for measures to combat terrorism. Not only does the Act penalize acts of terrorism, terrorist meetings and the harbouring of terrorists but it also provides for the suppression of the financing of international terrorism and the seizure and detention of terrorist cash. The Prevention of Terrorism (Denial of Bail) Act 2002, the Convention for the Suppression of the Financing of Terrorism Act 2003 and the Prevention of Terrorism (Special Measures) Regulations 2003 have since followed.

(h) As regards access to justice, reforms designed to rationalize and streamline court procedures are being implemented. The process of reform in the judiciary is an ongoing exercise. In June 2003, three new posts of Supreme Court Judges were created, bringing the total number of judges to 12. A Commission was set up to look into the reform of the judiciary with a view of rationalizing anomalies in the interest of the rapid and efficient administration of justice. The Commission presided by Lord Mackay submitted its report with a number of recommendations which are being implemented either through legislation or administrative procedure. Government has benefited from UNDP support in this exercise. Moreover, the Judicial and Legal Provisions Act of 1999 allows the Master and Registrar of the Supreme Court to conduct pre-trial case management to facilitate quick disposal of cases before the Supreme Court.

(i) A major reform project initiated by the Ministry for Civil Service Affairs is underway. This project provides inter alia for

- (i) Adequate information on all services provided by Government to be made available on the Internet;
- (ii) The creation of Charter of rights (Consumers' charter for each Ministry/Government Department).

(j) The Bail Act 1999 came into force on 14 February 2000, in replacement of the Bail Act 1989. The fundamental rule is to have suspects released on bail unless there are compelling reasons not to do so.

(k) The Dangerous Drugs Act 2000 came into effect on 5 December 2001, replacing the 1986 Act. The 1995 Dangerous Drugs Act considered by the Committee upon the presentation of the 3rd periodic report was never proclaimed. The constant uprise in drug trafficking and drug consumption, including the rise in the consumption of Amphetamine type stimulants, has led to Parliament increasing the measures to combat the drug scourge and the imposition of heavier penalties. At the same time, however, with respect to consumers, the emphasis, is now increasingly on rehabilitation and treatment.

(l) The Independent Broadcasting Authority Act 2001 was enacted by Parliament to promote the provision of a diverse range of radio and television broadcasting services throughout Mauritius. With the introduction of the Independent Broadcasting Authority Act, the State no longer has a monopoly for TV and radio broadcast.

(m) Since 8 March 2003, the Sex Discrimination Act 2002 has come into force and there now exists a Sex Discrimination Division which is part of the National Human Rights Commission. The emphasis is on the elimination of all forms of discrimination on the grounds of sex, marital status, pregnancy or family responsibility.

4. The Second Periodic Report for Mauritius listed, for ease of reference, the main legal provisions of our Constitution designed to implement the Covenant's rights. It may be helpful to list them again, and underline at the same time that no law which is found to contravene the Constitution is allowed to stand. The practice is still to challenge the constitutionality of a law before the Supreme Court under Section 17 of the Constitution or else to have inferior courts referring cases to the Supreme Court under Section 84 of the Constitution. The Court's primary concern is to ensure that contraventions of the constitutional rights be redressed as expeditiously as possible.

<u>The Covenant</u>	<u>Corresponding provision</u>
Articles 2 (1) and 3	Section 3 of the Constitution
Article 2 (3)	Sections 17 and 84 of the Constitution
Article 4	Sections 18 and 19 (7), (8), (9) of the Constitution.
Article 6	Section 4 of the Constitution
Article 7	Section 7 of the Constitution
Article 8	Section 6 of the Constitution
Article 9	Section 5 of the Constitution

<u>The Covenant</u>	<u>Corresponding provision</u>
Article 10	Section 7 of the Constitution
Article 12	Section 15 of the Constitution
Article 14	Section 10 of the Constitution
Article 15	Section 10 (4) of the Constitution
Article 16	Section 3 of the Constitution
Article 17	Section 9, 12 (1) and 12 (2) (b) of the Constitution
Article 18	Section 11 of the Constitution
Article 19	Section 12 of the Constitution
Article 20	Sections 53 to 61 and section 185 of the Criminal Code
Articles 21 and 22	Section 13 of the Constitution
Articles 23 and 24	Titles 5 to 8 of the Civil Code The Divorce and Judicial Separation Act Sections 268 and 271 of the Criminal Code
Article 25	Sections 33, 34, 42 to 44, 57, 85, 89 and 90 of the Constitution
Article 26	Sections 3 and 16 of the Constitution
Article 27	Sections 11, 14 and 16 of the Constitution Section 184 of the Criminal Code.

5. The Committee recommended in its concluding observations on the third periodic report that individuals be enabled to enforce the Covenant's rights directly before domestic courts. Even if such legal machinery is not in place, the provisions of the Covenant may be referred to in Courts, and are of persuasive character. In the case of *Matadeen v. Pointu and Ors* (1998), the Judicial Committee of the Privy Council observed that since 1973 Mauritius is a signatory to the International Covenant on Civil and Political Rights and that it is a well recognized canon of construction that domestic legislation, including the Constitution, should be construed so as to give effect to the Covenant.

6. Mauritius has recently been quoted in the international press as being an African success story where democracy and literacy and free trade are working together to attract investment, to raise incomes, create opportunity and to give hope to the people. In fact, Mauritius hosted in January 2003 the African Growth and Opportunity Act Business Forum.

Article 1

7. Over the past thirty years since independence in 1968, the Government of Mauritius has continuously raised the issue of the Chagos Archipelago in the international for a of the United Nations General Assembly, the Non-Aligned movement (New Delhi Summit 1983) and the African Union (Resolution AHG/Res 99 (XVII)) and Resolution AHG/Dec 159 (XXXVI) and in bilateral talks with the British Government, and asked for an early and unconditional return of the Chagos Archipelago, including Diego Garcia. Mauritius has always been

unreservedly supported by the international community on its position concerning the Chagos Archipelago.

8. It will be recalled that in 1965, the then colonial power enacted the so-called British Indian Ocean Territory Order 1965 (5.1 No. 1 of 1965) which purportedly excised the Chagos Archipelago from the Colony of Mauritius. It has always been the position of Mauritius that the unlawful excision of the Chagos Archipelago which formed part of its territory was made in breach of the United Nations Charter as applied and interpreted in accordance with Resolution 1514 (XIV) and in breach of the principle of self-determination under international law.

9. In the mid 1970s a member of the Chagossian Community in Mauritius started legal proceedings against the British Government in the English Courts, claiming amongst other things that he had been wrongfully removed from the islands. Under an agreement reached in 1982 the legal proceedings were withdrawn and the UK made a payment of 4 million pounds for the benefit of the Chagossian community in Mauritius.

10. In 1998 another member of the Chagossian community instituted judicial review proceedings challenging the validity of BIOT's Immigration Ordinance 1971 which prohibited the entry of any person into any part of the Territory unless he obtained a permit to do so. The judgment in November 2000 held that the 1971 Ordinance was indeed invalid and it was replaced by a new Ordinance which allows the Chagossians to return and reside in any part of the Territory except (for defence reasons) Diego Garcia.

11. No Chagossians have returned to the islands to live since the new Ordinance was enacted. The islands other than Diego Garcia are uninhabited and have no facilities on them to support a settled population. There are a few disintegrated remains of buildings from the copra plantation days, but these are unusable. There is no clean water supply, no power and no transport.

12. In February 2002, the Chagos Refugees Group, a Mauritius-based group of Chagos Islanders, applied to the UK Courts for further compensation and assisted resettlement on all the islands including Diego Garcia. The court case started in October 2002 and in October 2003 the Court quite categorically found in favour of the UK Government on every one of the claims that was brought against it. The claimants then sought leave to appeal on some of the issues.

13. With regards to the island of Tromelin, located at 230 miles North East of Madagascar and 350 miles North West of Mauritius, Mauritius has raised the issue of sovereignty with France, the other state claiming sovereignty over the island, every time the opportunity has arisen. Both the Prime Minister and the Foreign Minister whenever called upon to address the United Nations General Assembly, have made it a point to remind the General Assembly of the Mauritian claim to sovereignty over Tromelin and invariably called upon the French authorities to work with the Mauritian authority towards an early resolution of the sovereignty issue.

Article 2

14. Section 16 of the Constitution guarantees that no law shall make any provision that is discriminatory either of itself or in its effect, whereby "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by

race, caste, place of origin, political opinions, colour creed or sex. However, Section 16 does not apply, inter alia, to laws making provisions with respect to persons who are not citizens of Mauritius.

15. Section 17 of the Constitution provides for redress to a citizen who alleges that any of his constitutional rights is being or is likely to be contravened. It is worth noting that Section 17 is entitled “Enforcement of Protective Provisions”. In December 2002, in the interlocutory judgment of *Bishop of Roman Catholic Diocese of Port Louis and Ors v. Suttayadeo Tengur*, the Supreme Court made the following observations:

“A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The right to move the Supreme Court for redress where a fundamental right has been infringed is itself a fundamental right...Section 17 is the soul and heart of the Constitution...”

16. Section 17 (2), in addition, confers on the Court very wide powers to make such orders, issue such writs and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of the protected right.

17. In compliance with Article 2 (3) of the Covenant, Section 17 of the Constitution ensures that any person whose rights or freedoms are violated shall have an effective remedy. A recent example is the case of *S. Tengur v. The Minister of Education*. In this case, the applicant alleged that the practice of having 50% of the seats in schools managed by the Roman Catholic Authority and funded out of public funds reserved for children of catholic faith was discriminatory. The Supreme Court declared the policy of the Roman Catholic Authority to be an act of unlawful discrimination in breach of Section 16 of the Constitution, since Catholics had, all other things being equal, an advantage over non-Catholics in getting admitted to the secondary schools run by the Roman Catholic Authority. The Court, in arriving at its decision, considered the Provisions of the UNESCO Convention against Discrimination in Education, and the International Covenant on Economic, Social and Cultural Rights, to which Mauritius is a signatory “*as it is a well-recognized canon of construction that domestic legislation, including the Constitution, should if possible be construed so as to conform to such international instruments.*” The defendant lodged an appeal against this declaratory judgment to the Judicial Committee of the Privy Council, which appeal has been heard in December 2003 and decided in the applicant’s favour.

Article 3

18. The Sex Discrimination Act 2002 came into force on 8 March 2003 and is designed “to provide for the elimination of all forms of gender discrimination and sexual harassment in certain areas of public activity”. The Act prohibits discrimination in employment: no employer is allowed, in relation to recruitment, selection or employment to discriminate on the grounds of sex, marital status, pregnancy or family responsibility. Discrimination in education, in accommodation, in the disposal of property, in companies and partnerships, in clubs is strictly prohibited under the provisions of the Sex Discrimination Act.

19. In addition, the Sex Discrimination Act 2002 in its Part IV also penalizes acts of sexual harassment (defined as unwelcome sexual advances, unwelcome requests for sexual favours,

unwelcome conduct of a sexual nature). No employer may sexually harass an employee or a job seeker, no employee may harass a fellow employee, no staff of an educational institution may sexually harass a colleague or a student, to cite only a few examples of the prohibition of sexual harassment.

20. A Sex Discrimination Division, which is part of the National Human Rights Commission has been set up in accordance with the provisions of the Act and is empowered to receive and enquire into any written complaint relating to alleged infringements of the Sex Discrimination Act. The Division's functions also include promoting the understanding and acceptance of the Act.

21. Regulations, namely the Non-Citizens (Employment Restriction) have been made in 2001 regarding non-citizens married to Mauritians so that they are now exempted from the need to ask for a residence permit.

Article 4

22. Section 18 of the Constitution provides for derogations from fundamental rights and freedoms to be made in periods of emergency. However, recourse to these derogations may only be effected subject to strict controls. There should first be a Proclamation by the President and such Proclamation needs to secure two-thirds of the votes of the members of the National Assembly. Section 18 also provides for the setting up of an impartial tribunal to control any abuse by the Executive in periods of emergency.

Article 5

23. It is pointed out that derogations are provided for with respect to the constitutional rights in Chapter II of the Mauritian Constitution in cases where they are considered to be "reasonably justifiable in a democratic society".

Article 6

24. The right to life is entrenched in Section 4 of the Constitution. Section 4(2) establishes the criterion of reasonableness to decide on the circumstances where the use of force may lead to loss of life, namely

“(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny, or

(d) In order to prevent the commission by that person of a criminal offence”.

25. In all alleged cases of police brutality, the National Human Rights Commission carries out an enquiry and concludes as to the existence of foul play after hearing witnesses. Should the

Commission find that there has been foul play, the matter is referred to the Director of Public Prosecutions for any action deemed necessary.

26. In all matters too where death is suspicious or violent, the Director of Public Prosecutions is empowered by virtue of Section 111 of the District And Intermediate Courts (Criminal Jurisdiction) Act to require a Magistrate to hold an enquiry into the cause of death.

27. The National Assembly enacted the Abolition of Death Penalty Act in 1995, thereby removing the power of our Courts to impose the death sentence. Mauritius also co-sponsored the Resolution tabled by the European Union on the abolition of the death penalty at the Human Rights Commission in the year 2000.

28. In June 1998 Mauritius signed the Rome Statute of the International Criminal Court and subsequently ratified same on 5 March 2002. Drafting work pertaining to the implementation of the provisions of the Rome Statute is being undertaken.

29. The Prevention of Terrorism Act 2002 provides for numerous measures to combat terrorism, thereby protecting the right to life. Acts of terrorism include, inter alia, "attacks upon a person's life which may cause death" (Section 3 (2)). It is an offence under the Act to hold terrorist meetings, or to support an act of terrorism, or to harbour a terrorist.

30. The Medical Council (Code of Practice) Regulations 2000, in its Regulation 6, is to the following effect:

"Patients have a right to life: accordingly, it is the registered medical practitioner's duty to:

(a) Respect life from the time of conception;

(b) Respect it at all times irrespective of whatever pressures from outside that may be exerted to the contrary;

(c) Respect the quality of life including the capacity to procreate except for serious therapeutic reasons;

(d) Accept death as a natural phenomenon when it comes and avoid postponing it indefinitely by artificial means which are unlikely to improve the quality of life for the patient;

(e) Ensure, when death is unavoidable, that a patient dies with dignity and with as little suffering as possible".

Article 7

31. The Criminal Code (Amendment) Act 2003 introduced the new Section 78 to the Criminal Code, reading as follows:

"78. Torture by public official.

(1) *Subject to subsection (3), where:*

(a) *Any person who is a public official, or is otherwise acting in an official capacity;*

(b) *Any person, at the instigation of, or with the acquiescence of, a person otherwise acting in an official capacity;*

intentionally inflicts severe pain or suffering, whether physical or mental, on anyone

- (i) *To obtain a confession or other information from that person;*
- (ii) *To punish that other person for an act which that other person committed, or is suspected of having committed;*
- (iii) *To intimidate or coerce that other or a third person; or*
- (iv) *For any reason based on discrimination of any kind;*

he shall commit the offence of torture and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding five years”.

32. The judgment given in the *Isabelle Maigrot* case cited above is proof of the fact that the Mauritian Courts will readily intervene to prevent torture and breach of constitutional rights. The applicants had apprehended that one of the police officers entrusted with the enquiry in the Vanessa Lagesse murder case would act arbitrarily against them, in complete disregard of their constitutional rights. Their complaints ranged from torture to violation of rights. As a matter of urgency, the Judge ordered the police officer “not to deprive the applicants of their constitutional rights”.

Article 8

33. The 1st of February has now been proclaimed a public holiday to commemorate the abolition of slavery which took place on February 1 1835.

34. On that day, several activities are organized, including a wreathlaying ceremony and cultural activities.

Article 9

35. The new Bail Act 1999 governs the detention and release of detainees. The rule is that a detainee is to be released on bail with the necessary conditions being imposed. It is only where the release on bail is insufficient to avoid dangers such as absconding and interference with witnesses that bail is to be denied.

36. In the case of *Maloupe v. The District Magistrate of Grand Port* (July 2000) the Supreme Court made the following observations:

“The rationale of the law of bail at pre-trial stage is that a person should normally be released on bail if the imposition of the conditions reduces the risks - risk of absconding, risk to the administration of justice, risk to society - to such an extent that they become negligible having regard to the weight which the presumption of innocence should carry in the balance”.

37. The grounds on which bail may be denied are clearly set out in Section 4 of the Act and include, inter alia, reasonable grounds for believing that the detainee, if released, is likely to fail to surrender to custody, or commit an offence or obstruct the course of justice.

38. Under Section 32 of the Dangerous Drugs Act 2000, however, where a person is arrested for offences under Sections 30, 33, 35, 36, 38 or 39 of the Act and where that person has already been convicted of any drug offence, bail is not allowed.

39. In accordance with Section 5 (2) of the Constitution, any person who is arrested or detained has to be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

40. By virtue too of Section 5 (5) of the Constitution, any person who is unlawfully arrested or detained by any other person is entitled to compensation from that other person.

41. Section 4 (6) of the Bail Act 2000 also provides that where bail is refused to a detainee, such a detainee shall only be remanded onto custody for a period not exceeding 21 days, after which the detainee shall be brought again before the Court.

42. With respect to Article 9 (4) of the Covenant, the procedure of Habeas Corpus is available in Mauritian law. A writ of habeas corpus is in effect a procedure to secure, as a matter of urgency, the release of a person who is illegally detained. Section 188 of the Criminal Procedure Act provides as follows:

“Where a Judge receives a complaint by or on behalf of a person to the effect that he is illegally committed or restrained of his liberty, he may order all persons whom it may concern to:

(a) Return to him any depositions or commitments;

(b) Take and return any other matter any other evidence or matter necessary for the purpose of ascertaining the cause of such detention and imprisonment;

(c) Issue a writ of habeas corpus directed generally to every gaoler, officer or any other person in whose custody the person committed or restrained may be”.

43. In July 2000, the Judicial Committee of the Privy Council delivered the ground breaking judgment of *Sooriamurthy Darmalingum v. The State* (Privy Council Appeal No. 42 of 1999) with respect to the right to be tried within a reasonable time. In that case there had been a delay of 13 ½ years between the appellant’s arrest and judgment on appeal. The Law Lords concluded that there had been a flagrant breach of the reasonable time guarantee, and that *“the appellant has had the shadow of the proceedings hanging over him for about 15 years”*. The appellant’s conviction was therefore quashed. Following the decision in *Darmalingum*, a stay of proceedings is frequently being sought in Mauritian Courts, often successfully, on behalf of accused persons whose trial suffers inordinate delay.

Article 10

44. Following incidents which took place on 26 September 2003 at Beau Bassin Prison, the Government has appointed the Chairman of the National Human Rights Commission to look into various aspects of the administration of the prisons, including the functioning of the Board of Visitors and the measures to be taken to reduce the number of detainees on remand.

45. The Prime Minister is also chairing a Committee looking into the conditions of detainees in general and also the extent of the AIDS problem affecting detainees.

46. The Protection of the Child (Miscellaneous Provisions) Act 1998 amended the existing Juvenile Offenders Act, and introduced a number of new measures. The age in the definition of a juvenile has been amended from 17 years to 18 years. The new Article 9 (3) provides as follows:

“Where any person apparently below the age of 18 is apprehended, the police officer in charge of the station to which that person is brought shall, immediately, take all reasonable steps to inform his parent or guardian of his apprehension and the place where he may be seen by the parent or guardian”.

47. Furthermore, no statement may be recorded from a juvenile in the absence of his parent or guardian. No prosecution may be instituted against a minor except on an information filed with the consent of the Director of Public Prosecutions.

Article 11

48. In the case of *Kamla Toolsy v. The District Magistrate of Pamplemousses* (2002), the Supreme Court considered the compliance of the Mauritian procedure of Summons After Unsatisfied Judgment Debt with Article 11 of the Covenant, taking into consideration the concluding remarks of the Human Rights Committee on the third periodic report. The Court was of the opinion that the procedure of SAUJ is compliant with Article 11 *“just as Order 48 in England is in compliance with article 1 of the Fourth Protocol to the European Convention”*. The Supreme Court’s reasoning in coming to its conclusion was as follows:

“An examination of a debtor on a SAUJ procedure has for purpose to discover his assets so that the judgment given in favour of a creditor can be executed. Where the debtor, having been duly summoned, fails to attend, the Court may order the imprisonment of the debtor unless the debt is paid in the meantime. Where the debtor attends and where the examination shows that the debtor has no assets, a term of imprisonment can be imposed only where it is proven that the debtor has either incurred his debt by fraud or that he had disposed of his property to defraud his creditors. We are here far from the situation of article 11 of the ICCPR where no one is to be imprisoned ‘merely on the ground of inability’ to pay his debt”.

Article 12

49. Freedom of movement is enshrined in Section 15 of the Constitution. The taking away of liberty is the exception to the rule.

50. In *Municipal Council of Port Louis v. Ibrahim Yousouf Aboobakar* (2004) SCJ 10, the Municipality sought a perpetual injunction to restrain the defendant from entering the premises of the Central Market, given that the defendant had become a hardened source of nuisance to tourists, stall occupiers and the public at large. In deciding the matter, the Supreme Court referred to Section 15 of the Constitution and the recent case of *Oliviera v. Netherlands* (2003) before the European Court of Justice. The Court observed that restrictions to freedom of movement may be granted so long as justifiable in a democratic society and proportionate to the mischief intended to be covered.

51. It was held that an order restraining a citizen's access to a market place altogether for his lifetime would go too far in a democratic society.

52. The Bail Act 1999 imposes restrictions on the right to leave the country where one is charged with a serious offence. However, still by virtue of the same Act, a person may ask for a Variation Order and is then allowed to leave the country on a restricted passport as to time and place.

53. The recent amendments in the Bail (Amendment) Act 2002 even provide for multiple departures in these circumstances.

Article 13

54. In the case of *D.Danche v. The Commissioner of Police and Ors* (2002), the District Magistrate of Port Louis had issued a warrant of arrest against a French national under the Extradition Act, after having found that there was sufficient evidence adduced to justify his committal to prison for having committed in the United States of America the offences of mail fraud, interstate transportation of stolen property and wire fraud.

55. At the hearing for the French applicant's release, his Counsel argued that there was no binding extradition treaty between Mauritius and the USA.

56. The Court held, upon examination of the relevant documents, that the extradition treaty signed between the United Kingdom and the USA under the United Kingdom Extradition Acts 1870-1935 was succeeded to by Mauritius after its independence.

57. The application was accordingly set aside.

Article 14

58. Section 10 of the Constitution mirrors the rights in Article 14 of the Covenant.

59. The Sexual Offences (Miscellaneous Provisions) Bill (No. 31 of 2003) proposes to allow complainants in sexual offence cases to depone through a live video or live television link system, all with a view to protecting the dignity and privacy of complainants in such cases.

60. The right to be tried without undue delay has become more alive since the decision in *Darmalingum* (cited above).

61. The Legal Aid Act 1982 still applies. In relation to legal aid, in the case of *Degrace v. The State* in 2001, the appellate court observed that the appellant had intimated his wish not to retain counsel in the lower court. Whilst agreeing that the Constitution did not impose a duty on Magistrates to enquire whether an accused party lacked the means to retain counsel. The Court, on a review of the relevant provision of the European Convention on Human Rights and the position in the UK and the USA, made the following observations:

“An accused party must be familiar with the rules of criminal procedure and ‘voire dire’ to be able to conduct his case on his own. We would strongly recommend that the learned Magistrates of our Courts should take the initiative to ensure that impoverished persons are afforded legal aid in trials.”

Articles 15 and 16

62. Section 10 (4) of the Mauritian Constitution mirrors the provision in Article 15 (1) of the Covenant.

63. No significant development has occurred with respect to Article 16.

Article 17

64. Section 9 of The Constitution protects the right to privacy of one’s property.

The Code of Conduct for Broadcasting Services established under the Independent Broadcasting Authority Act 2001 states, inter alia, that:

“7. *Privacy*

In so far as both news and comment are concerned, broadcasting licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest”.

65. The third periodic report of Mauritius mentioned the concern to have legislation preserving the confidentiality of data stored in computers.

66. The Computer Misuse and Cybercrime Act 2003 aims to provide for repression of criminal activities perpetrated through computers, including the penalisation of unauthorized access to computer data, unauthorized disclosure of password and electronic fraud.

67. Our law of defamation is effective in deterring and remedying unlawful attacks on one’s honour and reputation.

68. In *Professor Baligadoo v. La Sentinelle Ltee* (2000), the plaintiff alleged that his honour and reputation as an able doctor had been prejudiced by an article written and published by the defendants, which article had stated that the plaintiff was using patients as guinea pigs to test a

new drug not yet commercialized. The Supreme Court observed that the expression ‘guinea pigs’ as used was certainly defamatory as it conjured the idea of the plaintiff not treating a patient with the consideration and dignity that he deserves. It was held that the article was neither accurate nor fair to the plaintiff and the plaintiff was awarded damages in the sum of Rs 200,000.

69. In *Dhaneswar Soobrah v. Le Mauricien Ltee* (2002), it was held that comments made in an article published by the defendant to the effect that the plaintiff’s departure from the country (at a time where the plaintiff was the general manager of the Central Water Authority) was “mysterious” and the obvious suggestion that the plaintiff was acting as a fugitive were substantially based on insinuated facts which the evidence revealed to be untrue. The plaintiff was awarded Rs 75,000 in damages.

Article 18

70. With a view to allowing Mauritians of all cultural denominations the opportunity to better participate in religious and cultural activities of their choice and to foster harmony and mutual respect, there are laws which have been passed providing for the establishment of different cultural centres. Some of them are:

The Mauritius Marathi Cultural Centre Trust Act

The Mauritius Telegu Cultural Centre Trust Act

The Mauritius Tamil Cultural Centre Trust Act

The Islamic Cultural Centre Trust Fund (Amendment) Act to deal with matters relating to the organizing, facilitating, monitoring and supervision of Islamic pilgrimage to holy places

The Apravasi Ghat Trust Fund Act

The Nelson Mandela Centre for African Culture Trust Fund Act.

71. Most of the above pieces of legislation also lay emphasis on the need to establish useful links with organizations engaged in similar activities locally and internationally.

72. In *Raj Dayal v. Gilbert Ahnee* (2002), the plaintiff was the Commissioner of Police when in 1995 the defendants wrote and caused to be published an article which, in the plaintiff’s view, conveyed to the readers that there is a grotesque conflict between his role as Commissioner of Police and the performance of public rituals pertaining to his faith. According to the plaintiff, he was sincerely involved in the practice of his religious faith and this did not in any way conflict with his obligations and duties as Commissioner of Police. The plaintiff also argued that there is nothing which prevents him from going about his spiritual practice in public or in private in the company of other people.

73. The defendant, however, deponed in Court to the effect that he was “shocked and scandalized” to see the plaintiff on television actively participating in religious rituals on the occasion of Hindu festival. According to the defendant, the plaintiff’s position as Commissioner of Police imposed on him “a devoir de reserve” and that as a high ranking officer of the State, the plaintiff should refrain from actively and publicly participating in religious rites.

74. The Court held that the article in issue went much beyond the mere expression of the author’s views on secularism. The Court noted that the sincerity of purpose of a person who is involved in the practice of his religious faith was being questioned, and that the plaintiff’s conduct was being referred to as “une indigne exploitation populiste de sentiment religieux”. The article was held to be highly defamatory, and damages were awarded to the plaintiff.

Article 19

75. The Independent Broadcasting Authority Act 2001 is now in force, establishing the Independent Broadcasting Authority to promote the provision of a diverse range of radio and television broadcasting services throughout Mauritius.

76. The Second Schedule to the Act establishes a Code of Conduct for Broadcasting Services, with its preamble to the following effect:

“The fundamental principle to be upheld is that the freedom of all broadcasting licensees is indivisible from, and subject to, the same restraints as those relevant to the individual person, and is founded on the individual’s right to be informed and to freely receive and disseminate opinions”.

77. The general restrictions, as per the new Code, are that broadcasting licensees shall:

“(a) Not broadcast any material which is indecent, obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or the public order or relations between sections of the population;

(b) Not, without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocities, drug abuse and obscenity; and

(c) Exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.”

78. In its judgment in the *Dayal* case cited above, the Supreme Court observed that:

“There is no doubt that freedom of expression (is) an entrenched constitutional right of the highest importance in a democratic society like ours.”

Article 20

79. Under Chapter 1 to Book III of the Criminal Code, the following are penalized:

- (i) Stirring up war against the State;
- (ii) Plotting with foreign power;
- (iii) Causing risk of war (by any act of hostility);
- (iv) Inciting citizen to rise up in arms;
- (v) Inciting officer to mutiny;
- (vi) Stirring up civil war.

Article 21

80. In the case of *General Workers Federation v. The Commissioner of Police* (2003), the applicant was aggrieved by a decision of the respondent to prohibit a gathering, and referred the matter to the Judge in Chambers.

81. The facts were as follows: by virtue of the provisions of the Public Gatherings Act 1991, the applicants informed the respondent of their intention of holding a peaceful march in the City of Port Louis to protest against the unfair and unjust conditions contained in the African Growth and Opportunity Act and also against the anti-people policies of President Bush. The letter stated the itinerary of the proposed march as well as the time at which the march would end. The respondent took the decision to prohibit the march, but failed to inform the applicants of the decision with the delay of 48 hours imposed on him by Section 4 (3) of the Act.

82. The reason given by the respondent for the refusal read thus:

“I wish to inform you that as the AGOA Conference will be in progress, no public gathering or procession will be allowed as the Force will be fully taken up with the commitments in connection with the said conference”.

83. Section 4 of the Public Gatherings Act provides for the powers of the Commissioner of Police after he has been duly notified of a proposed public gathering. That section reads as follows:

“4. Regulation of public gatherings

(1) The Commissioner shall have power, for the purpose of preventing public disorder, damage to property or disruption of the life of the community, to impose conditions on the holding of a gathering.

(2) *Where the Commissioner intends to exercise his powers under subsection (1), he shall within 48 hours from receiving notice of the gathering, call the organizers and inform them of his intention to impose conditions on the holding of the gathering and the reasons for those conditions.*

(3) *The Commissioner shall have the power to prohibit the gathering where he reasonably believes that imposing conditions would not be sufficient to prevent public disorder, damage to property or disruption of the life of the community and shall so inform the organizers within 48 hours of receiving the notice.*

(4) *Any person aggrieved by a decision of the Commissioner under this section may refer the matter to a judge in Chambers who shall, after hearing the parties, make any such order as he may deem fit in the circumstances."*

84. It was held by the Court that the prohibition of the gathering in question could not be said to be based on a reasonable belief that imposing conditions would not be sufficient to prevent public disorder, as per the requirement of Section 4 (4) of the Public Gatherings Act. The decision to prohibit the gathering was also held to be in violation of "the spirit of" Section 12 (freedom of expression) and Section 13 (freedom of assembly) of the Constitution.

Article 22

85. Government has decided that the Industrial Relations Act should be replaced by a new legislation. A Technical Committee at the Ministry of Labour, Industrial Relations and Employment is examining all previous reports on The Industrial Relations Act.

86. The social partners - Federations of Trade Unions and the Mauritius Employers Federation - have been invited to submit proposals.

87. The thirteen Federations of Trade Unions have so far submitted a common memorandum on 30 January 2004. The Employers' Organisation has asked for a further delay to submit their Memorandum. A White Paper will be prepared after all the proposals are received.

Article 23

88. The Protection from Domestic Violence Act 1997 has come to protect aggrieved spouses, and children from acts of violence within the home.

89. A very wide definition of violence is adopted by the Act in its interpretation section, extending even to damage to the spouse's property. "Spouse" is widely defined to include a person who:

(a) Has been civilly or religiously married to a person of the opposite sex and is living or has lived with that person as husband and wife;

(b) Whether living together or not, has the care and custody of a child.

90. Under the Act, any person who has been the victim of an act of domestic violence and who reasonably believes that his spouse is likely to commit any further act of domestic violence

against him may apply to the Court for a protection order restraining the respondent spouse from engaging in any conduct which may constitute an act of domestic violence, and ordering him to be of good behaviour towards the applicant.

91. The aggrieved spouse may even apply for an occupation order granting to him the exclusive right to live in the residence belonging to him, the respondent spouse or both of them.

92. Informers are exempt of liability, both civil and criminal, under the Act.

93. Any person who fails to comply with any order under the Act is liable to a fine not exceeding 10,000 rupees and imprisonment for a term not exceeding 2 years.

94. The right to marry is recognized as being of public order. In the case of *George M.S. Schezzo v. The State of Mauritius* (1999), which was an application before the Judge in Chambers, the applicant prayed for an order directing the respondent to depute an officer from the Passport and Immigration Office to produce the applicant's passport, which passport had been secured by the police after the applicant was charged with a criminal offence, so that the applicant may start the procedures for his marriage. The learned Judge in Chambers, in granting the application, made the following observations:

“In my view, the right to marry is of public order subject to the law of the land, and the respondent cannot legitimately use its power to withhold the applicant's passport so as to also, indirectly, deprive him of his natural human right to marry under the law. The refusal of the respondent to allow the use of the passport by the applicant for the purpose of entailing marriage procedure under S. 19 A of the Civil Status Act is, in the circumstances of the case, unjustified and amounts to an unfair exercise of power.”

Article 24

95. The Child Protection Act provides, inter alia, for the issuing of emergency protection orders where there is reasonable cause to suspect that a child is being exposed to harm and is in need of assistance. Such an order, where issued, has effect for a period of 14 days.

96. Under the said Act, any person who ill-treats a child commits an offence. Nor may a child be allowed to beg, buy alcohol or have access to gaming houses.

97. Where a child is ill-treated, neglected or abandoned, a committal order may be applied for, and the child is then sent to a place of safety.

98. In 1998, the Protection of the Child (Miscellaneous) Act was enacted to amend many laws in order to protect children from abuse and exploitation in line with the articles of the Convention on the Rights of the Child. In the same year the Criminal Code (Amendment) Act and the Criminal Code (Supplementary) Amendment Act were amended to provide for more severe penalties in case of sexual abuse and exploitation of children, including trafficking and prostitution.

99. On 11 November 2001, the Government of Mauritius signed the Optional Protocol on the involvement of children in armed conflict as well as the Optional Protocol on the sale of children, child prostitution and child pornography.

100. The Child Protection (Foster Care) Regulations 2002 set up a Foster Care Advisory Committee, with the Permanent Secretary being the supervisory body for all placements made.

101. The Permanent Secretary has all the powers of supervision over the foster home including the power to visit, assess and guide the foster home. Above all, the Permanent Secretary has to ensure that the child's best interests prevail.

102. Where a child is the subject of a series of emergency placements he shall be placed as far as is practicable in the same foster home, provided that they occur within a period of one year.

103. Under the new Ombudsman for Children Act 2003, the objects of the Office of Ombudsman for Children are set out as follows:

- (i) Ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals;
- (ii) Promote the rights and interests of children;
- (iii) Promote compliance with the Convention on the Rights of the Child.

104. The Ombudsman for Children is empowered, inter alia, to investigate cases relating to the situation of children in the family, in schools as well as cases of abandoned and street children. Suspected or reported cases of child labour may also be investigated.

105. A new National Children Council's Act has been passed in April 2003 and will come into force shortly. Its objectives will be as follows:

- (i) To be the key consultative and co-ordinating national body on all activities and issues related to children;
- (ii) Protect the rights of children;
- (iii) Promote activities for the welfare of children in line with the CRC.

Article 25

106. In *Cehl Mohamad Fakeemeeah v. The Commissioner of Police* (2001), the applicant was a detainee in prison on provisional charges and at the same time the leader of a political party and a candidate at the then scheduled Municipal Council elections. He sought an order directing the respondents to:

- (i) Authorize him to campaign through press conference;
- (ii) Make such arrangements as necessary for him as an elector to appear at the polling center to cast his vote on the election day;
- (iii) Make such arrangements as necessary for him to attend as candidate at polling station centres on the election day;

- (iv) Make such arrangements as necessary for him to attend as candidate on the counting day.

107. All four orders asked for were refused. The Court held that the applicant being in lawful custody and being unable to attend in person at the time and place described for polling was, by virtue of Section 44 of the Constitution, not entitled to vote at the Municipal Elections.

108. The right to vote was said not be absolute under our Constitution. The Court referred to Article 25 ICCPR which, in the Court's view, "*prescribes that the right to vote may be subject to limitations provided they are not unreasonable*" (Narayan J.).

109. The Rodrigues National Assembly Act 2001 has been enacted to provide for the establishment of the Rodrigues National Assembly and the Executive Council of the Regional Assembly. The Regional Assembly consists of 18 members elected in accordance with section 4 of the Act, 12 of whom are local region members and the other six island region members.

Article 26

110. The Training and Employment of Disabled Persons Act 1996 aims at preventing discrimination against disabled persons resulting from or arising out of their disability.

111. A disabled person has been defined as someone who has a physical, mental or sensory disability which gives rise to barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society.

112. Section 3 of the Act establishes the Training and Employment of Disabled Persons Board to prevent discrimination against disabled persons and to encourage the establishment of appropriate vocational centres and other institutions for the training of disabled persons.

113. By virtue of the same Act, every disabled person may apply to have his name and particulars entered in the register of disabled persons. Employers may no longer discriminate against disabled persons in relation to advertisement and recruitment for employment.

Article 27

114. The Mauritius Marathi, Telegu and Tamil Centres aim at preserving the respective marathi, telegu and tamil cultures across the country.

115. The Islamic Cultural Centre has been set up to promote Arabic and Urdu languages and Islamic culture. As for the Nelson Mandela Centre for African Culture, it aims at preserving and promoting Creole Arts and culture by continuous activities like lectures, seminars, workshops, exhibitions and cultural shows.
