**MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE**

**(HUMAN RIGHTS DIVISION)**

## Materials for the Study on the situation of the violations and abuses of human rights rooted in harmful practices related to accusations of witchcraft and ritual attacks, as well as stigmatisation

**I. Measures to ensure the elimination of harmful practices amounting to human rights violations related to accusations of witchcraft and ritual attacks.**

1.1 What measures have been put in place, including legal and policy ones, to ensure the elimination of harmful practices amounting to human rights violations related to accusations of witchcraft and ritual attacks, as well as stigmatization?

The legal measures which are in place to ensure the elimination of harmful practices relating to accusations of witchcraft, stigmatization and ritual attacks are to be found in the general criminal law, some of which are listed and reproduced below:

A. Offence of defamation

Section 288 of the Criminal Code provides as follows:

“288. Interpretation of ‘defamation’

(1) Any imputation or allegation of a fact prejudicial to the honour, character or reputation of the person to whom such fact is imputed or alleged is a defamation.

(2) Any imputation or allegation concerning the honour, character or reputation of a deceased person is a defamation where it is calculated to throw discredit on or be hurtful to the feelings of the family or relatives of the deceased.

(3) Any person who, by any of the means specified in section 206, is guilty of defamation shall be liable to imprisonment for a term not exceeding 5 years and a fine not exceeding 50,000 rupees.

(4) No offence is committed under this section where the writing or words –

(a) impute or allege anything which is true concerning any person, where the publisher can show that it was for the public good that the imputation or allegation should be published;

(b) are a fair and bona fide comment or criticism of the conduct of a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further;

(c) are a fair and bona fide comment or criticism of the conduct of any person touching any public question, and respecting his character so far as his character appears in that conduct;

(d) are an impartial and accurate report of the proceedings of any Court or of the result of any such proceedings, unless the Court has itself prohibited the publication, or the subject-matter of the trial is unfit for publication, or the subject-matter of the proceedings is blasphemous or obscene;

(e) are a fair and bona fide comment or criticism of the merits of any case, civil or criminal, which has been decided by any Court, or respecting the conduct of any person as a party, witness, or agent in any such case, or respecting the character of such person, so far as his character appears in that conduct;

(f) are a fair and bona fide comment or criticism of the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance;

(g) are written or uttered by a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, and pass in good faith any censure on the conduct of that other to any person having an interest in such conduct, or in a newspaper if there was no other way for the writer efficiently to protect his interest or the interests of society in matters to which such lawful authority relates;

(h) prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter or accusation;

(i) amount to an imputation or allegation on the character of another, provided that the imputation or allegation is made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good;

(j) convey a caution in good faith to one person against another, provided that such caution is intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested or for the public good; or

(k) publish an impartial and accurate report of the proceedings of any public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of the Assembly or of a municipal council.”

B. Offence of insult

Section 296 of the Criminal Code provides as follows:

“296. Insult

Any injurious expression or any term of contempt or invective, or other abusive language, not carrying with it the imputation of a fact, is an insult (‘injure’) and any person who is guilty of the offence shall be liable to the following penalties –

(a) where the offence is committed by means of words, exclamations or threats not made use of in public, a fine not exceeding 50,000 rupees;

(b) where the offence is committed by means of words, exclamations or threats made use of in public, a fine not exceeding 100,000 rupees;

(c) where the offence is committed by means of any written or printed matter, drawing, picture, emblem or image, imprisonment for a term not exceeding 2 years and a fine not exceeding 100,000 rupees.”

C. Offence of criminal intimidation

“291. Criminal intimidation

Any person who threatens another, either by writing or verbally, with making any disclosure or imputation which may cause any injury to his person, reputation or property, or to the person, or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, shall be guilty of criminal intimidation, and shall be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.”

D. Offence of murder

Section 222 of the Criminal Code provides as follows:

“222. Penalty for murder and infanticide

(1) Any person who is convicted of –

(a) murder or murder of a newly born child, shall be sentenced to penal servitude for life or, where the Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence and has entered those circumstances on the record of the proceedings, for a term not exceeding 60 years;

(b) attempt at murder or attempt at murder of a newly born child, shall be liable to penal servitude for life or, where the Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence and has entered those circumstances on the record of the proceedings, for a term not exceeding 60 years.”

E. Offence of manslaughter

Section 223 of the Criminal Code provides as follows:

“223. Penalty for manslaughter

(1) Any person guilty of manslaughter preceding, accompanying or following another crime shall be liable to penal servitude for life or, where the Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence and has entered those circumstances on the record of the proceedings, for a term not exceeding 60 years;

(2) Any person who attempts to commit manslaughter in the cases mentioned in this section shall be liable to penal servitude.

(3) In every other case, a person guilty of manslaughter shall be liable to penal servitude for a term not exceeding 45 years.”

F. Offence of assault with aggravating circumstance

Section 228 of the Criminal Code provides as follows:

“228. Assault with aggravating circumstance

(1) Any person who wilfully inflicts any wound or blow, or is the author of any other violence or assault shall if such act of violence has caused any sickness or incapacity for personal labour for more than 20 days, be punished by imprisonment and a fine not exceeding 100,000 rupees.

(2) Where as a result of any act of violence specified in subsection (1) the person injured or assaulted has had an arm, a leg or a thigh broken, or has lost the use of both eyes or of one eye only, the offender shall be punished by penal servitude not exceeding 20 years and to a fine not exceeding 100,000 rupees.

(3) Where the wound or blow inflicted wilfully, but without intention to kill, shall nevertheless cause death, the offender shall be punished by penal servitude for term not exceeding 20 years.”

1.2 What measures have been undertaken to ensure that no one is deprived of the right to life, liberty or security of person because of religion or belief, and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on the account of accusations of witchcraft and ritual attacks?

All the rights listed under this question are protected under the Constitution. The rights extend to all persons whether on account of accusations of witchcraft and ritual attacks or otherwise. The rights in question are listed and reproduced below:

A. Right to life

Section 4 of the Constitution provides as follows:

“4. Protection of right to life

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable –

(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, or if he dies as the result of a lawful act of war.”

B. Right to liberty/Freedom from arbitrary arrest or detention

Section 5 of the Constitution provides as follows:

“5. Protection of right to personal liberty

(1) No person shall be deprived of his personal liberty save as may be authorised by law –

(a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Mauritius or elsewhere, in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of a court punishing him for contempt of that court or of another court;

(c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) for the purpose of bringing him before a court in execution of the order of a court;

(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(f) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Mauritius, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Mauritius or the taking of proceedings relating thereto;

(j) upon reasonable suspicion of his being likely to commit breaches of the peace; or

(k) in execution of the order of the Commissioner of Police, upon reasonable suspicion of his having engaged in, or being about to engage in, activities likely to cause a serious threat to public safety or public order.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained –

(a) for the purpose of bringing him before a court in execution of the order of a court;

(b) upon reasonable suspicion of his having committed, or being about to commit a criminal offence; or

(c) upon reasonable suspicion of his being likely to commit breaches of the peace,

and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including, in particular, such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial; and if any person arrested or detained as mentioned in paragraph (c) is not brought before a court within a reasonable time in order that the court may decide whether to order him to give security for his good behaviour, then, without prejudice to any further proceedings that may be brought against him, he shall be released unconditionally.

(3A) (a) Notwithstanding subsection (3), where a person is arrested or detained for an offence related to terrorism or a drug offence, he shall not, in relation to such offences related to terrorism, or drug offences as may be prescribed by an Act of Parliament, be admitted to bail until the final determination of the proceedings brought against him, where –

1. he has already been convicted of an offence related to terrorism or a drug offence; or
2. he is arrested or detained for an offence related to terrorism or a drug offence during the period that he has been released on bail after he has been charged with having committed an offence related to terrorism or a drug offence.

(b) A Bill for an Act of Parliament to prescribe the offences related to terrorism or drug offences under paragraph (a) or to amend or repeal such an Act shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

(4) Where a person is detained in pursuance of any such provision of law as is referred to in subsection (1)(k) –

(a) he shall, as soon as is reasonably practicable and, in any case not more than 7 days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) not more than 7 days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than 14 days after the commencement of his detention and thereafter during his detention at intervals of not more than 30 days, his case shall be reviewed by an independent and impartial tribunal consisting of a chairman and 2 other members appointed by the Judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney in Mauritius;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of his case;

(e) at the hearing of his case by the tribunal, he shall be permitted to appear in person or by a legal representative of his own choice and, unless the tribunal otherwise directs, the hearing shall be held in public;

(f) at the conclusion of any review by a tribunal in pursuance of this subsection in any case, the tribunal shall announce its decision in public, stating whether or not there is, in its opinion, sufficient cause for the detention, and if, in its opinion, there is not sufficient cause, the detained person shall forthwith be released and if during the period of 6 months from his release he is again detained the tribunal established for the review of his case shall not decide that, in its opinion, there is sufficient cause for the further detention unless it is satisfied that new and reasonable grounds for the detention exist.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person.

(6) In the exercise of any functions conferred upon him for the purposes of subsection (1) (k), the Commissioner of Police shall not be subject to the direction or control of any other person or authority.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (3) to the extent that the law in question authorises a police officer not below the rank of superintendent of police to direct that any person arrested upon reasonable suspicion of having committed any offence related to terrorism or any drug dealing offence be detained in police custody for a period not exceeding 36 hours from his arrest without having access to any person other than a police officer not below the rank of Inspector or a Government Medical Officer.

(8) A Bill for an Act of Parliament to amend or to repeal the provisions of any law with regard to the keeping of a custody record and video recording in respect of the detention of any person for a drug offence shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.”

C. Freedom of religion and belief

Section 11 of the Constitution provides as follows:

“11. Protection of freedom of conscience

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) 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 makes provision – (a) in the interests of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.”

D. Freedom from torture or other cruel, inhuman or degrading treatment/punishment

Section 7 of the Constitution provides as follows:

“7. Protection from inhuman treatment

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(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.”

1.3 What measures have been put in place to ensure equal access to justice, including effective remedy, as well as psychosocial support, rehabilitation and reintegration of survivors?

The legal measures which are in place to ensure equal access to justice and effective remedies to victims are to be found in the following legislations:

Section 9(1) of the Police Act provides:

“9. Duties of Police Force

1. The duties of the Police Force shall be to take all lawful measures for –

(b) preventing and detecting offences;

(c) apprehending persons who have committed or who are reasonably suspected of having committed offences.”

Section 72 of the Constitution provides:

“72. Director of Public Prosecutions

(1) There shall be a Director of Public Prosecutions whose office shall be a public office and who shall be appointed by the Judicial and Legal Service Commission.

(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do – (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(6) In the exercise of the powers conferred upon him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.”

**II. Accountability**

 Chapter II of the Constitution guarantees the enjoyment of fundamental rights and freedom which include the right to life, the right to personal liberty, protection from slavery and forced labour, protection from inhumane treatment, protection from deprivation of property, protection for privacy of home and other property, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and protection from discrimination. It also guarantees to all citizens the right to equal protection and benefit of the law without discrimination, thus upholding and strengthening an environment conducive to equal opportunities and equality for all Mauritians.

**III. Effective protection of all persons, particularly persons in vulnerable situations, including women, children, persons with disabilities, older persons and persons with albinism.**

Persons in vulnerable situations, including women, children, persons with disabilities, older persons and persons with albinism enjoy all the rights that any individual enjoys under the laws of Mauritius. The laws governing non-discrimination are to be found in various pieces of legislation, affording protection to every citizen, such as Children’s Act, Public Health Act, Training and Employment of Disabled Persons Act, Social Aid Act, Combatting of Trafficking in Persons Act, Protection of Elderly Persons Act, amongst others.

Moreover, Mauritius has established 7 National Human Rights Institutions to ensure the protection of the rights of its people, namely the:

1. Office of the Ombudsman, which investigates into complaints against Government Institutions and seeks redress to injustice, if any, sustained in consequence of any alleged maladministration that may have been committed by any public officer or authority in exercise of administrative functions;
2. National Human Rights Commission (NHRC), which is a full-fledge institution with quasi jurisdictional competence to receive complaints against violation of Human Rights and to summon witnesses and respondents.

In addition to seeking redress before the Courts, the NHRC is empowered to enquire into any written complaint from any person alleging that any of 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. After enquiries into the complaints, the NHRC, thereafter makes relevant recommendations to the concerned authorities;

1. Ombudsperson for Children’s Office, which represents and defends the rights and interests of children in Mauritius, Rodrigues, Agalega, children of Mauritian origin who live abroad and children of any other nationalities who reside in the Republic of Mauritius;
2. Equal Opportunities Commission, which is an independent statutory body working inter alia towards the elimination of discrimination and the promotion of equality of opportunity and good relations between persons of different status;
3. Independent Police Complaints Commission (IPCC), which inter alia investigates into any complaints 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. The IPCC also 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;
4. Ombudspersons for Sports, which investigates into appeals for conciliation made any person who feels aggrieved by a decision of the Mauritius Olympic Committee, the Mauritius Paralympic Committee, a National Sports Federation, a Multisport Organisation, a regional sports committee, a sports club, a licensee, any member, referee, coach or other official of a sports organization, other than a decision or dispute related to doping; and
5. Ombudsperson for Financial Services, which provides protection to and deals with complaint made by consumers of financial services, inform and educate the general public on investments in the financial services offered by the financial institutions.

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