

**Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

REPUBLIC OF MAURITIUS

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Mauritius is not a State party to the 1951 Convention relating to the Status of Refugees or the 1967 Protocol. Mauritius signed the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa on 10th September 1969, but until now has not ratified or acceded to this Convention. Mauritius is also not party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Moreover, Mauritius has not ratified the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

UNHCR has no presence in Mauritius; however, this country is covered by UNHCR's Office in Pretoria, which follows closely the developments in Mauritius and undertakes missions there. The Government of Mauritius has not established any refugee policy, but cooperates with UNHCR when issues concerning refugees or asylum-seekers arise. According to UNHCR's latest statistics there were no persons of concern residing in Mauritius. The country experiences internal displacement associated with frequent cyclones.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Despite the absence of a refugee protection system the Government has not returned any persons in need of international protection to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion. In essence, Mauritius is upholding the principle of *non-refoulement*.

III. KEY ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Ratification or accession to key refugee law instruments

Accession to the 1951 Convention and its 1967 Protocol as well as establishment of a national legal framework would enable the Government of Mauritius to provide refugees with international protection and a mechanism that facilitates the appropriate engagement of relevant international organizations like UNHCR.

Accession greatly facilitates UNHCR's task of mobilizing international support to address refugee situations that may arise in any country. UNHCR believes that it is necessary to broaden the base of State support for these refugee instruments, ensuring that the protection

provided to refugees is more universal in scope and that the burdens and responsibilities of governments are equitably distributed and consistently applied. Notwithstanding the relatively small number of cases, and the competing domestic priorities, accession to the 1951 Convention, and establishment of a national legal framework would provide a clearer basis for the Government of Mauritius to provide refugees with international protection, and a mechanism that enables the appropriate engagements of relevant international organizations like UNHCR.

While UNHCR believes that formal accession to the 1951 Convention provides States with the best framework within which national laws and regulations can be developed, it also recognizes that this is not necessarily the first step that Mauritius needs to take to develop effective, balanced and credible national systems for refugee protection. UNHCR stands ready to provide training and capacity-building services in international refugee law, statelessness, and international protection principles. UNHCR also stands ready to deliver technical support and advisory services in the drafting of national refugee legislation in order to strengthen the Government's capacity to manage mixed migratory flows while protecting asylum-seekers.

In this context UNHCR also welcomed the recommendations by the Committee on Torture issued in June 2011 indicating that "*The State party should revise its legislation guaranteeing the principle of non-refoulement.*"¹ Furthermore, in 2010 the Committee on Economic, Social and Cultural Rights recommended "*that the State party enable asylum seekers to exercise their right to seek asylum and ensure protection against refoulement in line with the widely recognized principle of non-refoulement*" and "*consider ratifying the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.*"²

Recommendations:

- Accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and ratify the 1969 OUA Convention Governing the Specific Aspects of Refugee Problems in Africa;
- Consider the passage of domestic refugee legislation and/or administrative policies, to ensure that the country is in full compliance with international standards of treatment related to refugees, including the right to work;
- Accept UNHCR's technical support in drafting national refugee legislation, capacity building for Government officials and assistance in the development of a national refugee status determination procedure;
- Accept UNHCR's training to relevant officials to integrate 'good practices' and international standards of asylum/refugee protection into operational guidelines and procedures.

¹ UN Committee Against Torture (CAT), *Consideration of reports submitted by States parties under article 19 of the Convention - Mauritius*, 15 June 2011, CAT/C/MUS/CO/3, Paragraph 12, available at: <http://www.unhcr.org/refworld/publisher,CAT,,MUS,4ef052262,0.html>

² UN Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant : concluding observations of the Committee on Economic, Social and Cultural Rights: Mauritius*, 8 June 2010, Paragraph 10, available at: <http://www.unhcr.org/refworld/docid/4c1737a02.html>

Issue 2: Detention of persons in need of international protection

The geographical location of Mauritius and its relative economic wealth (which is better compared to those of other countries in the region) have converted the country into a destination and also a transit point for (irregular) migrants. Migrants are at risk of being exploited and submitted to poor work and housing conditions, crime, etc. Access to health and education for migrant workers' families is problematic. In addition, there are constant reports³ of arbitrary arrest and detention of undocumented persons in Mauritius, and reports of police brutality in detention and poor detention conditions. It is likely that there are also persons in need of international protection among the wider group of irregular migrants.⁴ The detention of asylum-seekers and refugees should only be used as a last resort, where necessary and justified. Alternatives to detention should be sought and given preference, in particular for certain categories of vulnerable persons. If detained, asylum-seekers should be entitled to minimum procedural guarantees, including the possibility to contact and be contacted by UNHCR.

UNHCR's 2012 Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers highlight that "*the position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic experiences, need to be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.*"⁵

Recommendations:

- Ensure that refugees and asylum-seekers are not penalized for illegal entry and stay in the country, that the detention of asylum-seekers is only used as a last resort, and where necessary, for as short a period as possible and that judicial safeguards are in place to prevent arbitrary and/or indefinite detention;
- Enhance detention conditions and, more importantly, also consider alternatives to detention, especially for asylum-seekers, refugees, stateless persons and other vulnerable individuals;
- Facilitate full and open access to asylum procedures for persons who have expressed a credible fear of returning to their country of origin and ensure *non-refoulement* of all persons in need of international protection.

Issue 3: Trafficking and exploitation of persons

The Committee on the Elimination of Discrimination Against Women had recently considered Mauritius as a country of source, destination and transit for trafficking in persons, and had expressed concerns over the "proliferation of sex tourism in the country, essentially

³ IOM and ILO carried out a mission during the Regional Consultation on mixed-migration held in 2012. They raised these issues and their concerns with UNHCR during their mission. Unfortunately, UNHCR was unable to attend the Consultations.

⁴ Ibid.

⁵ See the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), Guideline 1 entitled "The right to seek asylum must be respected" at: <http://www.unhcr.org/refworld/docid/503489533b8.html>.

generating sexual exploitation of women and girls.”⁶ While UNHCR notes with appreciation significant efforts made by Mauritius since 2009 in order to combat and prevent trafficking and exploitation,⁷ it remains concerned about the risk of refugees and asylum-seekers to become victims of trafficking.

Recommendations:

- Continue to raise awareness about human trafficking, including disseminating information and training of the judiciary and law enforcement officials on the new law to ensure strict application of the relevant criminal provisions;
- Address the root causes of trafficking and exploitation of persons, especially women, by increasing its efforts to improve the economic situation of women and girls, in particular women migrant workers, thereby eliminating their vulnerability to exploitation and traffickers.

Issue 4: Access to birth registration and issuance of birth certificates

Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. Failure to document a person’s legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care. In 2006, the Committee on the Rights of the Child also encouraged Mauritius to “[...] continue its initiatives to ensure that cases of tardy declarations are dealt with in a more expeditious manner.”⁸

Recommendation:

- Issue birth certificates to all children born on Mauritius’ territory, regardless of the status of their parents.

Issue 5: Preventing and Reducing Statelessness

Stateless persons who satisfy the refugee definition contained in article 1A(2) of the 1951 Convention are afforded the necessary international protection associated with that status. However, the international refugee protection regime does not specifically address the entitlement to rights of non-refugee stateless persons in need of international protection. Accession to the Statelessness Conventions would establish a framework to prevent and reduce statelessness, in order to avoid the detrimental effects that this can have on individuals and society, and to ensure minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

⁶ See Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/MUS/CO/6-7, Fiftieth Session, 21 October 2011, paragraphs 24 & 25, available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-MUS-CO-6-7.pdf>

⁷ Mauritius has adopted the 2009 Combatting of Trafficking Act and has ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 14 June 2011.

⁸ Committee on the Rights of the Child, Forty-first session, Concluding observations: Mauritius, Paragraph 34, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/409/78/PDF/G0640978.pdf?OpenElement>

The 1954 Convention relating to the Status of Stateless Persons ensures minimum standards of treatment of stateless persons in respect to a number of economic, social and cultural rights. These include, but are not limited to, the right to education, employment, housing, and public relief. Importantly, the Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

Furthermore, the 1961 Convention on the Reduction of Statelessness establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This convention is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

Recommendation:

- Accede to the 1954 Convention on the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness

Issue 6: Internally Displaced Persons

Mauritius faces frequent natural disasters associated with flooding and landslides, which often causes displacement. Over the years the country has developed national disaster response mechanism, early warning system and preparedness. Existing policy and institutional mechanism will be further enhanced by the ratification of the Kampala Convention and by creating an adequate national legal and policy framework that effectively deals with internal displacement.

Recommendation:

- Ratify or accede to the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures

- Universal Periodic Review:

Mauritius

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Mauritius, as well as from the report of the 2011 mission of the Special Rapporteur on the sale of children, child prostitution and child pornography to Mauritius.

1. Treaty Body Reports

Committee on the Elimination of Discrimination Against Women

CEDAW/C/MUS/CO/6-7, Fiftieth Session

21 October 2011

Trafficking and Exploitation of Prostitution

24. While the Committee notes the ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the adoption of the 2009 Combatting of Trafficking Act, the Committee is concerned that the State party remains a country of source, destination and transit for trafficking in persons, and about the proliferation of sex tourism in the country, essentially generating sexual exploitation of women and girls and augmenting the vulnerability of sex workers. The Committee is also concerned about the lack of information on the real extent of the sale and sexual exploitation of young girls because of the taboo surrounding sexuality and the lack of a centralized information system. The Committee notes with concern the absence of sex-disaggregated data with regard to both trafficking and prostitution as well as the lack of a national plan of action to addressing both trafficking and sexual exploitation in the State party.

25. The Committee recommends that the State party:

- a. Ensure the effective implementation of the newly adopted law and introduce effective prevention measures, timely prosecution and punishment of traffickers;**
- b. Continue raising awareness about human trafficking, including disseminating information and training of the judiciary and law enforcement officials on the new law to ensure strict application of the relevant criminal provisions;**
- c. Adopt a comprehensive national action plan and develop a coordination mechanism to address trafficking and sexual exploitation and ensure the allocation of sufficient human and financial resources for the effective implementation of the action plan;**
- d. Address the root causes of trafficking and exploitation of women by increasing its efforts to improve the economic situation of women and girls, in particular women migrant workers, thereby eliminating their vulnerability to exploitation and traffickers;**

- e. **Collect sex-disaggregated data on the number of sex-workers and trafficked persons as well as data on the number of complaints, investigations, prosecutions and sentences in relation to trafficking and prostitution and include such data in its next periodic report.**

Committee Against Torture

CAT/C/MUS/CO/3, 46th Session

15 June 2011

Non-refoulement

12. The Committee is concerned that the legislation of the State does not clearly and fully guarantee the principle of non-refoulement set out in article 3 of the Convention, as requested by the Committee in its concluding observations (A/54/44, 1999, para. 123 (c)). It is also concerned about the lack of sufficient information regarding the process followed in cases of requests for extradition as well as the procedural guarantees the person extradited enjoys, including the right to appeal against the extradition, with suspensive effect (art. 3).

The State party should revise its legislation guaranteeing the principle of non-refoulement. The State party should review its Extradition Act to make it in full compliance with article 3 of the Convention, in particular, it should clarify the process under which extradition is requested and decided, the guarantees offered, including the possibility to challenge the decision with suspensive effect in order to ensure that persons expelled, returned or extradited are not in danger of being subject to torture. The State party should also provide detailed statistical data on the number of requests received, the requesting States and the number of persons extradited or not.

Data collection

21. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on death row prisoners, ill-treatment of migrant workers, trafficking in humans and domestic and sexual violence.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of persons guilty of torture and ill-treatment, ill-treatment of migrant workers, death row prisoners, trafficking in humans and domestic and sexual violence, disaggregated by age, sex, ethnicity and type of crime, as well as on means for redress, including compensation and rehabilitation, provided to the victims.

Committee on Economic, Social, and Cultural Rights

E/C.12/MUS/CO/4, 44th Session

21 May 2010

10. The Committee is concerned that the State party has not adopted any policies or laws to protect refugees and asylum seekers.

The Committee recommends that the State party enable asylum seekers to exercise their right to seek asylum and ensure protection against refoulement in line with the widely recognized principle of non-refoulement. In this regard, the Committee also

recommends that the State party consider ratifying the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

13. The Committee is concerned that, according to section 16(4)(b) of the Constitution, the non-discrimination clause in section 16(1) of the Constitution does not apply to laws that make provisions with respect to non-nationals. (art. 2)

In line with its general comment no. 20, the Committee recommends that the State party undertake to ensure the applicability of the non-discrimination clause to non-nationals.

20. The Committee is concerned that, according to regulation 3 of the Social Aid Regulations of 1984, non-nationals are not entitled to social aid that is paid to poor households who do not have sufficient resources to meet their basic needs. (art. 9)

The Committee recommends the State party to amend regulation 3 of the Social Aid Regulations 1984 in order to ensure that non-national individuals and families who do not have sufficient resources to meet their basic needs are entitled to social aid.

Committee on the Rights of the Child

CRC/C/MUS/CO/2, 41st Session

17 March 2006

Birth registration

33. The Committee notes with appreciation the initiatives undertaken by the State party to deal with tardy declaration of births and unregistered children, including the establishment of a high level Committee chaired by the Attorney-General and the Minister of Women's Rights, Child Development, Family Welfare and Consumer Protection in August 2005. It also notes the creation of a hotline operating on a 24-hour basis through which tardy declarations can be made. However, the Committee also notes that the procedures regarding late registration are still complex and very long.

34. The Committee encourages the State party to continue its initiatives to ensure that cases of tardy declarations are dealt with in a more expeditious manner.

2. Special Procedure Reports

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid

Addendum: Mission to Mauritius

9 November 2011

114. The Government should strengthen child-sensitive complaints, reporting and counselling mechanisms by ensuring that they:

(a) Are accessible to all children under the jurisdiction of the State, without discrimination of any kind, while being age appropriate and gender sensitive and granting special protection to children at risk;

116. Regarding prevention and child rights promotion, the Government should:

...

(b) Ensure immediate free registration of all children born on the territory, with special attention paid to unregistered children, children at risk and those in marginalized situations;