



MAURITIUS

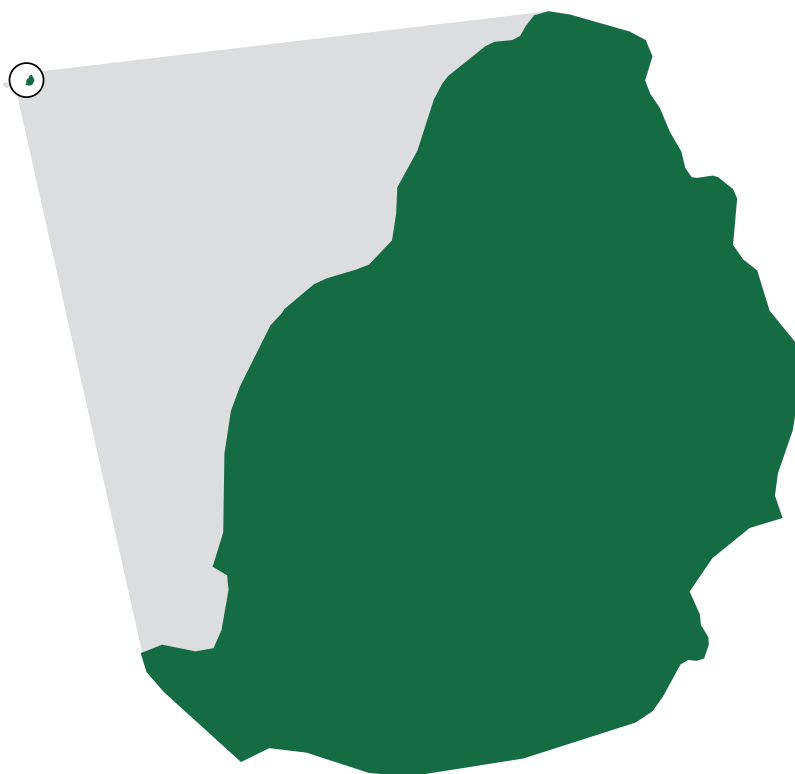
ECPAT

COUNTRY OVERVIEW

*A report on the scale, scope and context of
the sexual exploitation of children*

JUNE, 2019





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2018

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Preface

Recent years have seen unprecedented progress towards embedding the child's right to protection from sexual exploitation more deeply into the global agenda, no more so than the global mandate to eliminate the sexual exploitation of children (SEC) enshrined in the Sustainable Development Goals (SDGs) adopted by world leaders in 2015. ECPAT Country Overviews on SEC provide an effective tool for advocacy at all levels as well as for monitoring, including on government commitments made in the SDGs to end violence against children in all its different forms by 2030.

ECPAT Country Overviews are first and foremost, a desk review exercise that gather and present all the existing publicly available information into a comprehensive summary of all forms of SEC in a country. They do not contain any new primary data. They also provide an assessment of achievements and challenges in implementing counteractions - including the participation of children themselves - to eliminate SEC.

ECPAT Country Overviews also suggest concrete priority actions urgently needed to proactively advance the national fight against SEC and enable the monitoring of the implementation of international instruments on child rights related to sexual exploitation that have been ratified by the State. Furthermore, the ECPAT Country Overviews provide well-organized information and research, which can be used in preparing Alternative Reports and Additional Submissions to the Committee on the Rights of the Child and the Human Rights Council.

During the process, drafts are shared with ECPAT members, relevant local organisations, and experts working on the ground who review the content and supplement the information with other local sources and analysis. ECPAT International greatly relies on the contributions of all those involved in producing these reports and would like to express its profound appreciation for their invaluable inputs.



At a Glance

The Republic of Mauritius (hereinafter ‘Mauritius’) is a small island in the Indian Ocean with a population of 1,262,000 out of which approximately 23% are children. There are several potential contributing factors that can lead to the sexual exploitation of children (SEC) in Mauritius including social norms, poverty and unemployment, sexual taboos and limited sexual education as well as dropping out of school early. Furthermore, it is important to note the existence of especially vulnerable groups to SEC, such as children living in the street, children not registered at birth and children from Creole cultural background.

In terms of exploitation in prostitution, although the number of reported cases and victims as well as convictions decreased in the last years, the issue persists. The increase in Internet access and mobile cell phones subscriptions leads to Mauritian children becoming more and more vulnerable to online child sexual exploitation. With regard to child trafficking, data from the police force does not differentiate trafficking for sexual purposes from other forms of trafficking and therefore the scale of the problem remains unclear. Additionally, being one of the top tourism destinations in the region, children in Mauritius may be vulnerable to sexual exploitation in travel and tourism. Cases of child, early and forced marriages have been reported in the country due to loopholes in the legislation and little action by the government in this regard. It is important to note that one recurrent problem is the lack of comprehensive and centralized data collection systems at the national level to estimate the scale of sexual exploitation of children and its manifestations and monitor progress made to combat the phenomenon.

With regard to international commitments, Mauritius is a party to the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child

Pornography (OPSC); however, no report has been submitted for the OPSC review so far. At the regional level, Mauritius has ratified the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, although it has not submitted any national periodic report to the African Committee on the Rights and Welfare of the Child so far.

There is a lack of clarity, comprehension, and uniformity in Mauritius’ national legislation in relation to all forms of child sexual exploitation. The main laws penalising SEC- related offences are the Child Protection Act and the Criminal Code, but these insufficiently address SEC in many ways and do not always meet the standards set by international conventions. National laws also do not establish extraterritorial jurisdiction over all SEC- related offences but only over trafficking under certain circumstances. The approval of the Children’s Bill (bringing all legislation concerning children under the same text), is more urgent than ever in order to solve loopholes and ensure effective protection of children.

At the national level, the government does not have a main body specifically coordinating policies and measures against the sexual exploitation of children. Instead, several governmental bodies deal with children’s rights, such as the Ministry of Gender Equality, Child Development and Family Welfare, the National Children’s Council, and the Office of the Ombudsperson for Children. This partition of authority can lead to challenges in terms of coordination and communication and may result in children not receiving the protection they need.

Although Mauritius is making notable efforts to tackle the issue of SEC, it appears that the phenomenon is still prevalent and more preventive measures and awareness raising is needed. The Crime Prevention Unit, and the ‘*Brigade des*

Mineurs', carry out various activities related to SEC prevention such as public awareness campaigns in schools and community centres on dangers and consequences of 'child sex trafficking'. Other government bodies working on prevention include the National Cybercrime Prevention Committee, the Police Family Protection Unit as well as civil society organisations and the private sector.

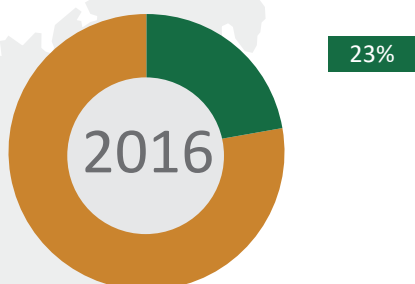
Despite the availability of mechanisms aiming to provide access to justice for child victims, several problems have been identified in relation to legal aid and assistance as well as the need to ensure a child-friendly environment and protection of victims' privacy during legal proceedings.

There are several government bodies working together to ensure the protection of child victims of SEC. Despite efforts made in this regard, there is also a scarcity of resources in the country in terms of recovery and reintegration services for child victims of SEC. The government has set up rehabilitation centres and shelters for child victims but an adequate and sufficient provision of services is not always ensured. Furthermore, there is a lack of provision in terms of access to compensation for child victims of sexual exploitation. Forums or platforms for victims and survivors are scarce, and despite the existence of two bodies at the national level for children's participation, actual involvement of children in government planning or civic life is considerably limited.

POPULATION

SOURCE: UNICEF State of the World's Children Report 2017

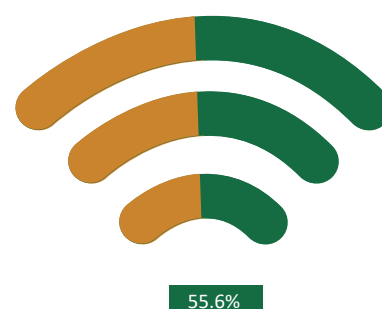
Children under 18 years



INTERNET ACCESS

SOURCE: ITU Statistics 2018: Mauritius

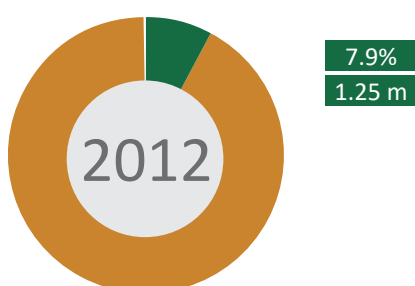
Have internet access



POVERTY RATE

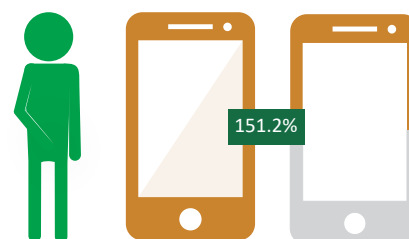
SOURCE: Poverty & Equity Data Portal: World Bank

Living under the national poverty line



MOBILE PHONE USERS

SOURCE: ITU Statistics 2018: Mauritius



151.2 mobile phone subscriptions
per 100 inhabitants

CHILDREN'S RIGHTS UNDER THE LAW

	Girls	Boys
Age of consent for sex	16	16
Minimum age for marriage	18*	18*
Legal working age	16	16
Compulsory age of schooling	16	16

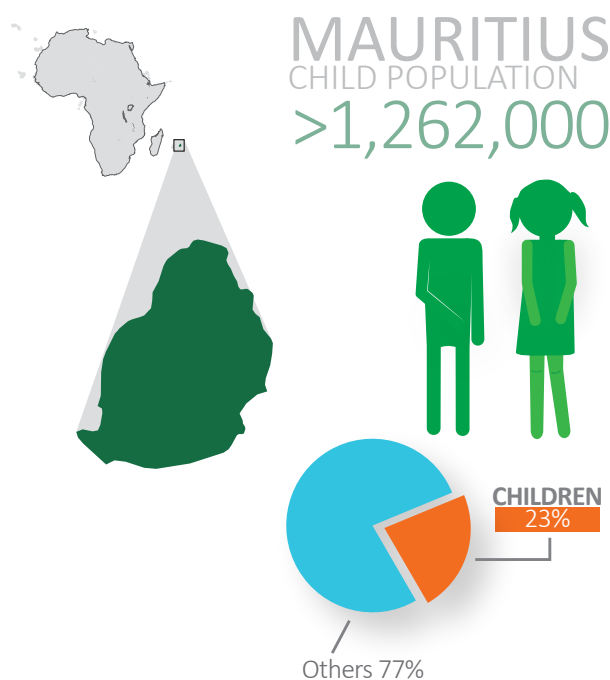
* Exceptions in the law allow for marriages under 18 under certain conditions.

Introduction

COUNTRY OVERVIEW AND SPECIFIC VULNERABILITIES LEADING TO THE SEXUAL EXPLOITATION OF CHILDREN

Mauritius is a small island nation in the Indian Ocean. Considered part of the African continent, it is situated 800km off the east coast of Madagascar and it is comprised of the main island of Mauritius and three other smaller island dependencies: Rodrigues, Agalega and St. Brandon.¹ The country has a population of over 1,262,000 inhabitants and children represent approximately 23% of the population.² An interesting fact about Mauritius in terms of its demographics is that it has the lowest fertility rate in Africa as of 2017.³ According to media reports citing governmental statistics, the decline in the fertility rate can be attributed to an increasing employment rate of women and a receding mean marriage age.⁴

Historically, Mauritius was colonised by the Netherlands, France and the United Kingdom (UK), but regained its independence from the UK in 1968. After independence, a parliamentary republican government was instituted.⁵ Mauritius' ethnic makeup is a product of two centuries of colonisation from Europe and labour migration from Asia and continental Africa, with Indo-Mauritians making up nearly two thirds of the total population, followed by Creoles, Sino-Mauritians and Franco-Mauritians.⁶ Concerning religion, because of Indian influence, Hinduism is



most prevalent with 48.5%, followed by Roman Catholicism, Islam, and other forms of Christianity.⁷ While the official language of the National Assembly is English, less than 1% of the population speaks it. Approximately 86.5% of the population speaks Creole, followed by Bhojpuri 5.3%, and French 4.1%.⁸

Mauritius has achieved a spectacular economic transformation over the last 40 years.⁹ Mauritius

1 Mauritius Attractions (n.d.), Geography of Mauritius.

2 UNICEF (2017), The State of the World's Children 2017: Children in a Digital World, UNICEF Publications, 175.

3 World Bank Data (2017), Fertility Rate – Mauritius.

4 Indian Ocean Times (n.d.), *Mauritius: the fertility rate decreased in 20 years on the island*.

5 BBC News (2019), *Mauritius Country Profile – Timeline*.

6 Index Mundi (2018), *Mauritius Demographics Profile 2018*.

7 *Ibid.*

8 *Ibid.*

9 World Bank Data (2017), *GDP per Capita - Mauritius 1976-2017*.

ranked 65th, out of 179 countries in the Human Development Index in 2018 just after Turkey and ahead of Panama and Serbia; this score gives Mauritius the status of high human development.¹⁰ The gross domestic product per capita at purchasing power parity reached \$22,356 in 2017¹¹ being one of the highest in Sub-Saharan Africa.¹² A key sector of Mauritius' economy is the tourism industry,¹³ which may increase children's vulnerability to sexual exploitation in travel and tourism, as explained in the dedicated section below.

According to the Child Protection Act, a child is "any unmarried person under the age of 18".¹⁴ There are several other national legislations defining a child or a juvenile, which are not wholly consistent.¹⁵

The Special Rapporteur on the sale of children and sexual exploitation pointed out, in her visit to Mauritius in 2011, several noticeable issues that influence children's rights and development and could potentially lead to their sexual exploitation. Those included social norms, poverty and unemployment, sexual taboos and limited sexual education as well as high school dropout rates.¹⁶ Furthermore, children living and/or working in the streets and children not registered at birth were described as being among the most vulnerable to child sexual exploitation.¹⁷ However, there is

no available information of the progress made to address these concerns over the last few years and more research on current risk factors and the vulnerability of certain groups is needed.

A survey conducted by SAFIRE in 2012 revealed that 6,780 children and young adults aged between 5 and 19 were living on the streets.¹⁸ The Committee on the Rights of the Child also expressed concern in 2015 over the government's lack of appropriate measures to address the magnitude of this problem.¹⁹ At the time of writing, there is no information available on the number of Mauritian children currently living on the streets or whether any progress has been made in this regard. If this is still the case, the fact that a significant number of children may be living and/or working on the streets is of serious concern because, as global research shows, they can easily become targets of all forms of sexual exploitation.²⁰

The Creole community is especially impacted by poverty²¹ and it has been reported that children of Creole cultural background are often discriminated by the police,²² which could also result in reluctance of Creole victims to report incidents to law enforcement. Lastly, lack of birth registration exposes affected children to a magnitude of rights violations; such as being denied access to healthcare and education as well as vulnerability

10 United Nations Development Programme (2018), Human Development Indices and Indicators: 2018 Statistical Update, 23.

11 World Bank Data (2017), *GDP per capita – Mauritius*.

12 World Bank Data (2017), *GDP per capita, Regional Comparison*.

13 World Bank Data (2017), *Mauritius Overview*.

14 *Child Protection Act* (1994), Article 2.

15 In the Interpretation and General Clauses Act, a minor is defined as any unmarried person under the age of 18. The Civil Code defines a minor as an individual of either sex who is not yet 18 years of age. The Juveniles Offenders Act defines a juvenile as a person under the age of 18. A 'young person' means a person who has reached the age of 14 and is under the age of 18. The Probation of Offenders Act defines a minor as a person under the age of 18. A child means a person under the age of 18 according to the Ombudsperson for Children Act. Under the Employment Rights Act, a child is a person under the age of 16. Under the Immigration Act, a dependent child is under the age of 24. The Family Allowance Act defines a child as any unmarried person under the age of 14. Under the Social Aid Act, a child means an unmarried person who is under the age of 20.

16 Human Rights Council (2011), *Report of the Special Rapporteur on the sale of children and sexual exploitation on her visit to Mauritius*, 9 November 2011, A/HRC/19/63/Add.1, para. 19.

17 *Ibid.*

18 Safire (2012), *Study on Street Children in Mauritius*, 40. See also: *Mauritius: The alarming situation of street children worries social workers and associations of the island* (9 August 2013), *Indian Ocean Times*.

19 Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*, paras 67-68.

20 ECPAT International (2016), *Power, Impunity and Anonymity: Understanding the Forces Driving the Demand for Sexual Exploitation of Children*, 42. For a case study analysing the vulnerability of children in street situation, see also: Hecht, M. et al., (2015), *A Desk Study on the Sexual Exploitation of Children in Travel and Tourism in the Middle East and North African Region: A Contribution for the Global Study on the Sexual Exploitation of Children in Travel and Tourism conducted by ECPAT International*. (Bangkok: ECPAT International, 2015).

21 Humanium (n.d.), *Children of Mauritius, realising children's rights in Mauritius*; ; See also, Mauritius (16 September 2013), *Indian Ocean Times*.

22 Convention on the Rights of the Child (2014) *Alternative Report for Mauritius*, 13.

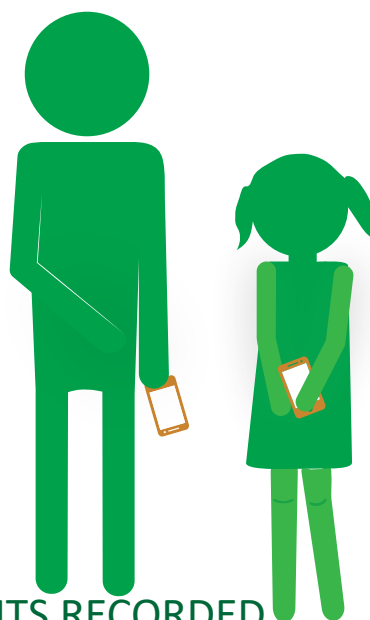
to exploitative child labour, early child marriage and trafficking – all factors that can lead to sexual exploitation.²³

It is hard to get an overall picture of the scope of child sexual exploitation in the country. Data is scarce and statistics from the police department focus only on a few crimes related to child sexual exploitation.²⁴ Data collected by Helpline Mauritius, initiated and operated by Halley Movement, the ECPAT Member in the country, although only reflecting the number of cases reported through their helpline, may serve as an indicator of the extent of the problem in the country. The helpline receives complaints nearly every day, with more than 900 complaints recorded from 2017 to 2018 reporting different types of abuse affecting children. Since 2018, around 100 cases of cyberbullying, most of which refer to sexual bullying have been recorded.²⁵

The absence of a centralised data gathering system at the national level that can provide comprehensive statistics on the different forms of SEC means that the true extent and severity of the problem is unknown. Without this crucial first step, it would be an insurmountable task to not only identify, but also to lessen the risk factors that lead to SEC in the first place.

The Mauritian Government reported in 2018 that the Ministry of Gender Equality has hired a consultant to work on the design of a holistic system that will capture updated statistics on cases of violence against children (as well as gender based violence cases) at a national level. This initiative aims to strengthen national capacity to collect, analyse and disseminate official statistics and guide policymaking.²⁶ However, no information has been found regarding the completion of this task.

HELPLINE MAURITIUS RECEIVES COMPLAINTS NEARLY EVERY DAY



900 COMPLAINTS RECORDED FROM 2017 TO 2018. SINCE 2018 AROUND **100 CASES OF CYBERBULLYING**, MOST OF WHICH REFER TO SEXUAL BULLYING, HAVE BEEN RECORDED.

²³ Cody, C. (2009), *Count every child: The right to birth registration*, Woking, Plan Ltd. Publication production and design by Plan's Global Publications Team, Woking, UK, 21-23. See also: UNICEF (2016, 25 Oct), *Child protection from violence, exploitation and abuse: Birth registration*.

²⁴ Statistics Mauritius (2018), *Digest of Crime, Justice and Security - Statistics 2017*.

²⁵ Halley Movement (May 2019), Personal Communication.

²⁶ Committee on the Elimination of Discrimination Against Women (2018), *Eighth periodic report submitted by Mauritius under article 18 of the Convention pursuant to the simplified reporting procedure*, para. 8.

The Context of the Sexual Exploitation of Children in Mauritius

EXPLOITATION OF CHILDREN IN PROSTITUTION²⁷

Article 2 (b) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) defines ‘child prostitution’ as “the use of a child in sexual activities for remuneration or any other form of consideration”.²⁸

According to data from the Mauritius Police Force, the Office of the Director of Public Prosecutions, the Judiciary and the Mauritius Prison Service, in 2017 there were 131 reported cases²⁹ involving 138 juvenile victims³⁰ for the crime of sexual offences against children, which refers to conduct including “causing child to be sexually abused; accessing to a brothel; and engaging in prostitution”.³¹ Out of the 131 reported cases, 34 ended in conviction.³² Despite the number of reported cases, victims and convictions decreasing between 2016 and 2017,³³ exploitation of children in prostitution is still a reality and more measures

are needed to prevent children from being forced into prostitution.

Root causes for exploitation of children in prostitution remain mostly unexplored. According to a recent study that analyses the relationship between teenage motherhood and prostitution in Mauritius, although children do not openly participate in the prostitution sector because the law forbids it, they intervene indirectly through intermediaries and facilitators such as taxi drivers and staff in hotels, bars and nightclubs.³⁴ The study further argues that teenage pregnancies are one of the main risk factors leading to engagement of children in prostitution.³⁵ Underage mothers often face a lack of support by family members and even experience situations of violence at the family household. This, together with decreasing work opportunities, makes them leave home and seek informal employment that does not require them to leave their children alone for long hours. As a result, prostitution often seems like the only viable alternative.³⁶ These findings are significant if we take into account that teenage pregnancy is prevalent in Mauritius. A survey conducted by the Mauritian Ministry of Health in 2014, found

27 ECPAT prefers the term ‘exploitation of children in prostitution’ instead of ‘child prostitution’ in line with the recently widely adopted Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 30. Bangkok: ECPAT International.

28 UN General Assembly (2000), *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (hereinafter OPSC), A/RES/54/263, 25 May 2000, entered into force on 18 January 2002, Article 2(b).

29 Statistics Mauritius (2018), *Digest of Crime, Justice and Security - Statistics 2017*, 35.

30 *Ibid.*, 54.

31 Child Protection Act (1994), Section 14 (1).

32 Statistics Mauritius (2018), *Digest of Crime, Justice and Security - Statistics 2017*, 67.

33 *Ibid.*, 35, 54 and 67. There were 197 reported cases, 194 victims and 38 convictions in 2016.

34 Bhukuth A., Ballet J. (2019) *Prostitution and Survival in Mauritius*. In: Ballet J., Bhukuth A. (eds) *Child Exploitation in the Global South*. Palgrave Macmillan, Cham, 159.

35 *Ibid.*, 159.

36 *Ibid.*, 166-169.

that 12.1% of teenagers (women age 15-19 years) currently in union had already begun childbearing: 10.6% were already mothers and 1.5% were pregnant with their first child.³⁷

ONLINE CHILD SEXUAL EXPLOITATION (OCSE)

Online child sexual exploitation (OCSE) can include child sexual abuse/exploitation material (CSAM/CSEM),³⁸ live streaming of child sexual abuse, online grooming of children for sexual purposes, sexual extortion of children and various CSAM/CSEM-related conducts (production, distribution, downloading).³⁹ Article 2 (c) of the OPSC defines 'child pornography' as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes".⁴⁰

As the country's economy rapidly grows, more people, including children, now have access to the Internet. As of 2018, 55.6% of Mauritians had Internet access, and there were as many as 151.2 mobile-cellular subscriptions per 100 people.⁴¹ According to global research, the increasing use of mobile phones and the proliferation of Internet access, although conducive to innovation and development, opens up new potential risks of sexual exploitation for children in the online environment.⁴² The misuse of available technologies gives perpetrators new avenues to groom and exploit children.⁴³ Moreover, the anonymity of the Internet facilitates opportunities for child sex offenders to share and distribute child sexual abuse and child sexual exploitation material (CSAM/CSEM).⁴⁴

The Child Online Safety Action Plan⁴⁵ was a first step to address the new challenges and risks for children in the digital environment. However, a lack of implementation by government agencies has resulted in civil society organisations carrying most of the burden to address this issue through awareness raising programmes and providing reporting mechanisms for victims.⁴⁶ In 2013, the Government of Mauritius reported that the Department of Information and Communications Technology (ICT) had been drafting a law meant to increase protection from the risks of OCSE in accordance to the action plan.⁴⁷ However, no information was available at the time of writing regarding the advancement of this process.

SALE AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), defines 'trafficking in persons' as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices

37 Ministry of Health and Quality of Life (2014), *The 2014 Contraceptive Survey*, 5.

38 ECPAT prefers the terms 'child sexual exploitation material' or 'child sexual abuse material', but in a legal context still uses 'child pornography' in line with the recently widely adopted *Terminology Guidelines*, 40.

39 ECPAT. (n.d.), *Issues we work on*. Bangkok: ECPAT International.

40 OPSC, Article 2(c).

41 ITU (2018), *ITU ICT-Eye: Mauritius Profile*.

42 ECPAT International (2017), *Briefing Paper: Emerging global threats related to the online sexual exploitation of children*, 1.

43 United Nations Special Rapporteur on the sale of children, child prostitution and child pornography (2016), *25 years of fighting the sale and sexual exploitation of children: Addressing new challenges*, 10-11.

44 *Ibid.*

45 National Computer Board (2009), *Child Safety Online Action Plan for Mauritius*.

46 *Halley Movement* (May 2019), Personal Communication.

47 Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child by the Government of Mauritius*, para. 342.

similar to slavery, servitude or the removal of organs”.⁴⁸

In case of child victims, Article 3 (c) of the Protocol specifies that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if it does not involve any of the means stipulated in Article 3 (a)”.⁴⁹ In other words, the Protocol recognises that children can never be willing participants to their own exploitation.

For its part, the OPSC deals with the ‘sale of children’, defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.⁵⁰ Both concepts are often used in conjunction and without any clear distinction. However, despite a certain overlap, ‘sale of children’ is not identical to ‘trafficking’. The ‘sale of children’ always involves some form of commercial transaction, which trafficking in children does not require, but does not necessarily include the purpose of exploiting a child (e.g. sale of children for illegal adoption). Therefore, ‘sale of children’ is not necessarily related to sexual abuse and sexual or other forms of exploitation. Lastly, the ‘sale of children’ can take place without physically moving the child out of his/her social environment, whereas trafficking inherently depends on the movement of the child.⁵¹

Mauritius is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking.⁵² According to data from the Mauritius Police Force, the number of child trafficking cases reported to the police decreased from four cases involving five victims in 2016 to one case involving one victim in 2017, all the victims being girls.⁵³ However, no information was provided regarding the purposes of these crimes and consequently it is unclear if any of the reported cases had a sexual purpose. As reported by the US Department of State, Mauritius “does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so”.⁵⁴ It remained stable on Tier 2 of the Trafficking Watchlist⁵⁵ in 2018.

Nevertheless, it is worth noting that many challenges remain and that this data might not reflect the reality of child trafficking in the country. Lengthy judicial processes, frequently lasting many years, deter victims from seeking legal redress leading to cases being underreported.⁵⁶ Lastly, reports indicate that lack of coordination among law enforcement and prosecutors due to insufficient training and case tracking problems continued to hinder efforts to investigate and prosecute child trafficking cases during 2017.⁵⁷

48 UN General Assembly. (2000, November 15), *United Nations Convention against Transnational Organized Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)*. Res. 55/25 of 15. Art. 3 (a).

49 *Ibid.*, Article 3 (c).

50 OPSC, Article 2 (b).

51 ECPAT International (2016, January 28), *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 58. Bangkok: ECPAT International.

52 US Department of State (2018), *Trafficking in Persons Report 2018*, 301.

53 Statistics Mauritius (2018), *Digest of Crime, Justice and Security - Statistics 2017*, 38 and 54.

54 US Department of State (2018), *Trafficking in Persons Report 2018*, 299.

55 The U.S. Department of State places each country in its reports onto one of four tiers, as mandated by the Trafficking Victims Protection Act of 2000 (TVPA). The analyses are based on the extent of governments’ efforts measured against the TVPA’s minimum standards for the elimination of human trafficking, which are generally consistent with the Palermo Protocol. Governments of countries that do not fully meet the TVPA’s minimum standards but are making significant efforts to meet those standards are ranked as Tier 2.

56 US Department of State (2018), *Trafficking in Persons Report 2018*, 299.

57 US Department of Labor (2018), *2017 Findings on the Worst Forms of Child Labor*, 680.

IS MAURITIUS REALLY A TOURISM PARADISE ?

According to the 2017 Travel and Tourism Competitiveness Report published by the World Economic Forum, Mauritius ranked **55th as the most visited country in the world**. The China National Tourism Administration also ranked Mauritius as a number one destination in 2016.



SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM (SECTT)

The sexual exploitation of children in travel and tourism (SECTT) is defined as any “acts of sexual exploitation embedded in a context of travel, tourism, or both”.⁵⁸ The UNWTO Framework Convention on Tourism Ethics recognises that the exploitation of children conflicts with the fundamental aims of tourism and should be strongly combated with the cooperation of all the States concerned.⁵⁹

Being a tropical island with beautiful beaches and diverse flora and fauna, Mauritius is one of the top tourism destinations in the region.⁶⁰ According to the 2017 Travel and Tourism Competitiveness Report published by the World Economic Forum, Mauritius ranked 55th as the most visited country in the world.⁶¹ The China National Tourism Administration also ranked Mauritius as a number one destination in 2016.⁶²

Unfortunately, not every tourist comes to Mauritius for its beautiful scenery. In 2012, *Slate Africa* claimed that Mauritius was among the 10 major destinations for ‘sex tourism’⁶³ in Africa.⁶⁴ Members of the ECPAT International regional network also pointed at Mauritius for being one of the major destinations for travelling child sex offenders.⁶⁵

However, there is a considerable lack of data and information regarding such issues. The government should consider conducting a nationwide research to better understand the full scale of the phenomenon.

58 ECPAT International, Defence for Children, Ministry of Foreign Affairs of the Netherlands. (2016, May), *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism (hereinafter Global study on SECTT)*. Bangkok: ECPAT International.

59 UNWTO (2017), *Consideration, approval or adoption of the UNWTO Framework Convention on Tourism Ethics*, Article 5 (3), UN Doc. A/RES/707(XXII).

60 *Mauritius: The best Africa destination you know nothing about* (11 April 2017), *CNN*.

61 The World Economic Forum (2017), *Travel and Tourism Competitiveness Report 2017*, 9.

62 *Mauritius, No.1 preferred destination in China* (18 May 2016), *Indian Ocean Times*.

63 According to the *Terminology Guidelines*, 56 “‘child sex tourism’ is a term that could [...] be harmful to the child. Alternative terms such as ‘sexual exploitation of children in travel and tourism’ appear more appropriate”.

64 *Les grandes destinations du tourisme sexuel en Afrique* (6 June 2014), *Slate Afrique*.

65 *Global Study on SECTT*, 44.

CHILD, EARLY AND FORCED MARRIAGE (CEFM)

The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Luxembourg Guidelines) define 'child marriage' as "a marriage in which at least one of the parties is a child. It also refers to the act of marrying off children, usually young girls, with or without their consent".⁶⁶ Some forms of child marriage are related to commercial sexual exploitation of children, in cases where child marriage is linked to forced child labour, slavery and bondage, servitude or payment of a dowry.⁶⁷

According to Target 5.3⁶⁸ of the SDGs, governments must work to end harmful practices such as early child marriages. Unfortunately, the Mauritius government has reportedly consistently denied that there are harmful traditional practices in Mauritius.⁶⁹ In 2015, the CRC Committee expressed its concern that in Mauritius exceptions to the minimum age to marry (which allow for marriage at age 16 under certain circumstances), are

"possible and extensively granted with a high number of underage marriages in the country".⁷⁰ Although there is not relevant data or statistics on child marriage available,⁷¹ according to an academic expert, there is a number of informal unions taking place that are impossible to quantify because they are not registered.⁷² Furthermore, exceptions of the law with regard to religious marriage also make possible child marriage practices within certain faith communities.⁷³

A 2018 incident involving the death of a 13-year-old pregnant girl who was married has attracted the attention of the Mauritian public opinion into the issue of child marriage.⁷⁴ As a result, the government has established a team within the Ministry of Gender Equality, Child Development and Family Welfare, in order to analyse the phenomenon and start a process of consultations with NGOs and the public on the question of the minimum age to marry.⁷⁵ Although public awareness is being raised, no updated information is available on progress being made.

66 Terminology Guidelines, 63.

67 ECPAT International and Plan International (2015), *Thematic Report. Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*. Bangkok: ECPAT International.

68 Target 5.3: "Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations".

69 Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child by the Government of Mauritius*, para. 451.

70 Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*, para. 25.

71 Girls Not Brides (2019), *Child Marriage Atlas: Mauritius*.

72 Budoo, A. (4 July 2018), *It's time Mauritius took decisive steps to outlaw child marriages*, *The Conversation*. Ashwanee Budoo is the Project manager of the Master's in Human Rights and Democratisation in Africa at the Centre for Human Rights at the University of Pretoria.

73 *Of child marriage and the interpretation of the law* (25 June 2018), *Le Mauricien*; See also: US Department of State (2019), *Mauritius 2018 Human Rights Report*, 11.

74 Ibid., see also: Mauritius: #childnotbride – *The fight is on to end child marriage in Mauritius* (2 August 2018), *Gender Links*.

75 Ministry of Gender Equality, Child Development and Family Welfare (3 July 2018), *Communiqué Ministère de l'Égalité du Genre, du Développement de l'enfant et du Bien-Être de la Famille*. For the communicate in English see: Ombudsperson for Children Office (2018), *Annual Report 2017-2018*, 235.

International, Regional and National Commitments and Legislation on the Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council

International Instruments	Date of ratification/accession
Convention on the Rights of the Child - 1989	26 July 1990
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000	14 June 2011
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)	8 June 2000
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organized Crime)	24 September 2003
Regional Instruments	Date of ratification/accession
African Charter on Human and People's Rights - 1986	19 June 1992
Protocol on the Rights of Women in Africa (Maputo Protocol) - 2003	29 January 2005
African Charter on the Rights and Welfare of the Child - 1990	14 February 1992
African Youth Charter - 2006	8 February 2008

Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (CRC review)	2011 – 3rd - 5th periodic report submitted	<p>Concluding observations relevant to SEC:</p> <ul style="list-style-type: none"> • Ensure the incorporation of all the provisions of the Convention into the domestic legal order for full implementation; • Take measures for the National Child Protection Strategy and its Action Plan to cover all areas under the Convention, including measures concerning child victims of trafficking and prostitution; • Ensure that the minimum age of marriage, set at 18 years, is strictly enforced.

Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)		State's report overdue since July 2013
Human Rights Council – Working Group on the Universal Periodic Review	2018 – Third Cycle	<p>Conclusions and/or recommendations relevant to SEC:</p> <ul style="list-style-type: none"> • Over 14 recommendations urging for the finalisation, adoption and implementation of the Children's Bill with particular attention to early and forced marriage, trafficking, sexual exploitation and forced prostitution. • Seven recommendations on the finalisation of the drafting of the national action plan to combat human trafficking, particularly in children and continue developing capacity for trafficking investigations and prosecutions. • Ensure coordination among the law enforcement agencies and provide adequate access to recovery and reintegration measures to child victims of SEC; • Submit a national report on the CRC OPSC and ratify the Optional Protocol of the CRC on a Communication Procedure; • Consider reviewing the Civil Code and the Child Protection Act to ensure compliance with the minimum age of marriage established at 18 years and eradicate child early and forced marriage.⁷⁶

INTERNATIONAL AND REGIONAL COMMITMENTS

International commitments	
Commitment	Start date
Tourism and the Sustainable Development Goals: Journey to 2030	2017
The 2030 Agenda for Sustainable Development	2016
Partnerships for Sustainable Development Goals – an online platform that provides global engagement for multi-stakeholder partnerships and voluntary commitments from all stakeholders devoted to support the implementation of the Sustainable Development Goals.	2015
Education for Sustainable Development in the Indian Ocean Region – Partnerships for SDGs	2012

⁷⁶ Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*. Human Rights Council (2018), *Report of the Working Group on the Universal Periodic Review Mauritius*.

Regional commitments	
Commitment	Start date
African Union Agenda 2063 – The Africa We Want	2015
Southern African Development Community – a regional community aimed at deepening regional integration and accelerating poverty eradication. Their activities target, inter alia, children exposed to sexual exploitation, harmful trafficking, and harmful practices such as early marriages.	1992
Regional Police Chiefs Co-operation Organisation – two of the organisation’s priorities are crimes against women and children, and trafficking in human beings.	2006
Indian Ocean Child Rights Observatory – a regional monitoring body of child rights through networking, advocacy, research, and exchange of information.	1984

In terms of international commitments, although the country has signed and ratified a number of conventions, several challenges remain in relation to effective implementation. As a Member State of the African Union, the Mauritian government hosted the Sixth Conference of African Ministers in Charge of Integration in 2013.⁷⁷ Although the Conference was mainly focusing on economic growth in Africa, it concluded that there is a low implementation of international conventions and an insufficient incorporation of the conventions into national legal frameworks.⁷⁸ For example, despite the fact that Mauritius ratified the African Charter on the Rights and Welfare of the Child in 1992, it has not submitted any national periodic report to the Committee so far,⁷⁹ neither has it submitted any report for the OPSC review of the CRC Committee.⁸⁰

With regard to international and regional commitments to eradicate child marriage, Mauritius has ratified the African Charter on the Rights and Welfare of the Child, which has strong provisions against child marriage.⁸¹ Additionally, the country ratified in 2017 the Protocol to the African Charter on Human and People’s Rights

on the Rights of Women in Africa (also known as Maputo Protocol)⁸² although it is unclear whether ratification included reservations to article 6(b), which prohibits the marriage of a girl under 18 years of age. Official clarification from the Mauritian Government on their ratification status and the implications of this ratification with regard to domestic legislation on the minimum age to marry is needed. Furthermore, Mauritius has yet to ratify the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages,⁸³ and sign the Southern African Development Community Protocol on Gender and Development,⁸⁴ which also prohibits child marriage in its article 8.⁸⁵

Mauritius has been actively participating in the implementation and mainstreaming of SDGs through various measures and plans in collaboration with governmental ministries, NGOs and the private sector. In 2015, Mauritius committed to the 2030 Agenda for SDG and the Ministry of Foreign Affairs, Regional Integration and International Trade, with the assistance of the UN Resident Coordinator’s office and Standard Chartered Mauritius, launched a project called

77 African Union (2013), *Sixth Conference of African Ministers in Charge of Integration 15-19 April 2013, Port Louis, Mauritius*.

78 *Ibid.*

79 ACERWC (n.d.), *Reporting Table*.

80 UN OHCHR (n.d.), *Reporting Status for Mauritius*.

81 Article 21(2) of the *African Charter on the Rights and Welfare of the Child* explicitly states “child marriage and the betrothal of girls and boys shall be prohibited” and that “effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years.”

82 Committee on the Elimination of Discrimination against Women (2018) *Eighth periodic report submitted by Mauritius under article 18 of the Convention pursuant to the simplified reporting procedure*, para. 159. See also: The Ministry of Foreign Affairs, Regional Integration, and International Trade (2017) *News: Accession to the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa*.

83 United Nations Treaty Collection (1962) *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages: Signatories*.

84 *Revised SADC gender protocol enters into force* (20 Aug 2018), *Tralac News*.

85 Southern African Development Community (2008), *SADC Protocol on Gender and Development*, South Africa.

‘UNSDGs Campaigns in Mauritius’.⁸⁶ Moreover, Statistics Mauritius hosted a workshop in 2016 to spread awareness on the importance of the SDGs, with around 100 participants including NGOs, the private sector, Trade Unionists, and the media.⁸⁷ Mauritius Prime Minister took the commitment to present the first Mauritius Voluntary National Report (VNR) in July 2019 at the High Level Development Forum of the ECOSOC in New York.⁸⁸ The report is a snapshot of how Mauritius is implementing SDGs and a first draft was made available at the beginning of 2019 for feedback and comments from the public.⁸⁹ Unfortunately, the draft VNR does not mention any progress or specific measure taken to address child sexual exploitation in any of its manifestations.

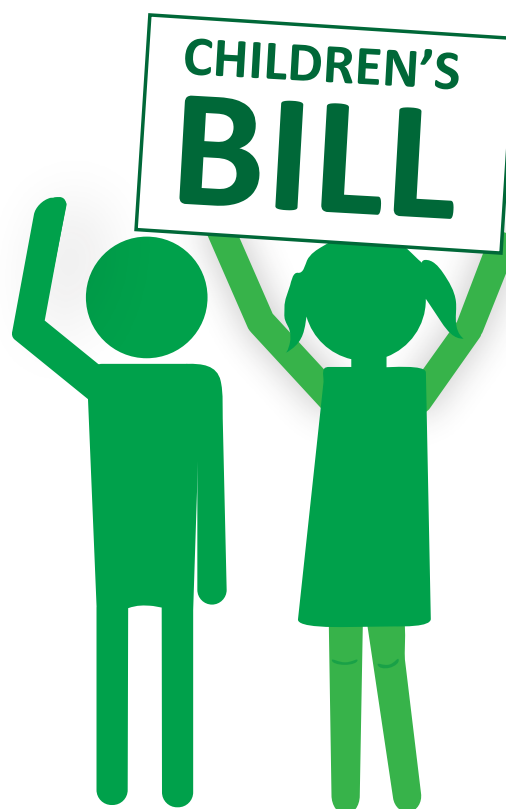
With reference to commitments made by the private sector, as of May 2019, there are nine national companies and sixteen international companies with operations in Mauritius, which are members of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (The Code).⁹⁰

NATIONAL LEGISLATION

The Supreme Court of Mauritius has not been consistent when dealing with the question of whether international treaties, which have not been incorporated in the national legal framework, impose obligations on Mauritius.⁹¹ At the time of writing, the government has not yet made any comprehensive incorporation of the CRC and other relevant international treaties into its national law system.

The main laws penalising SEC offences in Mauritius are the Child Protection Act and the Criminal Code, which in many provisions do not meet international standards. The existing legal loopholes and gaps create significant obstacles to

the provision of adequate child protection. The CRC Committee has highlighted this neglect in its most recent Concluding Observations from 2015, urging the Government to take immediate actions. The Children’s Bill (the “Bill”), which is currently under finalisation, will purportedly seek to ensure compliance with the principles and provisions of the CRC by consolidating the different pieces of national legislation covering aspects of children’s rights, including protection of children from sexual exploitation, in a unified national framework.⁹²



In February 2018, a consultative meeting was held with NGOs, social workers and legal experts to discuss possible emerging issues affecting children and come up with provisions that would be included in the Bill.⁹³ The Minister of Gender Equality, Child Development and Family Welfare remarked that the best interest of the child will

⁸⁶ The Ministry of Foreign Affairs, Regional Integration, and International Trade (2015), *The United Nations Sustainable Development Goals Campaigns in Mauritius*.

⁸⁷ Statistics Mauritius (2016), *Workshop on the Development of SDGs Statistical Indicators*.

⁸⁸ Ministry of Foreign Affairs, Regional Integration and International Trade (2019, March 22), Press Communique from the VNR Team.

⁸⁹ Government of Mauritius (2019), Mauritius VNR (Draft).

⁹⁰ The Code is a private sector initiative, supported by ECPAT, UNICEF and the UNWTO, to provide awareness, tools and support to companies in the tourism industry to prevent the sexual exploitation of children. The Code (2017), Members of The Code: Mauritius.

⁹¹ Ddamulira Mujuzi, J. (2018), *The Supreme Court of Mauritius and Its Reliance on International Treaties to Interpret Legislation: Reconciling the Tension Between International Law and Domestic Law*, *Statute Law Review*, Volume 39, Issue 2, June 2018, 118–133.

⁹² Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child by the Government of Mauritius*, para. 222.

⁹³ *Draft Children’s Bill: Consultative Meeting discusses emerging issues affecting children* (26 February 2018), Government Information Service, Prime Minister’s Office.

be provided for in line with the CRC and that children shall be consulted before the finalisation of the Bill, in line with the CRC principles of child participation.⁹⁴ Later that year, a validation workshop on the draft of the Bill was held as a joint collaboration of the Ministry of Gender Equality, Child Development and Family Welfare and the EU, with representatives from the public sector and NGOs.⁹⁵ The Minister pointed out that some of the issues considered during consultative meetings for their inclusion in the Bill included “institutional mechanism for a better child protection service; age of marriage and age of consent; age of criminal responsibility and child abuse and neglect”.⁹⁶ A recent communication dated June 2019 from the Mauritius Government announcing Cabinet Decisions included an update on the Children’s Bill, whose drafting “has been agreed in accordance with the major policy orientations elaborated following consultations with key stakeholders”.⁹⁷ This announcement shows that the issue is being prioritised in the political agenda although the expected date of approval of the bill still remains unknown.

Exploitation of children in prostitution

The exploitation of children in prostitution is broadly defined in the Child Protection Act as a “sexual offence” when “any person who causes, incites or allows any child to (a) be sexually abused by him or by another person; (b) have access to a brothel; and (c) engage in prostitution”.⁹⁸ It specifies that a child shall be deemed to be “sexually abused where he has taken part whether as a willing or unwilling participant or observer in any act which is sexual in nature”.⁹⁹ Under Section 18 (5) of the Act, such offences shall be penalised with a maximum imprisonment of up to 10 years.¹⁰⁰ The punishment can be increased to 15 years of imprisonment in cases where the victim is a child with an intellectual disability.¹⁰¹ The Criminal Code of Mauritius provides similar criminalisation of child sexual exploitation

in prostitution but with increased penalties (maximum of 20 years of imprisonment).¹⁰²

Additionally, the Criminal Code contains other SEC related provisions regarding ‘illegal sexual intercourse’, commitment of indecent acts upon children and debauching of youth, all of which differ on the definition of a child, are often times inconsistent and contain a number of significant loopholes. The provision criminalising the commitment of indecent acts only protects children below 12,¹⁰³ whilst that referring to sexual intercourse only protects children under 16, thereby establishing the age of sexual consent at 16.¹⁰⁴ For both provisions, penalties are increased if the perpetrator is in a position of trust.¹⁰⁵ It is worth nothing that the Code explains neither what constitutes an ‘indecent act’ nor defines ‘minor’. Another apparent inconsistency is delineated by Article 250 (2), which establishes a minimum of 2-year imprisonment for the crime of sodomy committed on a minor. A worrisome aspect of the legislation is that Article 249 (7) states that it shall be a “sufficient defence” to any prosecution of the crimes in Articles 249 (3) and (4) if the person charged had “reasonable cause to believe that the child was above the age of 12 or 16, as the case may be”.¹⁰⁶ This is troubling because it could potentially allow sexual abuse and exploitation of a child as young as 13 and contribute to offenders evading criminal responsibility if they plead unawareness of the victim’s age.

Lastly, under Article 251 on ‘Debauching Youth’, the Criminal Code penalises “habitually exciting, encouraging, or facilitating the debauchery or corruption of youth” with a maximum imprisonment of 10 years, when committed against “youth of either sex under the age of 18”.¹⁰⁷

94 *Ibid.*

95 *Children’s Bill will significantly help tackle child-related challenges, says Minister Jadoo-Jaunbocus* (28 May 2018), *Government Information Service, Prime Minister’s Office*.

96 *Ibid.*

97 *Cabinet Decisions taken on 07 JUNE 2019* (7 June 2019), *Government Information Service, Prime Minister’s Office*.

98 *Child Protection Act* (1994), Section 14 (1).

99 *Ibid.*, Section 14 (2).

100 *Ibid.*, Section 18 (5) (b).

101 *Ibid.*, Section 18 (5) (a).

102 *Criminal Code* (1838), Section 253 (2) (a).

103 *Ibid.*, Section 249 (3).

104 *Ibid.*, Section 249 (4).

105 *Ibid.*, Section 249 (5).

106 *Ibid.*, Section 249 (7).

107 *Ibid.*, Section 251 (1).

The penalty is increased if the person corrupting the morality of the child and encouraging ‘prostitution’ were parents, guardians or other persons entrusted with the care of the child. This provision could provide for an exception to the age of consent, rising the standard to 18 years for cases of debauchery involving sexual activity, although reducing the penalty in comparison with the ones provided for the crime of illegal sexual intercourse.¹⁰⁸

Online child sexual exploitation (OCSE)

In Mauritius, there is no explicit law that defines ‘online child sexual exploitation’. The Child Protection Act, however, includes in its definition of acts of sexual nature “any activity of pornographic, obscene or indecent nature” which may partially entail some manifestations of OCSE.¹⁰⁹

Although the Act does not provide a definition for CSAM/CSEM, it penalises any person who takes, makes, distributes, shows, publishes or possesses indecent photographs of children with a view to distribute or show them, with a maximum of 10 years of imprisonment.¹¹⁰ In the case of child victims with intellectual disabilities, the penalty can be increased up to 15 years.¹¹¹ Additionally, in cases where a pseudo-photograph either conveys the “impression” that the person is a child or the “predominant impression” conveyed is that the person is a child, despite possessing some physical characteristics of an adult, such materials shall be considered “indecent photographs of children”.¹¹²

Unfortunately, the Act has several limitations. First, it does not specify whether this provision also applies to videos, audio material and live streaming of child sexual abuse. Second, it provides an offender with a chance to present a defence and prove that either he had reasonable grounds for the distribution or possession of such materials, that he had not seen them and/or that he did not know the material was indecent.¹¹³ Such an opportunity for defence could lead to

restrictions in bringing offenders to justice. Third, the provision does not specify whether knowingly obtaining access to child sexual abuse material is criminalized. Lastly, the mere possession of the material without a view to distribute or show it to other people is not criminalized either.

The Information and Communication Technologies Act may also be relevant, although its provisions do not specifically target SEC. Under Section 18, the Information and Communication Technologies Authority shall “take steps to regulate or curtail the harmful and illegal content on the Internet and other information and communication services”.¹¹⁴ Under Section 46, it is a criminal offence and penalised with up to five years of imprisonment¹¹⁵ when a person “uses an information and communication service, including the telecommunication service for the transmission or reception of a message which is grossly offensive, or of an indecent, obscene or menacing character”.¹¹⁶

In order to address the many gaps still present in Mauritian legislation regarding OCSE, a Child Online Safety Bill is to be drafted by the Department of Information and Communications Technology and the Ministry of Gender Equality, Child Development and Family Welfare.¹¹⁷ At the time of writing, there is no information on the expected timeframe for the approval of this bill or whether its content will be comprehensive enough to effectively address the risks of OCSE.

Sale and trafficking of children for sexual purposes

The Mauritian legal framework relating to the sale and trafficking of children for sexual purposes is comprehensive and in compliance with relevant international instruments. The main law that deals with the issue is the Combating of Trafficking in Persons Act, with Section 3 explicitly stating that the Act shall be applied “in addition to, and not in derogation from, the Child Protection Act”.¹¹⁸ The definition provided for human trafficking is in

108 *Ibid.*, Section 249 (4).

109 *Child Protection Act* (1994), Section 14 (2) (b).

110 *Ibid.*, Section 15 (1).

111 *Ibid.*, Section 18 (5) (a) and (b).

112 *Ibid.*, Section 15 (3).

113 *Ibid.*, Section 15 (2).

114 *Information and Communication Technologies Act* (2001), Section 18 (m).

115 *Ibid.*, Section 47 (1).

116 *Ibid.*, Section 46 (h) (i).

117 Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child by the Government of Mauritius*, para. 342.

118 *Combating of Trafficking in Persons Act* (2009), Section 3.

line with the Palermo Protocol.¹¹⁹ Furthermore, it defines 'sexual exploitation' as "obtaining financial or other benefits through the involvement of another person in prostitution or in other kinds of sexual services, including pornographic acts or the production of pornographic materials, as a result of subjecting another person to one of the means listed in [...]the definition of 'trafficking'".¹²⁰ Lastly, it clearly states that a minor can never consent to trafficking, and that therefore, the idea that a victim consented to being trafficked can never be used as a defence.¹²¹

Another relevant law is the Child Protection Act. In 2005, it was amended to include specific provisions on 'child trafficking'. The Act criminalises the trafficking of children both within and outside the national borders.¹²² The Act further protects child victims by prohibiting the release of press reports including details related to the child's identity as well as the publication of photos of the child by newspapers and broadcasts.¹²³ Unfortunately, neither the Combating of Trafficking in Persons Act nor the Child Protection Act distinguishes the concepts of 'sale' and 'trafficking'.¹²⁴

Sexual exploitation of children in travel and tourism (SECTT)

There is no explicit legal provision that penalises the sexual exploitation of children in travel and tourism.

Although it does not address SECTT directly, the Tourism Authority Act may facilitate a partial prevention of sexual exploitation through the tourism and travel sector. Under Section 126, any person who "carries on his business or operates a tourist enterprise in a manner contrary to the interests of public health, public order or public safety" shall be sentenced with a maximum of 3 years of imprisonment and a fine up to 100,000

Rupees (approximately 2,900 USD as of April 2019).¹²⁵

Child, early and forced marriages (CEFM)

The main legal instrument that governs marriage in Mauritius is the Civil Code, dating back to 1808. It has not been entirely revised or amended yet, which causes legal loopholes and fails to prevent child marriages. According to Article 144, "no one can enter into marriage before the age of 18".¹²⁶ However, a minor who is above the age of 16 can marry with parental consent or with permission from a judge.¹²⁷ As stated previously, data indicates that numerous child marriages with parental consent do occur. Furthermore, a claim for annulment of an underage marriage cannot be made when the parties 'tacitly' approve the marriage, six months have passed, or the woman has conceived before the six months deadline.¹²⁸ When a minor enters into marriage, he/she will automatically be emancipated and will have to assume all the responsibilities and rights of an adult.¹²⁹ Furthermore, religious marriages have no codified minimum age and often go unregistered, which can result in child marriages among certain faith groups that tend to be more tolerant towards this practice.¹³⁰

The CRC Committee expressed its concern with the definition of a child under the Child Protection Act as any 'unmarried' person.¹³¹ There is also another worrisome provision in the Child Protection Act. Under Section 13C (4), if the person who abducted a child is civilly married to the child, then he shall not be prosecuted.¹³² The wording of the article and especially the use of the pronoun 'he' when referring to the offender additionally indicates a potential lack of protection for boys, as well as a failure to punish female offenders.

119 *Ibid.*, Section 2.

120 *Ibid.*

121 *Ibid.*, Section 11 (1) (b).

122 *Child Protection Act* (1994), Section 13A (2).

123 *Ibid.*, Section 13A (5) (a) and (b).

124 Human Rights Council (2011), *Report of the Special Rapporteur on the sale of children and sexual exploitation on her visit to Mauritius*, 9 November 2011, A/HRC/19/63/Add.1, para. 33.

125 *Ibid.*, Section 126 (d).

126 *Mauritian Civil Code* (1808), Article 144.

127 *Ibid.*, Article 145.

128 *Ibid.*, Article 183.

129 *Ibid.*, Article 183.

130 Musawah (2018), *Thematic Report on Muslim Family Law and Muslim Women's Rights in Mauritius*, 12.

131 The Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*, para. 25.

132 *Child Protection Act* (1994), Section 13C (4).

Extraterritorial jurisdiction and extradition law

The Mauritius Criminal Code does not establish extraterritorial jurisdiction for offences committed outside the country, or by a foreigner. For its part, although it criminalises child trafficking even when it happens “outside Mauritius” but “for the purpose of exploitation in Mauritius”, the Child Protection Act remains unclear about the applicability of its provisions on foreigners who commit a crime with no connection to Mauritius. According to the Combating of Trafficking in Persons Act, Mauritian jurisdiction applies to any person (including foreigners arrested in Mauritian territory) who commits an offence provided by the Act, outside Mauritius.¹³³

With regard to extradition for SEC related crimes, a new Extradition Act was passed in 2017, which sets the rules for extradition and includes a double criminality requirement.¹³⁴ Any act that is punished by the laws of Mauritius and the requesting State by imprisonment or other deprivation of liberty for a term of not less than 2 years, regardless of differing categorization, terminology or constituent elements of the crime, can be extraditable.¹³⁵ This allows for extradition of several SEC related crimes that fulfil these conditions. However, as it is the case with legislation on extradition in many countries, the law provides that a request for extradition of a person by a foreign State may be refused if that person is a citizen of Mauritius.¹³⁶

¹³³ *Combating of Trafficking in Persons Act* (2009), Section 15.

¹³⁴ *Extradition Act* (2017), Section 5. The double criminality principle requires the conduct of the prospective extradited person to constitute an offence in the jurisdictions of both the requesting state and the receiving state.

¹³⁵ *Extradition Act* (2017), Section 5(1).

¹³⁶ *Ibid.*, Section 9(a)(iii).

National Response to the Sexual Exploitation of Children

COORDINATION AND COOPERATION

Although, the CRC Committee urged the government in 2015 to establish an effective coordination body with a clear mandate and sufficient authority,¹³⁷ as of May 2019 the government has yet to establish a main pivotal body, which specifically coordinates policies and measures against the sexual exploitation of children.

Nevertheless, several governmental bodies deal with children's rights. The Child Development Unit, established by the Ministry of Gender Equality, Child Development and Family Welfare, assists child victims of abuse, including child victims of sexual exploitation.¹³⁸ Concerning law enforcement units working with children, different entities operate under the Mauritius Police Force: the Police IT Unit, the Police Crime Prevention Unit, and the Police Family Protection Unit, which established a '*Brigade des Mineurs*' that focuses on SEC and especially OCSE.

In addition to ministerial bodies, there are various and relevant quasi-governmental independent entities, such as the National Children's Council,¹³⁹ the Office of the Ombudsperson for Children, the National Human Rights Commission and the Human Rights Monitoring Committee.

The country has also created specific bodies focusing on particular issues relating to SEC. With regard to human trafficking, an Inter-Ministerial Committee on Human Trafficking was set up in 2016 in order to coordinate anti-trafficking efforts in Mauritius.¹⁴⁰ It is chaired by the Attorney General's Office and comprises representatives from the Ministry of Labour and the Ministry of Gender Equality Child Development and Family Welfare among others.¹⁴¹ However, at the time of writing there is no information on whether the Committee is effectively operating.

Despite the *de jure* existence of multiple government bodies dealing with children's rights, it is difficult to know whether all these actors are active in practice.¹⁴² Furthermore, such a plethora of institutions dealing with children rights issues has caused fragmentation between entities.¹⁴³ Difficulty in coordinating the different bodies and a lack of clarity concerning their respective responsibilities and roles has significantly hindered communication among the various child rights agencies. For example, when a child is in need of help, NGOs find it hard to know to which section or department they should refer the child. Not only that, but even when a child is referred to a specific department, it is frequently the case that he/she will be redirected to another department later on. The significant lack of coordination and consistency between the different child rights

137 Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*, para. 14.

138 Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child by the Government of Mauritius*, para. 237.

139 Ministry of Gender Equality, Child Development and Family Welfare (n.d.), *The National Children's Council*.

140 Government of Mauritius (19 July 2016). *Sixth National Assembly- Parliamentary Debates*, 24. See also: PM: Mauritius has solid reputation for respect of Human Rights (20 July 2016), *Government Information Service, Prime Minister's Office*.

141 US Department of Labor (2018), *2017 Findings on the Worst Forms of Child Labor*, 680.

142 Halley Movement (May 2019), Personal Communication.

143 Human Rights Council (2014), *Convention on the Rights of the Child: Alternative report for Mauritius*, 11.

bodies means that children may not receive the protection they need.¹⁴⁴

This being said, there are a number of initiatives and plans that have been adopted with regard to child protection, some of which focus on SEC-related issues. The National Child Protection Strategy and its Action Plan (2014-2022), which aim to prevent violence against children, were prepared in 2014 with the assistance of the European Union.¹⁴⁵ A considerable budget has been allocated to the plan (around 2 million US dollars). However, the CRC in 2015 expressed its concern about the lack of implementation and monitoring¹⁴⁶ and at the time of writing, no updated information has been found on the implementation of the plan.

With regard to efforts to end child trafficking, the government drafted in 2016 a National Plan to Combat Human Trafficking, which is still in the process of being adopted.¹⁴⁷ The government is also reportedly working on a comprehensive policy and strategic plan for children and the Police Department is collaborating with international organizations such as INTERPOL to gather information and intelligence for offences including those related to human trafficking having an international dimension.¹⁴⁸ In line with this, in 2016, the International Organisation for Migration Country Programme trained relevant law enforcement officials in counter trafficking.¹⁴⁹ Similarly, in November 2017, IREX delivered a capacity development programme to the criminal justice sector actors in Mauritius for improved implementation of anti-trafficking laws, and more coordination among police and prosecutors to investigate and prosecute trafficking crimes and avoid delays in the legal process.¹⁵⁰

Although not entirely focused on SEC, the government launched a “Government Programme Achieving Meaningful Change” (from 2015 to 2019) at the First Session of the Sixth National Assembly in 2015.¹⁵¹ It committed to adopt a zero-tolerance policy on child abuse. Moreover, it introduced a separate electronic register of perpetrators of child sexual abuse.¹⁵² In 2017, the Prime Minister and the Minister of Finance and Economic Development announced that they will focus on improving children’s rights, and that they will provide adequate social protection through the allocation of a new budget (2017-2018) to the Ministry of Gender Equality, Child Development, and Family Welfare.¹⁵³ The allocated budget includes provisions for shelters, day-care centres and the promotion of foster care but there is no explicit mention of provisions for child victims of SEC.¹⁵⁴

PREVENTION MEASURES, AWARENESS-RAISING AND EDUCATION

Mauritius has been active in implementing activities related to child protection including the prevention of sexual exploitation of children.

The Crime Prevention Unit carries out various activities including school sensitisation campaigns, youth crime prevention, parents’ sensitisation, setting up neighbourhood watch schemes, rehabilitation programmes, victim support and advice programmes, and publication of crime prevention literature (booklets/leaflets).¹⁵⁵ The *Brigade des Mineurs*, in close collaboration with the National Children’s Council and the Child Development Unit, as well as civil society organizations like the Halley Movement, carried

144 *Ibid.*

145 Minister of Gender Equality, Child Development and Family Welfare calls for reforms (5 March 2015), *Government Information Service, Prime Minister’s Office*.

146 Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*, p. 11-12

147 Mauritius Government (2019), *Draft 02 – Mauritius Voluntary National Review (VNR) 2019*, 73

148 Human Rights Council (2018), *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 submitted by the Republic of Mauritius*, para. 77.

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150 IREX (n.d.) *Trafficking in Persons Legal Assistance Programme (TIP-LAP)*; US Department of Labor (2018), *2017 Findings on the Worst Forms of Child Labor*, 680.

151 The Government of Mauritius (2015), *Government Programme Achieving Meaningful Change 2015-2019*, 29, para. 129.

152 *Ibid.* 30, para. 134; See also, Minister of Gender Equality, Child Development and Family Welfare calls for reforms (5 March 2015), *Government Information Service, Prime Minister’s Office*.

153 Mauritius: *Budget 2017-2018 Highlights - Measures for Women Empowerment and Child Development* (15 June 2017) *All Africa*.

154 *Ibid.*

155 The Mauritius Police Force (n.d.), *Crime Prevention Unit*

out sensitisation campaigns throughout the island to raise awareness on SEC.¹⁵⁶

The Ombudsperson for Children Office organized three consultative meetings on child sexual abuse on the theme “A Safer Childhood: A Milestone for Mauritian Independence” in February 2018, inviting high-level representative from public, parastatal and private sectors and the civil society to renew their commitment to end child sexual abuse and improve networking relationships among relevant stakeholders.¹⁵⁷

The National Cybercrime Prevention Committee, under the Ministry of Information and Communication Technology, was set up to improve the cyber environment of children and young adults in particular. The Mauritian computer Emergency Response Team was also set up to implement proactive measures to reduce risks.¹⁵⁸ The Internet Child Safety Foundation also has been running a campaign since 2001, targeting parents to alert them of the risks and harms that children can be exposed to whilst online.¹⁵⁹ Since 2009, the Ministry of Information and Communication Technology, the Ministry of Gender Equality, the *Brigade des Mineurs*, and the Office of the Ombudsperson for Children, have been organising workshops for the Safer Internet Day.¹⁶⁰ Some of the workshops organized this year for students and teachers dealt with topics such as how consent works in an online context or how to understand and identify risks for children on the Internet.¹⁶¹

With regard to child trafficking prevention, the ‘*Brigade des Mineurs*’ conducts extensive public awareness campaigns in schools and community centres, spreading information on the dangers and consequences of trafficking of children for sexual purposes.¹⁶² Furthermore, the Ministry of Tourism and external Communication reached out to

tourism operators by distributing pamphlets about the consequences of engaging in or facilitating trafficking of children for sexual purposes.¹⁶³ In 2017, the police educated 1,646 students in 96 primary and secondary schools on the prevention of SEC and human trafficking.¹⁶⁴ Moreover, from January to June 2018, 1,811 persons have been sensitised on child protection issues inclusive of child trafficking in primary and secondary schools, social welfare and community centres by officers of the Child Development Unit and psychologists of the Drop in Centre.¹⁶⁵

Besides government bodies and the police, many other actors are involved in prevention and awareness raising on SEC-related issues. Among those, NGOs, governmental agencies and the private sector are at the forefront. The Halley Movement together with the Mauritius Internet Governance Forum hosted the first National Internet Governance Forum on “Enhancing Digital Trust to Encompass Online Child Safety”, in 2017.¹⁶⁶ One of the sub-themes included the prevention of online sexual violence.¹⁶⁷ Later on, in August 2018, the Halley Movement organized the Mauritius Youth Internet Governance Forum, bringing together local participants from the IT sector, civil society, academia, business sector and youth advocates to discuss issues related to the protection of children online.¹⁶⁸ The next Internet Governance Forum will take place in August 2019 and will bring together national and regional experts to discuss about the impact of the Internet on OCSE.¹⁶⁹

On a different note, Air Mauritius has conducted a project to protect children from sexual exploitation by raising awareness on the issue among passengers who are also given the opportunity to make donations to the NGO, Association Airline Ambassadors.¹⁷⁰ The airline is active in preventing

156 The Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child by the Government of Mauritius*, para. 117. Information confirmed through Halley Movement, (May 2019). Personal communication.

157 Ombudsperson for Children Office (2018), *Annual Report 2017-2018*, 257.

158 The Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child by the Government of Mauritius*, paras. 342-346.

159 *Good Digital Parenting Campaign in Mauritius* (4 August 2016), Internet Child Safety Foundation.

160 National Computer Board (n.d.), *Safer Internet Day 2019*.

161 Safer Internet Day Mauritius (2019), *Welcome to Safer Internet Day 2019*.

162 US Department of State (2018), *Trafficking in Persons Report 2018*, 300.

163 *Ibid.*

164 US Department of Labor (2018), *2017 Findings on the Worst Forms of Child Labor*, 681.

165 Ministry of Gender Equality, Child Development and Family Welfare (n.d.), *Child Development Unit*.

166 Halley Movement (2017), *Mauritius IGF and National Stakeholders’ Summit*.

167 Mauritius Internet Governance Forum (2017), *Mauritius IGF 2017 - Call for Abstracts*.

168 *Youth Forum focuses on online child protection* (17 august 2018), Government Information Service, Prime Minister’s Office.

169 Halley Movement (May 2019), Personal Communication.

170 Air Mauritius (2017), *Our Commitments as a responsible airline*, (viii) Social Development Goals (SDGs).

SECTT and in encouraging many companies to become signatories to The Code of Conduct.¹⁷¹

Other initiatives aiming to prevent SECTT include the brochure produced in 2010 by the Ministry of Tourism in collaboration with the Association des Hôteliers et Restaurateurs de l'île Maurice and the Office of the Ombudsperson for Children, highlighting the responsibilities of tourism industry stakeholders in the fight for zero tolerance to sexual exploitation of children. The brochure was reportedly reviewed and updated in 2018 for circulation to all operators.¹⁷²

CHILD PROTECTION, ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

National complaint mechanisms

There are various legal mechanisms for children to access justice in Mauritius if they believe their rights were violated. Those include Constitutional complaints, civil/penal claims, administrative actions, the Ombudsman for children's Office, the National Human Rights Commission, and the African Union. None of these mechanisms though are specific to SEC.

Chapter II of the Constitution provides a framework for human rights protection that includes children.¹⁷³ Section 17 allows any person to apply directly to the Supreme Court for redress when they allege that their fundamental rights enumerated in Chapter II have been violated.¹⁷⁴ The Criminal Procedure Act also allows a person to either request the Director of Public Prosecutions to initiate a prosecution on their behalf or initiate prosecution themselves under Sections 4 and

5, respectively.¹⁷⁵ The Civil Code of Mauritius extends the complaint mechanisms available to children. Section 7 stipulates that each person has a legal personality.¹⁷⁶ However, a minor has to reach the age of majority to perform civil acts¹⁷⁷ except if a child is deemed 'capable of discernment', in which case, he/she may file a proceeding and request to be heard alone by a court of judge in any proceedings concerning him or her.¹⁷⁸ Such requests cannot be refused unless a special reasoning is followed.¹⁷⁹ There seems to be no age restriction on filing a case, but in general, young children are under the care of a duly authorised legal advisor (including parents),¹⁸⁰ and if the choice of the latter is considered to go against the best interests of the child, then the judge may appoint someone else.¹⁸¹ If the legal advisor represents the child, he/she will perform all civil actions on behalf of the child, except in the case where the child can act for him/herself.¹⁸² Unfortunately, it has been reported that, even though the law allows child victims to file a civil suit, the proceedings are very lengthy and expensive.¹⁸³

On top of legal provisions, several governmental entities provide complaint mechanisms for children. The Child Development Unit of the Ministry of Gender Equality, Child Development and Family Welfare investigates cases of child sexual abuse through two referral pathways differentiated by the type of perpetrator (family or non-family member).¹⁸⁴ Both pathways involve a similar process which includes filing the child's statement, medical examinations, individual and/or joint interviews, sharing information between the police and the Unit, referring cases to the Office of the Director of Public Prosecutions and producing the appropriate psychosocial reports and rehabilitation plans.¹⁸⁵ Referrals to the Child Development Unit come from several sources such as statutory authorities, non-state actors,

171 Programme Manager of The Code (May 2019), Personal Communication.

172 Committee on the Elimination of Discrimination Against Women (2018), *Eighth periodic report submitted by Mauritius under article 18 of the Convention pursuant to the simplified reporting procedure*, para. 56.

173 *Constitution of Mauritius* (1968), Chapter II: Protection of Fundamental Rights and Freedoms of Individual.

174 *Ibid.*, Section 17.

175 *Criminal Procedure Act* (1853), Sections 4 and 5.

176 *Mauritian Civil Code* (1808), Section 7.

177 *Ibid.*, Section 488.

178 *Ibid.*, Section 388-1.

179 *Ibid.*

180 *Ibid.*, Section 388.2.

181 *Ibid.*, Sections 388-1, 388-2 and 390.

182 *Ibid.*, Section 390.

183 US Department of State (2017), *Trafficking in Persons Report 2017*, 278.

184 Ombudsperson for Children Office (2018), *Annual Report 2017-2018*, 261.

185 *Ibid.*

community-based organizations, schools and the public. The Unit also operates a hotline through which anonymous referrals on child abuse, including SEC manifestations can be sent.¹⁸⁶ In 2017, 5,104 cases of child abuse were reported to the Child Development Unit, out of which 260 referred to cases of child sexual abuse,¹⁸⁷ however, these statistics do not disaggregate by type of sexual abuse and it is therefore not possible to know how many of the referrals correspond to SEC cases.

In accordance with the Constitution,¹⁸⁸ under the Ombudsman Act,¹⁸⁹ and the Ombudsperson for Children Act,¹⁹⁰ a child may file a complaint with the Ombudsperson. The tasks of the Ombudsperson include, among many, launching an investigation as he/she sees fit, and the investigation of any complaints lodged by a child.¹⁹¹ However, the provisions do not give the Ombudsperson power to bring a court case on behalf of the child nor investigate a case that is pending before any court.¹⁹² So far, engagement with the Ombudsman has been very limited, as underlined by the Mauritius delegation to the CRC, who claimed that from June 2013 to May 2014 only seven complaints have been received.¹⁹³ No updated information on the amount of complaints referred to the Ombudsperson for Children in subsequent years is available.

Stakeholders have criticised the limited effectiveness of child-friendly complaints and reporting mechanisms and noted other structural problems. These include understaffing issues in CDU outstations, limited capacity in NGO-run residential care institutions for victims of child sexual abuse, lack of training among police officers on how to engage with victims in a safe

conversation to obtain better statements as well as lack of specialised social workers and mental health professionals.¹⁹⁴ These deficiencies can hinder the efforts to effectively investigate and prosecute cases of SEC. The CRC Committee also recommended that the government hire additional qualified investigators to better address complaints made by children.¹⁹⁵ According to the CDU Annual Report of Performance for the years 2016 and 2017, 12 staff were hired in 2016 (three psychologist, three Family Welfare and Protection Officers and six Enforcement Officers)¹⁹⁶ and four more in 2017 (two coordinators and two Family Welfare and Protection Officers)¹⁹⁷ in order to better respond to the needs of children from the CDU.

Lastly, Mauritius has ratified the African Charter on the Rights and Welfare of the Child. This means that, after having exhausted all available national remedies,¹⁹⁸ any child (as well as any person, group or NGO) can pursue a complaint to the African Committee of Experts on the Rights and Welfare of the Child,¹⁹⁹ although there have been no cases of this happening so far from Mauritius.

Child-sensitive justice

A number of legal mechanisms are available to provide child-friendly and child-sensitive justice in Mauritius. Firstly, under the Constitution, any person under the age of 18 can be excluded from public proceedings in the interest of his/her welfare.²⁰⁰ According to the Child Protection Act, if it is in the interest of a child, his/her statement can be recorded in “the absence or without the consent of his parent”.²⁰¹ Under Section 13A (5), information on child victims of trafficking shall not

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*, 262.

¹⁸⁸ *Constitution of Mauritius* (1968), Section 97, Investigations by Ombudsman.

¹⁸⁹ *Ombudsman Act* (1969), Section 3, accessed 27 December 2017.

¹⁹⁰ *Ombudsperson for Children Act* (2003), accessed 27 December 2017.

¹⁹¹ *Ibid.* Section 6 (f) and (j).

¹⁹² *Ibid.*, Section 7(4).

¹⁹³ Child Rights Connect (2015), State Party Examination of Mauritius' Third to Fifth Periodic Report, p.3.

¹⁹⁴ Ombudsperson for Children Office (2018), *Annual Report 2017-2018*, 262.

¹⁹⁵ Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*, para 20.

¹⁹⁶ Child Development Unit (2018), *CDU Annual Report of Performance FY 2016/2017*, 24.

¹⁹⁷ *Ibid.*, 26.

¹⁹⁸ African Committee on the Rights and Welfare of the Child (2014), *Revised Guidelines for the Consideration of Communications*, Section IX.

¹⁹⁹ *African Charter on the Rights and Welfare of Child* (1990), Article 44; *African Charter on Human and Peoples' Rights* (1981), Article 55.

²⁰⁰ *Constitution of Mauritius* (1968), Article 10 (10) (a).

²⁰¹ *Child Protection Act* (1994), Section 12.

be published.²⁰² In accordance with the Criminal Procedure Act,²⁰³ the trial may be postponed if a witness is a child of ‘tender years’.²⁰⁴ Furthermore, a child of ‘tender years’ shall not be examined under oath or solemn affirmation, though may still be admissible as a witness if the presiding judge is “satisfied that he has sufficient intelligence to make a correct statement on the subject of the trial”.²⁰⁵ In accordance with the Civil Code, a minor is appointed a guardian if it appears desirable or necessary in the interest of the minor.²⁰⁶ Even in the case where a minor is emancipated by marriage, guardianship may remain an option for the minor.²⁰⁷

Moreover, the Courts Act has some relevant provisions that relate to the development of a child-sensitive judicial system. Under Section 161A, a minor may be excluded from proceedings, such as hearing or examining evidence, in order to “safeguard [his/ her] welfare”.²⁰⁸ An amendment to the Act in 2003 introduced live video streaming and television links when a victim is involved in a sexual offence case.²⁰⁹ However, this provision is reportedly not being implemented in practice²¹⁰ and the lack of alternatives to hearing the child’s statement in Court has been pointed out as a reason for some child abuse cases being dropped because the child refuses to speak in Court.²¹¹ Lastly, the Computer Misuse and Cybercrime Act contains a provision that may provide protection specific to child victims of OCSE. It stipulates that a Judge in Chambers may order any indecent photograph of a child to be deleted or destroyed.²¹²

In terms of legal advice and aid, the Legal Aid and Legal Assistance Act does not stipulate unconditional provision of legal aid to child victims but just to children charged with a crime or misdemeanour.²¹³ If a child victim wishes to obtain legal aid to be party to a civil or criminal proceeding, the application process is the same one provided for adult victims,²¹⁴ which could discourage them to seek legal aid and contribute to withdrawal of cases. Legal assistance is limited only to detainees or accused parties.²¹⁵ Besides the provisions stipulated in the Legal Aid and Legal Assistance Act, the Child Development Unit provides a 24h service through hotlines with free legal assistance for child victims of abuse.²¹⁶ The unit also provides the services of barristers if a victim decides to bring a case.²¹⁷ Unfortunately, pro bono services are not well developed yet, and need to be encouraged.²¹⁸ Updated information on the current availability of all these services and the effective operation of 24h hotline has not been found. Civil society organizations like Halley Movement also provide free legal assistance to victims reporting cases through its helpline.²¹⁹

On a different note, the Director of Public Prosecutions noted some challenges in prosecuting offenders responsible for child abuse, including sexual exploitation. One such challenge is that according to the Ombudsperson for Children, many cases related to child sexual abuse, including SEC cases, are dropped at some point of the judicial process because “the child is not speaking”.²²⁰ This can be explained due to several problems in the provision of child-sensitive justice such as the lack of child victim or witness support, cross-examinations being at times intimidating,

202 *Ibid.*, Section 13A (5).

203 *Criminal Procedure Act* (1853), Section 94.

204 The expression “tender years” is not clearly defined in this law, neither there is an international consensus about which exact age range does the expression refer to.

205 *Criminal Procedure Act* (1853), Sections 109 and 110.

206 *Mauritian Civil Code* (1808), Article 405.

207 *Ibid.*, Article 495.

208 *Courts Act* (1945, amended in 2003), Section 161A.

209 *Ibid.*, Section 161B.

210 *Halley Movement* (May 2019), Personal Communication.

211 Ombudsperson for Children Office (2018), *Annual Report 2017-2018*, 263.

212 *Computer Misuse and Cybercrime Act* (2003), Section 16.

213 *Legal Aid and Legal Assistance Act* (1973), Section 7A.

214 *Ibid.*, Section 4.

215 *Ibid.*, Section 7B.

216 Government of Mauritius (2011), *Letter from Government of Mauritius to the Office of the United Nations High Commissioner for Human Rights*, No. 351/2011 MMG/HR/28/1, 1.

217 Government of Mauritius (2011), *Mid-term progress report as at February 2011 on the implementation of the recommendations of the Human Rights Council following the Universal Periodic Review for Mauritius in February 2009*, 15.

218 Law Reform Commission (2011), *Opinion Paper on Legal Aid Reform*, 1.

219 *Halley Movement* (May 2019), Personal Communication.

220 Ombudsperson for Children Office (2018), *Annual Report 2017-2018*, 263.

the child's privacy not being sufficiently protected and the court atmosphere not being child-friendly, among others.²²¹ These shortcomings and the lengthy court proceedings can lead to secondary victimisation of child victims and their families. Lastly, Mauritius also faces geographical constraints in terms of providing services to children, as most of the resources are on the main island and some islands are located as far as 400km away.²²²

Access to recovery and reintegration

Institutions providing recovery and reintegration help to child victims do exist in Mauritius, but there is a considerable lack and limit of resources to adequately provide such services.²²³

Child victims of SEC in Mauritius receive care and protection mainly from the Ministry of Gender Equality, Child Development, and Family Welfare. A Residential Drop-in Centre was made operational since May 2016, to cater for the recovery needs of children victims of sexual abuse and sexual exploitation including child trafficking.²²⁴ The center, managed by the National Children's Council, can accommodate 32 children, aged between 0 to 18 years and contributes to the recovery and rehabilitation of child victims through psychotherapy. Furthermore children are sent back to resume their education with a view to their gradual reintegration back into society.²²⁵ The Mauritius Family Welfare and Planning Association also manages a day care Drop-in Centre for child victims of SEC. During the period January 2011 to March 2018, 2,960 cases were registered at this center, out of which 23 were alleged cases of exploitation of children in prostitution.²²⁶

Under the auspices of the Ministry, the Family Support Bureaux²²⁷ were set up throughout the country (six regional offices) to provide 24-hour hotline services, family counselling, visits to the family to speak with the child, prepare a report, and when necessary, apply for an emergency protection court order.²²⁸ When the order is issued, it allows the CDU to "search for the child, remove or return the child, prevent the child's removal from any place of safety, and request police or medical assistance".²²⁹ Furthermore, if there are reasonable grounds to believe that the child has been "ill-treated, neglected, abandoned, destitute or otherwise exposed to harm", the court will issue an interim order to place the child in a 'place of safety'²³⁰ for as long as 28 days.²³¹ If the case is serious, the court can also make a 'committal order' to place the child in alternative care until the age of 18.²³²

The Child Development Unit of the Police Force also makes efforts to provide adequate protection for child victims. With the Ministry of Health and Quality of Life, they refer the child victims of abuse to relevant persons such as doctors, nurses, and social workers for effective follow-up.²³³ However, police officers stated to the UN Special Rapporteur that "one major challenge faced is how to effectively identify child victims of sexual exploitation".²³⁴ This is particularly difficult for the CDU who has become the focal point of reference for any case involving children.²³⁵ Not only that, but CDU officers admitted to working extremely long hours due to the high number of cases, which makes it almost impossible for them to provide an effective follow-up. According to them, staff are not sufficiently trained, and as a result, the rehabilitation and reintegration procedures for

221 *Ibid.*

222 *Halley Movement* (May 2019), Personal Communication.

223 *Halley Movement* (May 2019), Personal Communication.

224 Committee on the Elimination of Discrimination Against Women (2018), *Eighth periodic report submitted by Mauritius under article 18 of the Convention pursuant to the simplified reporting procedure*, para. 58.

225 *Ibid.*

226 *Ibid.*

227 The Ministry of Gender Equality, Child Development, and Family Welfare, (n.d.), *Family Welfare and Protection Unit - Family Support Bureaux*. The Bureau is comprised of family welfare protection officers, care workers, police officers, and a psychologist.

228 Human Rights Council (2011), *Report of the Special Rapporteur on the sale of children and sexual exploitation on her visit to Mauritius*, 9 November 2011, A/HRC/19/63/Add.1 para. 69. Information confirmed through *Halley Movement* (May 2019), Personal Communication.

229 *Ibid.*, para. 76.

230 A place of safety is defined in the Child Protection Act as any place designated by the Minister to whom responsibility for the subject of child development and family welfare is assigned, and includes, inter alia, a foster home and a hospital.

231 Human Rights Council (2011), *Report of the Special Rapporteur on the sale of children and sexual exploitation on her visit to Mauritius*, 9 November 2011, A/HRC/19/63/Add.1 para. 76.

232 *Ibid.*

233 *Ibid.*, Para. 70.

234 *Ibid.*, Para. 71.

235 *Ibid.*, Para. 72. and 74.

child victims are lengthy and dysfunctional.²³⁶

The Ministry of Gender Equality, Child Development and Family Welfare established three shelters for child victims of violence (providing accommodation for 40 children) in 2013: ‘*La Cigogne*’, ‘*La Marguerite*’, and ‘*La Dauphinelle*’.²³⁷ Under the aegis of the Ministry, the National Children’s Council runs and manages ‘*La Colombe*’ Shelter. However, this shelter is not specifically geared towards child victims of sexual exploitation, and provides services for children with different needs/backgrounds, including physically abused children, sexually abused children, abandoned children, and children living on the street.

Although there are several shelters for child victims in Mauritius, it appears that they are not specifically focused on SEC victims and are often lacking enough resources or specialised personnel. Due to the lack of care services, coupled with difficulties in tracking victims, many child victims still appear to be neglected in the country.²³⁸ Unfortunately, even when children are referred to shelters, there have been worrisome news that indecent assaults were allegedly conducted against them while in care.²³⁹ The CRC Committee accordingly raised concern over the “reported discontinuation of support to victims of sexual exploitation” and the “inadequate rehabilitative services for victims”.²⁴⁰ Unfortunately, there is no information on progress made in this regard by the Mauritian government in the last years and it is difficult to assess the current situation.

Access to compensation

There is a lack of explicit legal provisions in terms of access to compensation for child victims of sexual exploitation. The Child Protection Act only allows financial assistance to -amongst four other conditions- children in distress, who are between the age of 10 and 16²⁴¹ and under a Child Mentoring Scheme.²⁴² According to the Criminal Procedure Act, the Supreme Court may, if it sees fit, order the convicted offender to pay for the incurred expenses.²⁴³ Similarly, under the District and Intermediate Courts (Criminal Jurisdiction) Act, such courts may assign a payment order to a convicted party.²⁴⁴

The only provision in Mauritius that stipulates compensation to a victim is the Combating of Trafficking in Persons Act. According to the Act, the Court shall issue a compensation order either to the person convicted of an offence or to the State.²⁴⁵ However, information on whether this provision has ever been applied in practice has not been found.

236 *Ibid.*

237 *Opening of three shelters for children* (16 December 2013), *Government Information Service, Prime Minister’s Office*.

238 *Prostitution juvénile : L’État ne peut faire le suivi des victimes réhabilitées* (28 July 2013), *Le Mauricien*.

239 *Allégation d’attouchement dans un ‘shelter’* (1 August 2013), *Slate Africa*.

240 Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the Un Committee on the Rights of the Child by the Government of Mauritius*, para. 41.

241 *Child Protection Act* (1994), Section 3A (2) (c).

242 *Ibid.*, Section 3D.

243 *Criminal Procedure Act* (1853), Sections 148 and 149.

244 *District and Intermediate Courts (Criminal Jurisdiction) Act* (1888), Section 75.

245 *Combating of Trafficking in Persons Act* (2009), Sections 16, 17, 18, and 19.



Child, Victim and Survivor Participation

There are several legal provisions in Mauritius that may uphold the right to participation. In particular, the Ombudspersons for Children Act, adopted in 2003, explicitly stipulates that its objective is to “ensure the rights, needs and interests of children are given full consideration”, and to “promote the rights and best interests of children”.²⁴⁶ However, despite such provisions, the CRC Committee was still concerned about a “lack of information on how this right is enforced in practice in all areas affecting children”.²⁴⁷

There are two bodies at the national level, which are dedicated to children’s participation: The National Children’s Council and the National Youth Council. The National Children’s Council²⁴⁸ was established in 1990 by the Ministry of Gender Equality, Child Development and Family Welfare and is now under the jurisdiction of the National Children’s Council Act.²⁴⁹ The key objective of the Council is to coordinate national bodies that deal with child-related policies, and to ensure children’s participation.²⁵⁰ In doing so, the Council has set up Children’s Clubs (since 1998) to encourage children’s participation in decision- making processes.²⁵¹

Additionally, the National Youth Council²⁵² was established in 1998 by the National Youth Council Act²⁵³ to provide a bridge between the government and the youth. It functions as an advisory board to the Minister to integrate youth in sectors of national development.²⁵⁴ Moreover, it is a member entity of the World Assembly of Youth.²⁵⁵ Nevertheless, there is no available evidence of any initiatives run by these bodies in recent years, thus more up-to-date information regarding their activities is needed in order to assess their impact and make sure that they are effectively operating in practice.

246 *Ombudsperson for Children Act* (2003), Section 5.

247 Committee on the Rights of the Child (2015), *Concluding Observations on the Report submitted by the Republic of Mauritius under Article 44 of the Convention*, para. 29

248 Government of Mauritius (n.d.), *National Children’s Council*.

249 *National Children’s Council Act* (2003).

250 *Ibid.*, Section 4.

251 Committee on the Rights of the Child (2013), *The Combined 3rd and 4th Periodic Report to the Un Committee on the Rights of the Child by the Government of Mauritius*, para. 34 and para. 308.

252 Government of Mauritius (n.d.), *National Youth Council*.

253 *National Youth Council Act* (1998).

254 Government of Mauritius (n.d.), *National Youth Council*.

255 The World Assembly of Youth (n.d.), *Home*.

Recommendations for Action

INTERNATIONAL AND REGIONAL LEGISLATION, COMMITMENTS AND COORDINATION TO ENDING SEC

- Ratify the Protocol to the Convention on the Rights of the Child on a communications procedure and further fulfil Mauritius' international obligations by submitting the national report with regard to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- Accede to the Convention on Consent to Marriage, Minimum Age for Marriage and registration of Marriages;
- Ratify the UNWTO Framework Convention on Tourism Ethics, and encourage travel agents and tourism agencies to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism;
- Cooperate proactively with the international community on tackling offences related to the sexual exploitation of children, specifically in terms of mutual legal assistance, exchange of information, and investigation.

NATIONAL RESPONSE TO SEC'S MANIFESTATIONS

- National legislations lack consistency in their definitions of a child. They should be amended and consolidated to ensure uniformity in accordance to international standards;
- Finalise the Children's Bill to unify the Mauritian legislation related to sexual exploitation of

children and comprehensively incorporate the provisions of international legal mechanisms and commitments, such as the Convention on the Rights of the Child along with its Protocols, the African Charter on the Rights and Welfare of the Child, etc. into national legislation;

- Increase the minimum marriage age from 16 to 18 years with no exceptions;
- Establish a pivotal governmental body that specifically coordinates policies and measures against all forms of sexual exploitation of children;
- Revise the Child Protection Act Section 13C (4) which does not prosecute an offender of child abduction if the child has married the offender;
- Mauritius should develop an adequate training programme for law enforcement officials in all islands of Mauritius including judges, prosecutors, lawyers, policy officers, civil servants, social workers, schoolteachers, health workers and other individual professionals regarding the sexual exploitation of children.

ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

- Ensure that the child's best interests are taken into account in child-sensitive complaints, petitions, and reporting mechanisms. Correspondingly, the State should recruit additional specialised investigators for the Ombudsperson for Children's Office;
- As stipulated in the 2003 amendment to the Courts Act, establish an effective child-sensitive justice system in courtrooms to ensure child victims of sexual exploitation have strict confidentiality during the proceedings making

video streaming available for hearings;

- Take measures to solve the problem of lengthy and expensive legal proceedings. For example, free or subsidised legal assistance together with pro bono services should be further developed to provide adequate protection for child victims, particularly by developing a child friendly application for legal aid or stipulating unconditional provision of legal aid for child victims altogether;
- The number of shelters and child-support centres that are specialised and properly qualified to deal with child victims of sexual exploitation should be increased and equipped with more and better-trained staff;
- Revise current laws or adopt a new legislation to provide explicit provisions that stipulate the right to compensation for child victims of sexual exploitation.

CHILD, VICTIM AND SURVIVOR PARTICIPATION

- Enable all children to engage in meaningful participation at all levels of decision-making that are relevant to them;
- Recognising the significant lack of children, victims and survivors participation mechanisms in the country, more awareness-raising campaigns on victims' and survivors' participation should be conducted with the goal to reduce the stigmatisation of victims.

RESEARCH NEEDS AND AGENDA

- Establish standardised and centralised information collecting mechanisms, preferably with data disaggregated by gender, age, and types of manifestations of sexual exploitation of children;
- Address the national data gap by using both qualitative and quantitative data collection methods in order to evaluate children's specific contexts (e.g. number of children living on the streets, number of children exploited through prostitution, etc.);
- Undertake both qualitative and quantitative research on specific issues where little evidence is available such as the situation of sexual exploitation of children in travel and tourism in the country.

Acronyms

CDU	Child Protection Unit
CEFM	Child, early and forced marriage
CSAM/CSEM	Child sexual abuse / exploitation material
CRC	Convention on the Rights of the Child
GDP	Gross Domestic Product
ICT	Information and Communications Technology
ILO	International Labour Organisation
NCPC	National Child Protection Committee
NGO	Non-governmental organisation
OCSE	Online child sexual exploitation
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
SDGs	Sustainable Development Goals
SEC	Sexual exploitation of children
SECTT	Sexual exploitation of children in travel and tourism
UNICEF	United Nations Children's Fund
UNWTO	United Nations World Tourism Organisation



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