

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 31st Session

MAURITIUS

I. BACKGROUND INFORMATION

Mauritius has not acceded to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). Mauritius has also not acceded to the *1954 Convention relating to the Status of Stateless Persons* (hereinafter referred to as the *1954 Convention*) and the *1961 Convention on the Reduction of Statelessness* (hereinafter referred to the *1961 Convention*). On 10 September 1969 Mauritius signed, but has yet to ratify, the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* commonly referred to as the the OAU Convention.

Mauritius has neither a national legislative framework on asylum, nor any laws or procedures which clearly establish the rights and safeguards to which asylum-seekers and refugees are entitled. In addition, there are no laws which establish procedures for statelessness status determination or provide a framework for the protection of stateless persons in the country. Since UNHCR has no presence in Mauritius, the country is covered by the UNHCR Regional Representation for Southern Africa (ROSA) located in Pretoria, South Africa. In this context, UNHCR does not have information on the number of asylum-seekers, refugees or stateless persons in Mauritius beyond those who contact UNHCR directly.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Accession to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol

Linked to 2nd cycle UPR recommendation no. 128.15: “Consider ratifying the 1951 Convention relating to the Status of Refugees and its Protocol (Rwanda)”, no 129.9: “Ratify the 1951 Convention relating to the Status of Refugees (France)” and no 129.14: “Sign the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Spain)”.

It should be noted that the *1951 Convention* is the international benchmark regarding the protection of asylum-seekers and refugees. It enshrines minimum standards regarding the rights of asylum-seekers and refugees which take into consideration their specific circumstances as persons having fled persecution in their countries of origin. Currently, refugees and persons seeking asylum in Mauritius do not have legal rights beyond what is stipulated under international customary law (e.g. the principle of *non-refoulement*).

Recommendations:

UNHCR recommends that the Government of Mauritius:

- (a) Accede to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*; and
- (b) Seek the technical assistance of UNHCR in developing national asylum legislations and refugee status procedure consistent with relevant international standards.

Additional protection challenges:

Issue 2: Ratify the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa

The *OAU Convention* is a legally binding regional instrument that addresses specific refugee protection issues in Africa. The ratification and national implementation of the *OAU Convention* would allow the Government to establish a legal framework governing refugee matters that currently does not exist in Mauritius as the country is neither a Party to the *1951 Convention*. Furthermore, the scope of protection of the *OAU Convention* is broader than the *1951 Convention* in that the former extends protection to refugees who are fleeing general violence.¹ Although Mauritius has signed the *OAU Convention*, the fact that it is yet to ratify this instrument is a clear pointer that there is no established legal regime that governs refugee protection in the country. As such, persons seeking asylum are unlikely to receive adequate protection.

Recommendations:

UNHCR recommends that the Government of Mauritius:

- (a) Ratify the *1969 Convention Governing the Specific Aspects of Refugee Problems in Africa* and take legislative and other measures necessary to ensure its national implementation.

Issue 3: Establish fair and efficient asylum procedures and guarantee full respect of the principle of non-refoulement

UNHCR notes that Mauritius is in need of national asylum legislation and a national framework on asylum that is consistent with relevant international standards, ensures prompt access to fair and efficient refugee status determination (RSD) procedures, and provides necessary safeguards, including the right to receive an explanation of negative RSD decisions in writing and the right to appeal such decisions. Without an effective asylum system, including a referral mechanism that ensures access to asylum procedures, there is a high risk that persons may be subject to *refoulement* in contravention of the *1951 Convention*, the *International Covenant on Civil and Political Rights* (“*ICCPR*”) and the *International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the “*ICAT*”).

UNHCR notes that the principle of *non-refoulement* constitutes one of the cornerstones of refugee protection and was first enshrined in Article 33(2) of the *1951 Convention*. This principle, which is quintessential for the protection of refugees and asylum-seekers, is currently widely acknowledged to constitute customary international law, and thus it is applicable to all States².

¹ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“*OAU Convention*”), 10 September 1969, 1001 U.N.T.S. 45, Art. 1(2), <http://www.refworld.org/docid/3ae6b36018.html>.

² See: UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law*, Response to the Questions posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93 available at: <http://www.unhcr.org/home/RSDLEGAL/437b6db64.html>; UNHCR, *Note on the Principle of Non-Refoulement (EU Seminar on the Implementation of the 1995 EU Resolution on Minimum Guarantees for Asylum Procedures)*, 1 November 1997, available at: <http://www.unhcr.org/home/RSDLEGAL/438c6d972.html>. See also New Zealand Court of Appeal, *Zaoui v. Attorney General*, 30 September 2004, (No 2) [2005] 1 NZLR 690, para. 34 (“The prohibition on refoulement,

In this regard, Article 3 of the ICAT expressly prohibits any State Party from expelling, returning or extraditing a person “to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, thus indelibly incorporating the international principle of non-refoulement in the text of the ICAT. The UN Committee against Torture clarified in its General Comment No. 4 that the prohibition of *non-refoulement* applies not only in situations where there are substantive grounds to believe the person in question would be in danger of being subjected to torture in a State to which he/she is facing deportation, but also in cases where the person at risk would be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.³

This includes return of asylum-seekers and refugees to countries they have transited through and where they would be in danger of being subjected to “a chain of *refoulement*” resulting in return to the country of origin where they might be at risk of torture as defined in article 1 of the ICAT. Transfers to the “first country of asylum” or “third safe country” require application of safeguards, and would not be appropriate where they represent an attempt, in whole or part, by a State to divest itself of responsibility.

In the absence of a national asylum system that provides for fair and efficient RSD and guarantees respect of the principle of *non-refoulement*, Mauritius relies on UNHCR to assess asylum claims under its mandate with a view to resettling to a third country those found to be in need of international protection. Asylum-seekers and refugees who contact UNHCR are temporarily tolerated on the territory provided that UNHCR ensures their resettlement to a third country. Relying on UNHCR to assess asylum claims and appeal to other States to receive refugees is not a sustainable solution, as UNHCR cannot guarantee resettlement of refugees recognised under its mandate and relies on States to provide resettlement places.

While UNHCR can make recommendations for the resettlement of refugees to third country, the State in question retains discretion over the decision of accepting those refugees or not. Furthermore, the resettlement process may often take a long time, a situation that may jeopardize refugees’ safety. While acknowledging that Mauritius is a small island, it nevertheless is enjoined to demonstrate international solidarity and burden sharing with other States, and allow some refugees to remain on its territory and protect them against *refoulement*, irrespectively of whether they remain on the territory or are accepted for resettlement by another State.

Recommendations:

UNHCR recommends that the Government of Mauritius:

- (a) Uphold and respect the international principle of *non-refoulement*, enshrined and acknowledged as customary international law and thus applicable to all States, and incorporate this principle in full in its national legislation;
- (b) Refrain from applying the concept of first country of asylum without safeguards incorporated in national legislation to ensure that asylum-seekers and refugees effectively benefit from international protection and that Mauritius retain responsibility for obligations arising under international law;

contained in art 33.1 of the Refugee Convention, is generally thought to be part of customary international law, the (unwritten) rules of international law binding on all States, which arise when States follow certain practices generally and consistently out of a sense of legal obligation.”) and para. 136 (“The Refugee Convention is designed to protect refugees from persecution and the non-refoulement obligation is central to this function. It is non-derogable in terms of art 42.1 and, as discussed above at para [34] has become part of customary international law.”). See also E. Lauterpacht and D. Bethlehem, *supra* footnote 13, paras. 193–219; G. Goodwin-Gill, *The Refugee in International Law*, 2nd edition, Oxford University Press (1996), at pp. 167–171.

³ UN Committee against Torture, [General Comment No. 4](#): Implementation of Article 3 of the Convention in the context of Article 22, Advance Unedited Version, 9 February 2018, paras 11-12.

- (c) Enact national asylum legislation and establish a functioning national asylum framework for ensuring international protection, which includes procedures for refugee status determination in line with international standards;
- (d) Establish a government agency responsible for receiving and screening asylum-seekers, victims of trafficking and other individuals, who may arrive in Mauritius and who may be in need of international protection, to ensure that they are referred to the correct procedures and receive necessary protection and assistance.

Issue 4: Prevention and reduction of statelessness

Mauritius has not acceded to the *1954 Convention* or the *1961 Convention*. There are no legal safeguards in domestic legislation to grant nationality by operation of the law at birth to children born in the country who would otherwise be stateless, and to foundlings.

UNHCR would like to note that States are responsible for conferring nationality and ensuring the right of every child to acquire a nationality. Discharging this responsibility requires creating safeguards against statelessness in nationality laws. The *1961 Convention* establishes a range of standards to prevent and reduce statelessness at birth and later in life, in particular that States shall grant their nationality to children who have ties with these States through birth on the territory or descent and who would otherwise be stateless. Thus, the *1961 Convention* is of central importance to the full enjoyment of every child's right to acquire a nationality. This is also stipulated by the Human Rights Committee (CCPR) in its *General Comment No. 17*.⁴

In addition, even if Mauritius were to ratify the *1951 Convention*, the international refugee protection regime would not specifically address the rights of non-refugee stateless persons who are in need of international protection. In many instances, stateless persons have no lawful residence status anywhere; this also occurs to stateless persons who are in the country of their birth and residence and who are denied the right to nationality in their own countries. Without any legal status, stateless persons are often subject to a range of human rights violations and discrimination, and can often fall into a vicious cycle involving failed expulsion and prolonged or repeated detention and release into situations of destitution. Accession to the *1954 Convention* would establish a framework to protect stateless persons or persons at risk of statelessness. The *1954 Convention* establishes an internationally recognised status for stateless persons. It also recognises a number of fundamental rights such as freedom of religion; freedom of association; access to courts; freedom of movement; and identity documentation. Therefore, the *1954 Convention* complements the *ICCPR* with regard to the human rights of stateless persons.⁵

Recommendations:

UNHCR recommends that the Government of Mauritius:

- (a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*; and,
- (b) Introduce legal safeguards for foundlings and children born in the country who would otherwise be stateless.

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⁴ *CCPR General Comment No. 17*, para. 8: "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents."

⁵ *CCPR General Comment No. 31*, para. 10: "The enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness."

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

MAURITIUS

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Mauritius.

I. Universal Periodic Review (Second Cycle – 2013)

Recommendation ⁶	Recommending State/s	Position ⁷
Accession to international instruments		
128.15 Consider ratifying the 1951 Convention relating to the Status of Refugees and its Protocol.	Rwanda	Supported
129.9. Ratify the 1951 Convention relating to the Status of Refugees.	France	Noted ⁸
129.14. Sign the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.	Spain	Noted ⁹
129.16. Ratify the Kampala convention and create an adequate national and legal policy framework to effectively deal with internally displaced people.	Uganda	Noted ¹⁰
Vulnerable groups		
128.16. Further enhance its efforts to ensure adequate legal protection for all segments of the population.	Kenya	Supported
128.27. Give continuity to the measures for the creation of a more inclusive, plural and cohesive society.	Nepal	Supported
128.65. Continue to address the concerns of disadvantaged and vulnerable persons as a matter of priority, through programs aimed at promoting their fundamental human rights.	Philippines	Supported
128.113. Continue its current efforts aimed at improving the fate of the Chagossians.	Gabon	Supported

⁶ All recommendations made to Mauritius during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Mauritius" (26 December 2013), A/HRC/25/8, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MUindex.aspx>.

⁷ Mauritius' views and replies, in English, can be found in: *Addendum* (14 March 2014), A/HRC/25/8/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MUindex.aspx>.

⁸ **Addendum:** "Mauritius, being a small and densely-populated island with stretched limited resources, has not yet adopted a policy or laws to grant refugee status to foreigners. It does however endeavour to treat applications for refugee status or political asylum on a humanitarian, case-to-case basis by facilitating their settlement in a friendly country willing to receive them."

⁹ **Addendum:** "Mauritius, being a small and densely-populated island with stretched limited resources, has not yet adopted a policy or laws to grant refugee status to foreigners. It does however endeavour to treat applications for refugee status or political asylum on a humanitarian, case-to-case basis by facilitating their settlement in a friendly country willing to receive them."

¹⁰ **Addendum:** "Given the size and geographical topography of Mauritius, the country does not have problems associated with internally displaced people"

Promotion and protection of human rights		
128.28. Continue with its resolve towards the promotion and protection of the human rights of all its citizens.	Zambia	Supported
128.29. Continue its reforms to improve policies and programmes towards the promotion and protection of all human rights.	Lesotho	Supported
128.30. Continue with the sensitization programmes in order to increase human rights awareness among the citizens of the country.	Nigeria	Supported
128.39. Consider providing appropriate human rights education and training to public servants and law enforcement officials.	Philippines	Supported
128.40. Continue human rights training and awareness-raising activities, particularly for security forces.	Côte d'Ivoire	Supported
128.41. Continue implementing measures underway to intensify efforts in providing capacity-building and training programs on human rights for its law enforcement officials as well as judicial and legal officials.	Bhutan	Supported
Discrimination		
128.55. Strengthen measures aimed at preventing and eliminating discrimination on the basis of race and ethnicity.	Botswana	Supported
128.60. Continue the efforts in favour of the promotion of the rights of women and children, and in the area of the fight against discrimination.	Algeria	Supported
128.63. Strengthen its efforts to eliminate all forms of violence and discrimination against women and children.	Senegal	Supported
Gender discrimination		
128.17. Ensure that the non-discrimination against women is reflected in the provisions of domestic law, including in the context of the current process of the constitutional reform.	Cabo Verde	Supported
128.56. Continue combating gender stereotypes and all forms of discrimination and violence against women.	Tunisia	Supported
128.75. Improve emphasis and transparency in tackling gender-based violence by introducing specific measures to encourage more reporting by the public and increased investigations, prosecutions, convictions and sentences to deter those who commit gender-based violence.	United Kingdom of Great Britain and Northern Ireland	Supported
Protection of children		
128.47. Continue its efforts to enhance the protection of children and improve their well-being.	Singapore	Supported
128.64. Strengthen the system of protection of the rights of the child by additional measures.	Benin	Supported
128.78. Improve existing measures on combating violence against children as a key obligation under the Convention on the Rights of the Child and other international human rights instruments.	Maldives	Supported
128.79. Put in place initiatives aimed at raising awareness, especially among professionals who work in the area, about violations of the human rights of children, including sexual abuse.	Brazil	Supported
128.80. Redouble efforts to fight against ill-treatment of children, particularly by the investigation, trial and punishment of perpetrators.	Uruguay	Supported
128.104. Expand activities to promote access to quality education for all children, in particular ensuring that children whose first language is different from the language of instruction are not at a disadvantage.	Canada	Supported
Trafficking and Forced labour		

128.22. Continue finalizing the process of reviewing the legal framework on prohibiting, preventing and responding to all forms of sale and sexual exploitation of children, and to ensure the effective implementation of the framework through, inter alia, the harmonization of national legal and regulatory frameworks with ratified international instruments, accompanied by binding measures and mechanisms.	Egypt	Supported
128.81. Continue its efforts to strengthening and combating child trafficking.	South Sudan	Supported
128.82. Strengthen measures aimed at fighting human trafficking, including addressing its root causes, and exploitation of women and girls.	Botswana	Supported
128.83. Establish a body to coordinate government efforts to combat trafficking in persons and the worst forms of child labour.	United States of America	Supported
128.84. Provide adequate resources to enforce laws against human trafficking through the investigation, prosecution and, if found guilty, conviction of trafficking offenders, including in cases involving forced labour or commercial sexual exploitation.	United States of America	Supported
Detention		
128.85. Carry out training to identify acts of torture for law enforcement personnel, the Office of the Director of Public Prosecutions, doctors, psychologists and any officials during the detention process. Additionally establish a complaints and follow-up mechanism.	Mexico	Supported
128.86. Ensure the effective implementation of the new laws related to human rights protection, in particular the mechanism of prevention and sanctioning of brutal acts committed by the police.	France	Supported
129.30. Ensure that the new Police and Criminal Evidence Bill fully addresses the practice of detention on the basis of "provisional information" by specifying that detention beyond a short time limit, defined in statute, is only possible once a suspect is formally charged.	United Kingdom	Noted ¹¹

II. Treaty Bodies

Committee against Torture

Concluding Observations, (15 June 2011), [CAT/C/MUS/CO/3](#)

Non-refoulement

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

The State party should revise its legislation guaranteeing the principle of non-refoulement. The State party should review its Extradition Act to make it in full compliance with article 3 of the Convention, in particular, it should clarify the process under which extradition is requested and decided, the guarantees offered, including the possibility to challenge the decision with suspensive effect in order to ensure that

¹¹ **Addendum:** "The Police and Criminal Evidence (PACE) Bill, which has already been introduced in the National Assembly, aims at providing, inter-alia, the necessary framework with regard to police powers and safeguards in matters of stop and search, arrest, detention, investigation, identification and interviewing of detainees. As regards the practice of suspects being detained on the basis of provisional information, the Bill makes provision for a police officer not to arrest a person on the basis of a mere allegation by a third party unless he has carried out necessary investigations to verify that an offence has been committed or is about to be committed."

persons expelled, returned or extradited are not in danger of being subject to torture. The State party should also provide detailed statistical data on the number of requests received, the requesting States and the number of persons extradited or not.

Committee on the Elimination of Racial Discrimination

Concluding Observations, (18 April 2013), [CERD/C/MUS/CO/15-19](#)

Situation of the Chagossians

21. While welcoming the measures taken by the State party to alleviate the sufferings of the Chagossians displaced from the island of Diego Garcia and other islands of the Chagos archipelago, the Committee remains concerned that they have not been able to exercise their right to return to their land (arts. 5 (d), 11).

The Committee recommends that the State party continue to seek all possible ways for remedying the injustice done to the Chagossians displaced mainly from the island of Diego Garcia and other islands of the Chagos archipelago.

Migrant workers

22. The Committee remains concerned at reports of poor working and living conditions of migrant workers, despite the measures taken such as the adoption of the Occupational Safety and Health (Employees' Lodging Accommodation) Regulation in 2011. (arts. 1 and 5).

The Committee calls on the State party to ensure effective investigation, prosecution and sanction of employers responsible for violations of the rights of migrant workers and to make sure that applicable laws enable an adequate protection of migrant workers. The Committee draws the attention of the State party to it.

Committee on the Rights of the Child

Concluding Observations, (27 February 2015), [CRC/C/MUS/CO/3-5](#)

Birth registration

33. The Committee notes the existence of a fast-track system to deal with the declaration of births and unregistered children. The Committee is concerned, however, about reported cases of persons whose birth has not been declared owing to lack of communication and lengthy procedures regarding late registration, especially in the case of declaration after 45 days from birth.

34. The Committee recommends that the State party take further measures to improve communication between the authorities concerned and families, and accelerate the procedures for and facilitate late birth registration.

Trafficking of children

65. The Committee is concerned that the State party remains a source, destination and transit country for trafficking in persons, including children. The Committee is also concerned at the absence of sex-disaggregated data with regard to trafficking, and at the lack of a national plan of action to address trafficking in the State party.

66. The Committee recommends that the State party adopt a comprehensive national action plan and develop a coordination mechanism to address trafficking and analyse the root causes of trafficking. The State party should, in particular:

- (a) Collect sex-disaggregated data on the number of trafficked persons and on the number of complaints, investigations, prosecutions and sentences in relation to trafficking;**

- (b) **Ensure the effective implementation of the Combating of Trafficking in Persons Act, introduce effective prevention measures and ensure the timely prosecution and punishment of traffickers;**
- (c) **Continue raising awareness about human trafficking, including through the dissemination of information and the training of the judiciary and law enforcement officials on the new law, in order to ensure strict application of the relevant criminal provisions;**
- (d) **Analyse and address the root causes of trafficking, increase its efforts to address poverty and eliminate the vulnerability of girls and boys to exploitation and traffickers.**