

Where is the African Charter?

Assessing the impact of the African Charter on Human and Peoples' Rights in Mauritius

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Faculty of Law, Centre for Human Rights,
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**By
Meskerem Geset Techane**

**Prepared under the supervision of
Dr. Rajendra Parsad Gunpath
At the Faculty of Law and Management, University of Mauritius
31 October 2011**

DECLARATION

I **Meskerem Geset Techane** hereby declare that this is my original work, that it has not been submitted for assessment before any other academic forum and that where another person's work is used, it has been duly acknowledged.

Student : Meskerem Geset Techane

Signature :

Date : 31 October 2011

Supervisor : Dr Rajendra Parsad Gunpath

Signature :

Date: 31 October 2011

DEDICATION

To the forefathers of the African Charter;
Who braved to open our own new chapter;
Envisioned an African conception of human rights;
Where our values and the quest for humanity meet.
Dreamt far beyond the horizons;
When the land conceived no seed of peace and justice;
And the world faltered 'African human rights?'
With faith, pioneered the 30 years long walk;
Today we are privileged to celebrate!
Also, indebted to contribute!



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Commemorating the 30th anniversary of the African Charter

Celebrating and reflecting

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My wonderful family, you were constant; your fervent prayers and encouragements throughout every phase of this challenging work renewed my strength. You are awesome. *Betam ewedachihualehu!*

ABSTRACT

The African Charter on Human and Peoples' Rights is turning 30 since its adoption. The Charter is also soon turning to its 20 in Mauritius since ratification. The Charter indeed has been hailed for its unique normative content and aspired to be a beacon of human rights in the Continent which has attracted the attention of academicians as well as experts in the field of human rights. The Charter has undoubtedly affected domestic systems through the promotional and protective mandates exercised by the African Commission. How much the Charter has actually influenced domestic human rights practices however, has not yet formed much of the available literature. More so, Mauritius being a party to the Charter for nearly two decades has not enjoyed the attention of writers on the African Charter. Not much is known as to the interactions of Mauritius with the African system which calls for investigation of how much the Charter has influenced the domestic system for two decades long. Beyond formidable normative content, the success of a human rights system depends on the impact it exerts on domestic systems through shaping the behaviours, actions and practice of domestic institutions. Such reflection is therefore, important to gauge the impact of the African Charter and profile its future towards success. This study attempts to enlighten the impact of the African Charter in Mauritius by embarking on examination of the practices of domestic institutions and actors offering unexploited area to ponder critically.

LIST OF ABBREVIATIONS

AHRLR	African Human Rights Law Reports
AU	The African Union
Anor	Another
Art	Article
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of all Forms of Racial Discrimination
CEDAW	International Convention on the Elimination of All Forms of Discrimination against Women
CRC	International Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organisation
LRC	Law Reform Commission
NGOs	Non Governmental Organisations
NHRI	National Human Rights Institutions
NHRC	National Human Rights Commission
OAU	Organisation of the African Unity
SCJ	Supreme Court Judgments
Sec	Section
UK	United Kingdom
UN	The Organisation of the United Nations

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CHAPTER ONE

BACKGROUND TO THE STUDY

1.1 African Charter: a beacon of African human rights

‘...We feel today that Africans need a consistent system to promote and protect their rights and freedoms...’ inspired by ‘those of our traditions that are beautiful and positive...’ keeping in mind ‘our values and the real needs of Africa’.¹

The African Charter on Human and Peoples’ Rights (African Charter or Charter), the anchor of human rights in the continent, was adopted on 21 June 1981 by the Assembly of Heads of States and Government of the OAU.² The process, however, predates 1981 involving different drafting stages. Drafting the Charter was initiated by few ‘revolutionary’ African leaders and experts with the support of few States who believed it was the right time for an African human rights instrument. Mauritius is one among four African states that proposed to the OAU Assembly to adopt a resolution for the drafting of the instrument.³ The Charter came into force on 26 October 1986 after ratification by a simple majority of the member states. The Charter is the most ratified human rights instrument of the region with 53 ratifications to date including Mauritius.⁴

The African Charter is drafted taking in due consideration the virtues of African traditions and the values of African civilisation which characterised African peoples’ reflection on the concept of human rights.⁵ Though it took significant inspirations from international human rights instruments yet is original in many aspects.⁶ The Charter

¹ Extracted from the address of President Leopold Sedar Senghor of Senegal at the Dakar drafting meeting (OAU DOC CAB/LEG/67/3).

² African Charter on Human and Peoples’ Rights OAU Doc CAB/LEG/67/3 Rev 5 (1981).

³ In 1979 at the OAU Assembly in Monrovia, initiated by President Senghor, Senegal and Mauritius supported by Nigeria and Uganda proposed the agenda.(see F Viljoen ‘The African Charter on Human and Peoples’ Rights /*The travaux preparatoires* in the light of subsequent practice’ (2004) 25 (9-12) *Human Rights Law Journal* 313).

⁴ See C Heyns and M Killander (eds) *Compendium of key human rights documents of the African Union* (2010) 477- 478.

⁵ Preamble of the African Charter.

⁶ F Ouguerouz *African Charter on Human and Peoples’ Rights: A comprehensive agenda for Human Dignity and sustainable democracy in Africa* (2003) 9-10.

embodies 'uniquely African features'⁷ and is a 'radical document that deals with human rights in a uniquely African way'.⁸ '[C]learly distinguished from its regional and universal counterparts',⁹ it enshrines civil and political rights as well as justiciable socio economic rights; individual rights as well as group rights ; not only incorporates duties of the State but those of individuals. It is a comprehensive human rights instrument that combined the values, traditions, history and particular needs of the region with international human rights norms.¹⁰

The supervisory mechanism created by the African Charter is the African Commission on Human and Peoples' Rights (African Commission or Commission).The Commission's mandate outlined under article 45 of the Charter can be summed as:

[F]our-fold: the promotion, protection and interpretation of the African Charter and the performance of any other task assigned by the Assembly of Heads of State and Government. ¹¹

The African Commission's mandate include the review of periodic reports on the implementation of the Charter by state parties and consideration of individual and interstate complaints.¹² The protective mandate of the Commission was later complemented by the creation of the African Court on Human and Peoples' Rights in 1998.¹³

This very year, 2011, is of paramount historic importance to the discourse on the African Charter marking the 30th anniversary of its adoption. At this moment in time, it is inescapable to inquire how successful has the system been and what positive achievements have been recorded along the years. Indeed, 'the success of a human rights system should be evaluated in accordance with its impact on human rights

⁷ F Viljoen 'Africa's contributions to the development of international human rights and humanitarian law' (2001) 1 *African Human Rights Law Journal* 20.

⁸ S Amadi 'The African Charter on Human and Peoples' Rights: realising its potential' (2002) 3(1) *Economic Social Rights Review* 4.

⁹ Ouguergouz (n 6 above) 10.

¹⁰ See E Ankumah *The African Commission on Human and Peoples' Rights practice and procedures* (1996) 6-8.

¹¹ GM Wachira & A Ayinla 'Twenty years of elusive enforcement of the recommendations of the African Commission on Human and Peoples' Rights: A possible remedy' (2006) 6 *African Human Rights Law Journal* 466.

¹² African Charter Arts 47-62.

¹³ See Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998).

practices at the domestic level'.¹⁴ It is therefore an appropriate time to reflect while celebrating; to measure the domestic impact of the African Charter with in State parties. The study is thus a contribution to the reflection by gauging the impact of the Charter in Mauritius.

1.2 Mauritius: the success of Africa

The Republic of Mauritius¹⁵ with an area of 2,040 kilometers is composed of two main islands on the Indian Ocean, Mauritius and Rodrigues.

Mauritius was both a French and British Colony at different periods. In the period from 1767 to 1810, the island was under the control the French government. In 1810 the British took control of the island and sustained the British rule until independence in 1968. Upon independence, the British Monarchy was maintained with the Queen of England as the head of State until Mauritius became a republic in 1992.

The population of Mauritius is made up of a large proportion of people with Asian origin; particularly Indian and Chinese. At July 2011, the population was estimated at 1,286,340 comprising approximately 68% Indo-Mauritians, 27% Creoles,¹⁶ 3 % Sino-Mauritians and 2 % Franco-Mauritians. English is the official language however, French dominates the media and business; and the French-derived Mauritian Creole is the widely spoken lingua franca of the country. The major religions practiced in Mauritius are Hindu (48%), Catholic and other Christians (32%), Muslims (16.6%) and other few minority religions are also practiced.

The Republic of Mauritius is a parliamentary multi party democracy system. The head of the State is the President of the Republic¹⁷ and the Prime Minister is the Head of Government.¹⁸ The National Assembly is a unicameral legislative body with members

¹⁴ C Heyns C & F Viljoen *The Impact of the United Nations human rights treaties on the domestic level* (2002)1.

¹⁵ The background note is summarised from the following sources; for further general background and information about Mauritius, see Helen Chapin Metz, ed. *Mauritius: A Country Study* (1994) available at <<http://countrystudies.us/mauritius/>>(accessed 25 August 2011).; the Web portal of Mauritius <<http://www.gov.mu/portal/site/abtmnius>> (accessed 15 August 2011).; US Department of State, Background note: Mauritius <<http://www.state.gov/r/pa/ei/bgn/2833.htm>> (accessed 15 August 2011).

¹⁶ Creol represents people of African and Malagasy origins and who may also be mixed with Indian, Chinese, French or British backgrounds.

¹⁷ Sec 28 of the Constitution of the Republic of Mauritius (Constitution).

¹⁸ See secs 59 & 61 of the Constitution.

elected in regular elections at 5 years interval.¹⁹ The Supreme Court is the highest judicial authority in the country. The Constitution however, has maintained the right of appeal to the Privy Council of the UK.²⁰

Mauritius records success stories at many levels deserving the name 'an island of success'.²¹ The economy is one of the 'most successful and competitive economies in Africa'.²² The three pillars of the economy are tourism, textiles and sugar industry complemented with financial services and other emerging sectors. The 2010 estimate shows GDP at \$9.5 billion and per capita income at \$7,420, one of the highest in Africa. Mauritius is a welfare state whereby government funded education; healthcare and social welfare system are available for the largest population.²³ Mauritius maintains high rank in the UNDP Human Development Index.²⁴ Mauritius is also commended by international observers for its strong and efficient domestic institutions; fair, transparent and democratic governance; judiciary operating independently in a fair and impartial manner.²⁵ Mauritius' history of positive coexistence is a recipe for the stable and vibrant democracy; 'there has never been civil war or armed conflict between political parties or ethnically-based groups or organizations' since independence.²⁶

Mauritius is a member of the UN since independence and a party to major international human rights instruments.²⁷ Mauritius reports to and cooperates with treaty bodies and has fulfilled its submission for the UPR.²⁸ Mauritius is a member of the UN Human Rights Council and actively participates in other international human rights mechanisms as well.

¹⁹ Section 31 of the Constitution.

²⁰ Sec 81 of the Constitution.

²¹ E Donmen & B Donmen *Mauritius: An island of success* (1999) quoted in N Richards 'Coexistence international country studies series: Mauritius' Brandies University (2007) 4.

²² See Metz (n 15 above).

²³ US Department of State (n 15 above).

²⁴ See http://en.wikipedia.org/wiki/List_of_countries_by_Human_Development_Index (accessed 15 August 2011).

²⁵ See Richards (n 21 above).

²⁶ As above.

²⁷ Mauritius has ratified ICCPR, ICESCR, CERD, CEDAW, CAT, CRC and CPD (Ministry of Foreign Affairs (MOFA), The Republic of Mauritius, archives, updated July 2011).

²⁸ See UPR consideration (See <<http://www.upr-info.org>> (accessed 20 September 2011)).

Mauritius is a member of the AU and also a party to the African Charter since 1992. Moreover, Mauritius has ratified the African Charter on the Rights and Welfare of the Child (1992) and the Protocol to the African Human Rights Court (2003) as well but has not made the declaration under article 34(6) of the Protocol yet; has signed the Protocol on the Rights of Women in Africa (2005) but has not ratified yet.²⁹ Mauritius has hosted the African Commission's 20th session and also has a special relationship with the Commission through the Chief Justice (Honourable YKJ Sik Yeung) serving as a member of the Commission.

1.3 Paradigm and delineation of the study

Heyns & Viljoen³⁰ delineate the paradigm how 'impact' is to be understood which is also adopted for this study. Impact constitutes 'any influence that a certain treaty may have in ensuring the realisation of its norms in the individual country'. Such an influence may be imparted through integration of treaty norms in domestic legal systems or the work of treaty bodies such as reporting and complaint mechanisms.³¹ Okafor's³² insight adds to the paradigm of 'impact' study of a treaty that looks beyond the conventional 'compliance' or 'implementation' approach. Impact engages investigating and analysing the extent a treaty affected the thinking process, behavior and action of the key domestic institutions. The study therefore, is not a treatise of merely evaluation of the implementation of the African Charter; is rather that of 'influence' of the Charter on domestic institutions, actions, behaviours and practice. However, the overlap between impact and implementation or compliance is often unavoidable and is also important for the investigation. The study does not also assess impact through observing and analysing the capacity of the African system rather is an interior looking of the domestic system.

1.4 Problem statement

The problem can be exclaimed in one statement that 'the African system is unable to trace its influence on the domestic system of Mauritius!' There is very negligible, close to none, literature that records the interaction of Mauritius with the African Charter. This is

²⁹ MOFA (n 30 above).

³⁰ Heyns & Viljoen (n 14 above) .

³¹ As above.

³² OC Okafor *The African human rights system, activist forces and international institutions* (2007).

ironic given the fact Mauritius has been a party for almost two decades. It is problematic because answers to important questions as to how much the system has shaped domestic human rights practices and behaviours and to what extent the promises of the Charter are realised cannot be easily traced.

Lack of state reporting has been evident on the part of Mauritius as government has submitted periodic reports only twice since 1992.³³ This poses another challenge to gauge the influence of the African Charter in the domestic arena. Non-reporting leaves the impact of the Charter in state parties unevaluated and unrecorded. This has been among the major challenges of the system in charting its influence with few states reporting in the past.³⁴ No doubt that the Charter is the cornerstone of the African human rights system, however, '[a] human rights guarantee is only as good as its system of supervision'³⁵ because the level of its impact and success in domestic system is assessed through such inspection.

No communications to the African Commission by or against Mauritius has been submitted to the Commission. Communications served as channels through which the African Charter has been influencing states actions and behaviours through informing legislative and executive measures. This is also another area that makes it problematic to define or trace the influence the Charter on the domestic system.

1.5 Research questions

The research questions the study investigates are two-fold:

- What is the impact of the African Charter on human rights practices and behaviours in Mauritius?
- What are the factors that enhance or impede the impact of the African Charter on human rights practices and behaviours in Mauritius?

³³ Status of states periodic reports available <http://www.achpr.org/eng/_info/statereport_considered_en.html> (accessed 19 June 2011).

³⁴ M Evans et al 'The reporting mechanism of the African Charter on Human and Peoples' Rights' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights the system in practice, 1986-2000* (2002) 41; see also B T Nyanduga 'Conference paper: Perspectives on the African Commission on Human and Peoples' Rights on the occasion of the 20th anniversary of the entry in to force of the African Charter on Human and Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 264.

³⁵ Wachira & Ayinla (n 8 above) 466.

1.6 Objective of the study

1.6.1 General objectives

The objective of the study is to gauge and record the domestic impact of the African Charter in Mauritius. It investigates the extent to which the influence of the Charter is reflected in the actions and behaviors of domestic institutions and key actors in Mauritius. The study also aims to identify opportunities and challenges that affect the impact of the Charter positively or negatively. Based on the investigation and analysis the study endeavors to inform relevant steps that need to be taken to enhance the impact of the African Charter.

1.6.2 Specific objectives

Based on the general objectives, to properly map influence, specific objectives that serve as indicators of impact are designed. The main specific objectives are to examine and analyse each of these indicators;

- status of African Charter in the domestic legal system;
- judicial decisions;
- litigation practices and lawyers' behaviours;
- legislative actions;
- executive actions;
- the practice of other actors (NGOs, National Human Rights Institutions (NHRIs), and academicians and academic institutions).

1.7 Significance of the study

The study endeavors to add a two-fold value. Firstly, it will contribute to the literature on the African human rights system providing basic information on the role of the African Charter in influencing promotion and protection of human rights in Mauritius. Moreover, given the absence of any specific literature on the topic, it will thus, serve as a ground breaking essay to the work of academicians, researchers and activists who may take interest in further study on the subject.

Secondly, on the practical side, the study indicates challenges and gaps and proffer recommendations as to how key state and non-state actors can contribute to realise the

domestic impact of the African Charter. It will also hint to the African Commission on considerations that may need to be taken to boost its influence in Mauritius.

1.8 Literature review

The African Charter enjoys a well endowed literature on its normative framework as well as the procedure, process and operation of the system.³⁶ However, there is a dearth of literature reflecting on its impact in the context of truly measuring its influence on human rights practices of states. As less attention had been paid to the impact of international human rights institutions,³⁷ same is with the impact of the African Commission on national behavior. This is not to dismiss several pieces of works which cannot be listed here that focus on specific aspects of implementation of or compliance with the Charter in different countries.

In a country specific context, the topic of African Charter in general and that of its impact suffers deficiency of literature with regards to Mauritius. The one study that can be noted is a comparative study by Hardowar³⁸ that attempted to analyse the Mauritian domestic legal framework in light of the normative frameworks of the African Charter. The work undeniably is a very important contribution in terms of comprehensiveness as well as breaking the silence albeit, only gives insight in examining the Constitution and the domestic laws in light of the Charter.

Nonetheless, the topic benefits tremendously from the work of Heyns and Viljoen³⁹ on the impact of the UN human rights treaties. Though their focus is on UN treaties and does not cover Mauritius, it significantly guides in approach and understanding of impact study of human rights treaties. Other works that attempted to gauge the impact of the African system in other African countries enormously albeit, indirectly inform exploration of the topic. One outstanding literature is that of Okafor's⁴⁰ with double edged importance. Primarily, the literature covers enriching discussions on different paradigms

³⁶ To note few ; E Ankumah (n 10 above); UO Umozurike *African Charter on Human and Peoples' Rights* (1997); Evans & Murray (n 34 above); VO Nmehielle *The African Human Rights System: Its laws, practice and Institutions* (2001); Ouguergouz (n 6 bove); F Viljoen *International human rights law in Africa* (2007 KO Kufuor *The African Human Rights System origin and evolution* (2010).

³⁷ Okafor (n 32 above) 38.

³⁸ RK Hardowar, 'Between promise and compromise: Mauritius and the African Charter on Human and Peoples' Rights' unpublished, LLB dissertation, University of Mauritius (2007).

³⁹ Heyns & Viljoen (n 14 above).

⁴⁰ Okafor (n 32 above).

of studying impact of international human rights institutions that are instrumental in the design of a study as this one. Further, more specifically, the book dedicates chapters to assess the impact of the African system in Nigeria and South Africa that lend insights for analysis. With regard to measuring the influence of the African Charter on the judiciary, two books by Viljoen⁴¹ and Killander⁴² are useful in informing the trend of judicial application of the African Charter in African countries. Though their focus is on other African countries, they are relevant inputs for a comparative discussion. Viljoen's contribution further highlights the interaction of the African Commission at different levels of domestic systems which in same manner assist to map general trends that serve for analogy.

1.9 Methodology

Primary and secondary sources are used to inform the investigation on the research questions. The study is qualitative and methodologies applied are qualitative primary data collection tools oriented with interdisciplinary techniques of field assessment and desk review of secondary data.

Primary sources mainly focused on interview and discussions with purposively selected informants targeting key government and non government institutions. The first step was to identify key actors at the domestic level and prepare a list of key informants and secondary informants. Interview guides and check lists were tailored for each key informant as appropriate to their roles and functions and in-depth interviews were conducted accordingly. Questionnaires were developed and distributed to relevant targets in the key institutions to support interviews for appropriate deductions. Group discussions with certain target groups are conducted with the use of motivated questions as appropriate. Informal discussions with some groups and individuals were also used as tools to verify information in certain occasions. Observations were also occasionally applied by attending training workshops, and visiting libraries and resource centers.

Participatory action research methodology was applied in two ways. Firstly, the author involved informants in the exercise of analysing findings and designing recommendations as possible. In some occasions summaries of specific interviews and

⁴¹ Viljoen (n 36 above).

⁴² M Killander (ed) *International law and domestic human rights litigation in Africa* (2010).

findings were sent out to informants for verification as well as enriching the data and the analysis. More importantly, a validation workshop has been organised where the findings were shared and verified among stakeholders and the exercise of analysis was furthered with them. On the same forum the recommendations were enriched, and some initiatives and networks towards their implementation were born. Secondly, the action research was applied through engaging the author with selected actors in implementing certain recommendations.

Secondary sources include desk review of relevant books, journal articles, academic papers and reports from governmental and non-governmental organisations. The desk review involved an in-depth as well as systematic review of laws, official reports, court decisions, academic writings, newspapers and NGO publications.

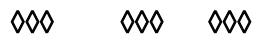
1.10 Challenges and Limitations of the study

Being an impact study, the exercise confronts the author with the overwhelming task of field assessment. On top, the topic being virgin, necessitates an in depth engagement with all relevant actors. However, exhausting all sources of information within a limited time was not possible. Therefore, the assessment pretends no comprehensiveness. On the other hand, due to the limited length, the study is able to present only an overview of the different aspects of the domestic system. Again, the study claims no comprehensiveness as to discussion of the findings.

Admittedly, examination of a legal system one is not acquainted with and conducting such a national study with vast field assessment, even more in a foreign country, without coupling with a team of researchers was quite a challenge. Interviewing some key officials was not possible due to their unavailability during the period of the field assessment. Further, confidentiality of some documents and lack official records of earlier years was a limitation in accessing relevant secondary data. However, in both cases secondary informants, informal discussions, and secondary documents were resorted as appropriate and as much was possible. In some occasions language posed a limited challenge that affected the speed of the assessment.

1.11 Overview of chapters

Chapter one lays out the background for the study introducing important aspects of the study. **Chapter two** is mainly devoted to define the position of the African Charter in the domestic legal system. **Chapter three** examines the influence exerted by the Charter on domestic institutions, actions and behaviours. Particular focus is devoted to judicial and litigation practices, legislative and executive actions, and the practice of key state and non-state actors. **Chapter four** analyses the challenges and opportunities that impede or enhance the impact of the Charter on the domestic system. **Chapter five** forwards recommendations illuminating the role various actors need to play to boost the influence of the African Charter.



CHAPTER TWO

THE DOMESTIC LEGAL SYSTEM AND THE PLACE OF THE AFRICAN CHARTER

2.1 Introduction

In order to assess and properly analyse the impact of a human rights treaty on domestic system, understanding the legal system is important. The status a treaty enjoys in the domestic law and the extent its norms are entrenched in the Constitution are determinant factors and form relevant background to further analyse influence at different levels. This chapter attempts to examine the place of the African Charter in the Mauritian legal system as a legal instrument as well as the correspondence of its norms with the constitutional rights.

2.2 Brief background to the Constitution and the legal system

The Constitution of Mauritius was bestowed to Mauritius by the British Government at the time of independence in 1968 which is based on the Westminster model.⁴³ The Constitution is the Supreme law of the land⁴⁴ and contains a justiciable Bill of Rights under Chapter II inspired by the European Convention on Human Rights (European Convention).⁴⁵ The Constitution provides for redress to be afforded by the Supreme Court to any individual whose rights under chapter II have been contravened.⁴⁶ It is the power and the duty of courts to interpret and enforce the provisions of the Constitution; and the Supreme Court has original power to settle constitutional questions of substantial nature.⁴⁷

⁴³ PR Domingue 'Legal method and Mauritian legal systems', unpublished, University of Mauritius (2001) 34.

⁴⁴ See Sec 2 of the Constitution

⁴⁵ National Human Rights Commission of Mauritius *Annual report for the year 2008* (NHRC report) (2009) 49.

⁴⁶ Sec 17.

⁴⁷ See sec 84 of the Constitution.

The legal system of Mauritius is characterised as mixed attributed to the fact that both the French and British colonial periods have left their significant legacy on the legal system. 'Part of Mauritian laws is of French origin and part of British origin evolved under both colonial regimes...Civilian or Romanist foundations have been overlaid by English jurisprudence'.⁴⁸ Therefore, having borrowings from two distinct systems, the legal system manifests substantial attributes derived from both systems.⁴⁹ After independence, important legislative reforms were in place to maintain and consolidate the mixed character of the Mauritian legal system.⁵⁰

2.3 Status of African Charter in domestic law

2.3.1 A dualist approach

African civil law countries have traditionally been seen as monist and common law countries as dualist.⁵¹ However, as indicated above Mauritius has mixed legal system based on French civil law and English Common law. As the concept of dualism wins in Commonwealth Africa,⁵² so does in Mauritius.

The dualist theory prescribes that international law and domestic law are separate legal systems.⁵³ In this case international norms have to go through a process of incorporation (domestication) to form part of domestic law and have a force of law municipally.⁵⁴ This means the Parliament must adopt a legislation to give effect to an international treaty which according to Dugard⁵⁵ can be done through one of the three principal methods bearing the same effect. One way is embodying the provisions of a treaty in the text of an Act of Parliament or another way is a treaty may be included as a schedule to a statute. The third method is that an enabling Act of Parliament may entrust

⁴⁸ Domangue (n 43 above) 4-32.

⁴⁹ As above.

⁵⁰ Domangue (n 43 above) 34-36.

⁵¹ M Killander & H Adjolohoun 'International law and domestic human rights litigation in Africa: An Introduction' in Killander (n 42 above) 4.

⁵² JO Ambani 'Navigating past the 'dualist doctrine':The case for progressive jurisprudence on the application of international human rights norms in Kenya in Killander (n 42 above) 27;see also Viljoen (n 36 above) 536.

⁵³ M Killander & H Adjolohoun 'International law and domestic human rights litigation in Africa: An Introduction' in Killander (n 42 above) 11; see also Viljoen (n 36 above) 535-536.

⁵⁴ As above.

⁵⁵ J Dugard *International law: A South African perspective* (2005) 61.

the executive with the power to bring a treaty in to effect through a proclamation or a notice in the *Government Gazette*.

In the particular case of Mauritius with regard to the African Charter, there has been no domestication through any of the possible ways. Mauritius being a dualist state, international conventions do not form part of the domestic law unless they have been incorporated by way of an Act of Parliament,⁵⁶ and hence are not enforceable by national courts unless they are incorporated in to domestic law.⁵⁷ The Supreme Court has also clearly spelled that '[i]t is a well-settled principle that unratified and unincorporated treaties are of no direct effect in our courts'.⁵⁸ It is argued that the current trend of indirect incorporation through corresponding Bills of Rights renders the need for direct application of international human rights treaty less.⁵⁹ However, the case of Mauritius does not fit in that category as the forthcoming discussion will unfold, the Bill of Rights does not correspond with the African Charter in certain significant aspects. The need for direct judicial application of the Charter is still strong but without legal arrangement.

Incorporation in to domestic law is an important element of observing treaty obligations and the impact of human rights treaty will be greatly reduced if it is not incorporated in to law.⁶⁰ Given the fact that so far only Nigeria, among the dualists, has domesticated the African Charter,⁶¹ Mauritius joins many other African countries that are reluctant to incorporate the African Charter in to the domestic legal framework. Adopting relevant international instruments is important but 'it is another story when it comes to giving effect to those treaties a force of law in domestic jurisdiction'.⁶²

⁵⁶ V Boodel 'The influence of the European Convention on the constitutional law of Mauritius' (1996) 2 *European Human Rights Law* (1996)160.

⁵⁷ Justice Rajsoomer Lallah 'The domestic dpplication of international human rights norms' (1988) 2 *Mauritius Law Review* 216.

⁵⁸ Interlocutory Judgment in *Devendranath Hurnam, a barrister-at-law* (2007) SCJ 289.

⁵⁹ M Killander & H Adjolohoun 'International law and domestic human rights litigation in Africa: An Introduction' in Killander (n 42 above) 14.

⁶⁰ Umozurike (n 36 above) 107.

⁶¹ A Bosl & J Diescho *Human Rights in Africa legal perspectives on their protection and promotion* (2009) 168; see also Viljoen (n 36 above) 536.

⁶² M Hansungule 'Domestication of international human rights law in Zambia' in Killander (n 42 above) 72.

2.3.2 The role of non domesticated treaties

It is the onus of the state to define the status of international instruments in the domestic legal system. The Constitution of Mauritius does not provide for relationship between binding international treaties and municipal laws. It is provided that the Constitution is supreme over any law to the effect that any law inconsistent with the Constitution shall be void.⁶³ This may be followed by perceptions that international instruments including the African Charter would have domestic relevance to the extent they are in harmony with the Constitution. It may be logically asserted that to the extent that the provisions of the Charter or any other human rights treaty correspond to the Bill of Rights, they enjoy 'indirect domestication'⁶⁴ and even more enjoy constitutional status. However, as will be shown later, it remains that the Bill of Rights is short of similar guarantees as those enshrined in the Charter.

The Constitution is also silent as to whether or not courts must use international and regional human rights instruments as interpretive guide. It differs from some dualist African constitutions such as that of South Africa and Malawi that provide the African Charter and other international instruments interpretative status.⁶⁵ The constitutional gap is not also complemented by the Interpretation Act as is the case in Botswana where courts are directed to use international law as an aid to interpretation of national law.⁶⁶ The Mauritian rule of interpretations⁶⁷ does not provide for similar canon. The African Charter thus, does not have legally imperative interpretative force in judicial proceedings that emanates either from the Constitution or other law rather it will be the discretion of the courts to apply it. Whether the courts exercise their discretion and whether the Charter provisions are actually applied will be an issue to be examined in the next chapter.

⁶³ Sec 2.

⁶⁴ M Killander & H Adjolohoun 'International law and domestic human rights litigation in Africa: An Introduction' in Killander (n 42 above) 14.

⁶⁵ For example see the Constitution of South Africa sec 39(1); the Constitution of Malawi sec 11 (2) (c).

⁶⁶ The Interpretation Act of 1984 (see sec 24).

⁶⁷ Interpretations and General Clauses Act RL 3/267 of 1982.

2.4 Norms of the African Charter in the Constitution

Following from the supremacy of the Constitution, the degree the provisions correspond to the African Charter determines the extent the norms enjoy higher status. The following discussion is only a cursory overview aiming at spotting major gaps.

2.4.1 Principles of non discrimination and equality

The principles of equality and non discrimination are entrenched in sections 3 and 16 of the Constitution. Standing at odds with the open ended approach of the African Charter, the grounds for discrimination under the provisions are exhaustively enumerated; include only race, caste, place of origin, sex, color, creed and political opinion. Under the Charter:

'[D]istinction of any kind' is prohibited, and the grounds listed serve merely as examples of the kinds of distinctions that are envisaged. The open-ended nature of the list is reinforced by the words 'or other status'.⁶⁸

Mauritian Courts have also followed strict application of the provisions in the old judgments.⁶⁹ Further, in the relatively recent case of *Matadeen and anor v Pointu and others* the Privy Council concluded, 'sections 3 and 16... do not apply to inequalities of treatment on grounds falling outside those enumerated'.⁷⁰ This is a perilous approach to the exclusion of protection from discrimination based on disability, sexual orientation, HIV status, etc.⁷¹ Given the highly regarded and binding position of the Council's decision, it will have force in shaping the behavior of judges and the entire jurisprudence.

The equality provision of the Constitution, departing from the African Charter, lacks a self-standing norm for 'equality before the law' and 'equal protection of the law'.⁷² It is a 'subordinate equality provision' that only prohibits discrimination in the enjoyment of the

⁶⁸ C Heyns 'Civil and political rights in the African Charter' in Evans & Murray (n 34 above) 145.

⁶⁹ See *Jeekahrajee v Registrar Co-operatives* (1978) MR 215 & *Société United Docks v Government of Mauritius* (1981) MR 500.

⁷⁰ (1998) MR 172 at 190.

⁷¹ Specific legislations such as the HIV and AIDS Act 31 of 2006; Equal Opportunities Act 42 of 2008; Employment of Disabled Persons Act 2 of 1996 etc to be noted .

⁷² See art 2 of the Charter.

rights and freedoms in the Constitution.⁷³ The European Convention has a similar approach to the matter⁷⁴ which explains the background of the provision as the Constitution is modeled by the same Convention. This approach has also resulted in another perilous jurisprudence where the Supreme Court held 'it is not correct to suggest that section 3 of our Constitution means or is deemed to mean that everyone is equal before the law'.⁷⁵

Moreover, the blanket exemption of laws concerning foreigners and personal status from the application of section 16 leaves the door wide open for discriminatory laws. The exclusion of personal status law may serve to justify laws that discriminate women and children in family and property matters. It inherently contradicts the spirit of the African Charter that particularly emphasises on the special protection of women and children.⁷⁶ The exemption of laws concerning foreigners is also of serious concern in Mauritius where there is a record of unsatisfactory working and living conditions of migrant workers, and the absence of law for granting asylum or refugee status.⁷⁷

2.4.2. Civil and political rights

The Constitution of Mauritius has incorporated 'traditional' civil and political rights that are derived from the European Convention. The rights to life, liberty, due process of law; freedoms of assembly, association and expression; and freedom of religion and conscience, though not identical, are more or less corresponding to the African Charter. A critically scrutiny would still spot some holes here and there. For the sake of this brief discussion however, few merit a highlight.

i) The right to dignity

The right to dignity and recognition of one's legal status is guaranteed under the African Charter.⁷⁸ The Constitution, however, lacks corresponding provisions particularly dealing

⁷³ Hardwar (n 36 above) 12.

⁷⁴ C Heyns 'Civil and political rights in the African Charter' in Evans & Murray (n 34 above) 147.

⁷⁵ *Jeekahrajee* (n 48 above) para 19.

⁷⁶ See Art 18 of the Charter.

⁷⁷ See African Commission *Concluding observations and recommendations on the 2nd - 5th periodic reports of the Republic of Mauritius* available at <<http://www.achpr.org>> (assessed 15 August 2011) para 40-41.

⁷⁸ See art 5 of the African Charter.

with dignity as a standalone right. The provisions dealing with degrading treatment and punishment may cover dignity to a certain extent. However, they do not adequately guarantee all aspects of dignity inherent in a human being. Also, a very important aspect of the right entrenched in the Charter, the right to the recognition of one's legal status, is not afforded constitutional guarantee.

The African Charter gives special emphasis to the right to dignity. In fact, dignity is one of the 'peculiarly African inspirations'⁷⁹ and 'the only right in the Charter described as "inherent in a human being"⁸⁰. Dignity is magnified to be one of the 'essential objectives for the achievement of the legitimate aspirations of the African people'⁸¹ on which the Charter is rooted.

ii) Freedom from torture, cruel, inhuman and degrading treatments

Section 7 of the Constitution provides protection from torture, inhuman or degrading punishment or any other such treatment. A critical diversion and an alarming concern in this regard is the exception provided in case of 'punishments authorised by law' that defeat the absolute protection provided under the African Charter article 5.

In *Huri-Laws v Nigeria*⁸² the African Commission underscored that 'the prohibition of torture, cruel, inhuman, or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses'. Therefore, such a right of the state under a general disguise 'authorised by law', as declared by the Commission in *Doebbler v Sudan*,⁸³ would be 'tantamount to sanctioning state sponsored torture' and 'contrary to the very nature' of the African Charter.

⁷⁹ R Gittleman 'The African Charter on Human and Peoples' Rights: A legal analysis' (1980-1982) 22 *Virginia Journal of International Law* 675.

⁸⁰ C Heyns 'Civil and political rights in the African Charter' in Evans & Murray (n 34 above)150.

⁸¹ See preamble of the African Charter.

⁸² (2000) AHRLR 273 (ACHPR 2000) para 40.

⁸³ (2003) AHRLR 153 (ACHPR 2003) para 42.

2.4.3 Socio economic and cultural rights

The socio economic and cultural rights guaranteed in the African Charter⁸⁴ do not find place under the Constitution of Mauritius. The right to work, the right to health and the right to education do not enjoy constitutional protection. This gap is explained by the borrowings of the Bill of Rights from the European Convention which also does not have socio economic rights provisions. Having ratified the Charter, Mauritius has not taken inspiration to incorporate justiciable socio economic rights in the Constitution. Whereas, the African Charter is particularly firm that:⁸⁵

[C]ivil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

The lack of constitutional guarantee for socio economic rights is ironic as Mauritius maintains a welfare state and relevant legislations are in place to fulfill these rights.⁸⁶

The right to participate freely in the cultural life of one's community as distinctly provided under the Charter⁸⁷ does not also find its constitutional equivalence. Interestingly, in practice, the provisions on freedom of expression and freedom of religion are understood to cover the right to culture.⁸⁸ There are also legislations and institutions to facilitate an enabling environment for the promotion and practice of culture.⁸⁹

The existence of such legislations generally boosted confidence as to the adequacy of the legal protections and fashioned less sensitivity towards translating them to

⁸⁴ Arts 15 -18 of the Charter.

⁸⁵ See preamble of the Charter.

⁸⁶ For example the right to work: Occupational Health and Safety Act 28 of 2005 & Employment Rights Act 33 of 2008; the right to health: Public Health (Amendment) Act 30 of 2006 & HIV and AIDS Act (n 71 above); the right to education: Education Act of 1957 (RL2/6031957) & Education (Amendment) Act 33 of 1977.

⁸⁷ See art 17 of the Charter.

⁸⁸ See NHCR *Annual report* (2007) 15 ; see also The Republic of Mauritius, *Combined periodic report 2nd- 5th (2008) under the African Charter on Human and Peoples' Rights 2nd report* (2008) available at <http://www.achpr.org/english/_info/statereport_considered_en.html> (accessed 16 August 2011) (periodic report) at 31.

⁸⁹ The Mauritian Cultural Centre Trust and other cultural trust funds of different cultural groups are established under the law to promote the language, culture, religion and traditional values of their groups (see periodic report (n 88 above) 32-34.

constitutional guarantees.⁹⁰ In spite of such legislative framework, socio economic and cultural rights need to enjoy constitutional guarantee as fundamental rights rather than legislative prerogatives.

2.4.4 Special protection for women and children

Apart from the general principle of non-discrimination, the Constitution does not devote provisions for special protections of women and children as provided in the African Charter.⁹¹ The State's specific commitment under the Charter to ensure elimination of all forms of discrimination against women is not constitutionally rooted with specific provisions.⁹²

Records with the Ministry of Gender, Child Development and Family Planning (Ministry of Gender) evidence Mauritian women and children remain vulnerable to violation of rights; and in particular the prevalence of domestic violence is alarming.⁹³ The African Commission has also shared its concern on the prevalence of violence and discrimination against children.⁹⁴ Noting such serious concerns, parallel with non legislative measures, placing the special protection of women and children as a constitutional norm is important.

2.4.5 Peoples' rights

The Constitution does not have the conception of peoples' rights. The peculiar and essential elements of the African Charter, peoples' rights,⁹⁵ are not entrenched in the Mauritian Bill of Rights. The right to economic, social and cultural development of the people enhances and complements with efforts of government towards sustainable development.⁹⁶ The African Charter also particularly emphasises that it is 'essential to pay

⁹⁰ Recent recommendations for revision are noted (see Law Reform Commission (LRC) Issue Paper, Constitutional Protection of Human Rights (2010) 4 & and NHRC (n 88 above) 13-15).

⁹¹ See art 18 (2) of the Charter.

⁹² The relevance of the Sex Discrimination Act 43 of 2002 & the Equal Opportunities Act is not to be dismissed..

⁹³ See Ministry of Gender *A study of the extent, nature and costs of domestic violence in Mauritian economy* (2010); see also Ministry of Gender *A situational analysis of women and children in the Republic of Mauritius* (2003).

⁹⁴ See Concluding observations (n 77 above) para 43 & 46.

⁹⁵ Arts 19 - 24 of the Charter.

⁹⁶ Richards(n 21 above) 7.

particular attention to the right to development'.⁹⁷ The principle that 'all people shall be equal' is of great importance to coexistence in a multicultural society like Mauritius. Also, needless to stress on the significance of the right to satisfactory environment in the highly industrialised economic context of the country as highlighted in the background.

2.5 Conclusion

The discussion under this chapter reveals that the status of the African Charter in the domestic legal system of Mauritius is shaky. Firstly, the system is dualist and the Charter is not domesticated. Second, the legal system does not define the role of non domesticated treaties as imperative rules of judicial interpretation. Thirdly, the norms of the Charter lack constitutional equivalence at many levels. These all will have implications to the impact of the Charter as domestic actions and behaviors will likely depend on the status a treaty enjoys in the legal system.

The next Chapter will unfold the impact of the African Charter on the domestic system as manifested in the actions and often behaviors of different government and non government actors.

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⁹⁷ See preamble.

CHAPTER THREE

THE IMPACT OF THE AFRICAN CHARTER ON THE DOMESTIC SYSTEM

3.1 Introduction

Measuring the influence of a system on another system is not an entirely a single simple task. It requires investigation of the practices and interactions of the relevant actors involved in the systems. This chapter aims to map to what extent the African Charter and the African Commission has influenced the actions and practices of key government and non government actors in the domestic system by examining and analysing their activities and the outcomes therein. However, it will only be an attempt to spot general trends as comprehensive discussion is not possible due to the limited nature of the study.

3.2 Judicial application

Judicial application of a human rights treaty may occur through direct enforcement as a basis of remedy or through reliance for interpretive guidance in the construction of constitutions or ordinary domestic laws.⁹⁸ The question of direct application in the case of Mauritius will not have much relevance because as discussed earlier the legal system subscribes for the dualist approach and jurisprudence has also reinforced it. For the sake of brevity and repetition, reference is made to the discussion under chapter 2 (2.3). Therefore, the discussion under this section will focus on judicial application of the African Charter as an aid to interpretation.

In order to examine evidence of judicial application of the African Charter in Mauritius, the study engaged systematic review of cases which fairly covered court

⁹⁸ Viljoen (36) 540.

judgments since ratification of the Charter (1992).⁹⁹ Corroboration and explanation of such evidence was sought from judges, counsels as well as court officers.¹⁰⁰

The discussion in the previous chapter established the lack of a constitutional or legislative imperative for interpretative application of international treaties. The investigation thus, will be whether courts have exercised judicial discretion to apply the African Charter as an aid to interpretation.

In the overwhelming majority of the cases, judges normally refer to the Constitution and the statutory law in question. This should not however, be taken as judicial practice in Mauritius is limited to municipal law; it is rather rich in reference to foreign case law, the European Convention, and in some cases international human rights law as relevant. Attached to the legal tradition's infusion, in the majority of the cases interpretive guidance is taken from French doctrines and English case law.

In the Mauritian judiciary, the most frequently referred human rights treaty is the European Convention, and as far as human rights jurisprudence is concerned that of the European Court of Human Rights (European Court) is the leading. The frequent interaction of the judiciary with the European system has occurred because of the correspondence between the provisions of the European Convention and the Constitution of Mauritius. For example, in *Police v Ramatoolah*¹⁰¹ the Intermediate Court referred to the decision of the European Court to analyse limitations on freedom of religion. The Court explained that:

[I]t has to be noted here that the freedom of religion as guaranteed by *the European Convention of Human Rights is similar to that as our Constitution*, hence its appropriateness here. [emphasis added]

In the same vein, it is common to come across quite a number of cases that make similar reference either directly or by reference to the Privy Council's decisions which are also highly influenced by the European Court's jurisprudence.¹⁰² Some decisions have

⁹⁹ The review was conducted at all levels of courts by year, by theme and by international instrument.

¹⁰⁰ Strategic selection of senior Supreme Court judges and former judges (who served in the justice system for more than 10 years at different tiers of the judiciary) mainly formed the key informant interview.

¹⁰¹ (2011) INT 252 3.

¹⁰² For few more example see *Dookhith S v The Distric Magistrate of Pamplémousses* (2011) SCJ 101; *Parayag RK v The independent Commission against Corruption* (2011) SCJ 309;

also made reference to the ICCPR in interpreting constitutional provisions.¹⁰³ Nonetheless, the review could not find any case that made reference to the African Charter or the case law of the African Commission. It is also strongly affirmed by judges that they have not so far used the Charter or the jurisprudence of the Commission in their judgments; nor have they come across any domestic decision that does so.¹⁰⁴

Many of the decisions of the European Court are already incorporated in the domestic jurisprudence through long standing judicial reliance. Judges are also conversant with European system as their legal education as well as judicial practice offered better exposure to the system. Therefore, judges naturally incline to refer to those cases instead of going out of the way looking for 'alien' jurisprudence. 'You use what you know and what is readily available'.¹⁰⁵

The non domesticated status of the African Charter was also pointed out as hindrance for judicial application.¹⁰⁶ This being a valid point albeit, should not justify lack of proactive efforts to apply the Charter as other African judges in similar legal systems have applied the Charter firmly. For example, a learned judge at the Botswana Court of Appeal, illuminating the need to use the Charter as 'an aid to the construction of the Constitution' stressed that domestic legislation should be interpreted in a manner 'not to conflict with Botswana's obligations under the Charter'.¹⁰⁷ A similarly positive judge at the Ghanaian Supreme Court maintained that the absence of a specific legislation to give effect to the Charter does should not affect reliance on the Charter.¹⁰⁸ Should same approach was followed by the Supreme Court of Mauritius, perilous decisions would

Moodoosoodun v State (2009) SCJ 413; *Bundhun VP v State* (2010) SCJ 206; *Oozeer SA.S & Ors v The State* (2007) SCJ 307; *State v Assame HD & Anor* (2001) SCJ 177.

¹⁰³ For example *Fakeemeeah Mohamed v Commissioner of Police & Others* (2001) SCJ 252; *Bajan M v the State* (2010) SCJ 348; *Toolsy Kamla v. H.H. The District Magistrate of Pamplémousses* (2002) SCJ 16.

¹⁰⁴ Interviews with Honourable Justice N Matadeen, Supreme Court Judge, 8 September 2011; Honorable Justice S B Domah, Supreme Court judge, 12 September 2011; Ms RN Narayan, Chairperson, Sex Discrimination Division, NHRC (also, a former Supreme Court Judge), 9 Sept 2011; Ms M J Lau Yuk Poon, Assistant Parliamentary Council, Attorney General's Office (also, a former judge of the Intermediate Court) , 20 September 2011.

¹⁰⁵ Justice Domah (n 104 above).

¹⁰⁶ Interview with judges & former judges (n 104 above).

¹⁰⁷ Amissah, J.P, in *Attorney-General of Botswana v Unity Dow* [1992] LRC (Const.) at 623 & 656h-i quoted in F Viljoen 'The application of the African Charter on Human And Peoples' Rights by domestic courts in Africa' 43 (1999) *Journal of African Law* 3 - 4.

¹⁰⁸ Archer, C.J, in *New Patriotic Party v Inspector-General of Police, Accra* [1993] 1 N.L.P.R. 73, suit 3/93, at 82 quoted in Viljoen (n 107 above) 5.

have been avoided in certain cases. In *Tsang Man Kin J v The State of Mauritius & Anor*¹⁰⁹ the Supreme Court rejected plaintiff's submission to give a broad and purposive interpretation to non discrimination under the Constitution. The Court reasoned out that widening the scope of non discrimination will not be 'one of construction and interpretation but rather of legislation'.¹¹⁰ Had the Court followed similar reasoning as those of its African peers and enlightened by the non exhaustive grounds of non discrimination under the Charter; the ruling would have been different. However, the court barred itself from creative interpretation following the perilous reasoning of the Privy Council¹¹¹ which is discussed earlier in chapter 2 (2.4).

In the above and many other cases the African Charter and the jurisprudence of the African Commission would have lent insight for interpretation of fundamental rights. However, the current jurisprudence in Mauritius shows glaring absence of judicial application of the Charter. The evidence of the study established that the Mauritian judiciary so far, has not played the role aspired by the African Commission¹¹² in incorporating the African Charter and the jurisprudence of the Commission in court decisions.

3.3. Litigation practices and legal activism

3.3.1 Litigations in domestic courts

Lawyers can play significant role in shaping litigations and informing courts with new trends. They are in a position to introduce human rights treaties to courts through their arguments. In the cases indicated above, mostly the submissions of the counsels were the driving force for the courts' reference to international law. Evidence also supports the submissions of counsels fashioned judicial behavior resulting in 'the frequency and innovative use' of the African Charter by African courts.¹¹³ Therefore, an investigation of

¹⁰⁹ (2006) SCJ 241.

¹¹⁰ (2006) SCJ 241 at 2.

¹¹¹ *Matadeen* (n 70 above).

¹¹² African Commission Resolution on the Role of Lawyers and Judges in the Integration of the Charter (1996).

¹¹³ Viljoen (105 above) 22.

judicial application of the African Charter should not disconnect judicial behavior from that of lawyers.¹¹⁴

The study covered both state lawyers and private lawyers where the findings show no significant distinction as to their litigation practice. State lawyers mostly interact with domestic law and tend to perceive their practice as more of municipal law.¹¹⁵ However, its unavoidable they often resort to the European Court's decisions and English case law which form part of the domestic jurisprudence. The African Charter or the African Commission's decisions do not cross their minds; nor do they face opponent parties invoking the Charter or the Commission's decisions.¹¹⁶

Counsel's submissions in the reviewed cases also evidence that majority of lawyers in the private practice use the European Convention in cases involving fundamental rights. If at all they need to liberate their litigation from the European system, the trend would be to invoke the ICCPR. Relatively better importance is attached to international treaties and international human rights bodies regard given to 'the UN's visibility and credibility'.¹¹⁷ Lawyers confirmed that it's not part of their litigation tradition to invoke the decisions of the African Commission.¹¹⁸ Generally Mauritian lawyers are not oriented in human rights litigation; and more relevant, they are unfamiliar to the discourse on the African Charter and the jurisprudence of the African Commission.¹¹⁹ This in effect requires them to put special effort to update themselves albeit, many fail to see the need for that.¹²⁰ The proactive use of the Charter provisions and Commission's jurisprudence in their litigations would have afforded better legal service to their clients. It's the lawyer's duty to act in the best interest of her/his client which includes the application of the progressive provisions of the African Charter. As is appropriately summed up:

¹¹⁴ M Killander & H Adjolahoun 'International law and domestic human rights litigation in Africa: An Introduction' in Killander (n 42 above) 18.

¹¹⁵ Interviews Ms Mootoo-Leckinig, Assisstant DPP, Director of Public Prosecutions (DPP) Office & Mr M Armoogum State Counsel, DPP Office, 8 September 2011.

¹¹⁶ As above.

¹¹⁷ Interview with Ms P Paten, Barrister & CEDAW Committee member, 5 September 2011.

¹¹⁸ Ms Paten (n 117 above); informal discussions with Mrs N Bundhun, Barrister & Mr V Chooshna Barrister (12 September 2011); interview with Mr J C Bibi, Barrister & human rights activist, 21 September 2011.

¹¹⁹ As above.

¹²⁰ Mr Bibi put it 'anything that's of African does not catch the attention of the lawyer here' (interview (n 118 above)).

There is ... the need for creativity on the part of the lawyer in formulating her or his client's case in human rights cases. This imposes a duty on the lawyer to update her or his knowledge of human rights jurisprudence...¹²¹

The African Commission also recognises the potentials of lawyers in developing its domestic impact to which effect urged lawyers to integrate the African Charter in their works.¹²²

3.3.2 Lawyers and law societies as activists

Lawyers beyond court room act as activists mobilised through strong law societies and civil society organisations. The Mauritius Bar Association and the Mauritius Law Society are associations of practicing lawyers but disinterested in human rights activism.¹²³ The associations or the large majority of the members have not been visibly engaged in local human rights initiatives to challenge laws, institutions and practices.¹²⁴ The lack of this tradition has also translated in to their invisible role in the African human rights system. On the contrary, their African peers at individual and association level have been locally active and beyond have provided the African Commission the opportunity to exercise its protective mandate by submitting communications. Few cases can be pointed out from Nigeria, Sudan, Swaziland and Zimbabwe.¹²⁵

3.4 Legislative actions

A number of new laws and amendments including constitutional amendments¹²⁶ have come in to effect after the ratification of the African Charter. It is not possible to review all

¹²¹ A Aturu ' The legal profession and protection of human rights' 2010 Paper presented for the Nigerian Institute of Advanced Legal Studies available at <[http://www.bamideleaturuandco.com/the% 2520 legal%2520profession%2520and%2520human%2520right](http://www.bamideleaturuandco.com/the%2520legal%2520profession%2520and%2520human%2520right)> (accessed 12 September 2011).

¹²² Resolution on the role of lawyers & judges (n 112 above).

¹²³ So far, they did not any human rights initiatives in their plans and activities along the years. (Interviews with senior lawyers Ms Paten & Mr Bibi (n 117&118 above); informal discussion with K Narrain, Administrative secretary of the Mauritius Bar Council, 12 September 2011)

¹²⁴ One would not escape noticing JUSTICE, a local human rights initiative against police brutality mobilised by the prominent lawyer Jean Claude Bibi.

¹²⁵ See *Aturu v Nigeria* (2000) AHRLR 179A (ACHPR 1994); *Law office of Ghazi Suleiman v Sudan (I)* (2003) AHRLR 134 (ACHPR 2003); *Lawyers for Human Rights v Swaziland* (2005) AHRLR 66 (ACHPR 2005) *Zimbabwe Lawyers for Human Rights and Another v Zimbabwe* (Communications 294/2004).

¹²⁶ See secs 5 (3),8,10, 16.

these legislations in this short study. For the purpose of painting general picture, selected legislations and law review trends will be briefly highlighted.

3.4.1 Progressive legislations

The Sex Discrimination Act and Protection from Domestic Violence Act¹²⁷ were passed to further afford protection of rights of women. The two legislations are highly important given the fact that the Constitution does not provide special protection for women. The Human Rights Protection Act¹²⁸ has established the NHRC and introduced human rights protection mechanisms. The Criminal Code (Amendment) Act,¹²⁹ and the HIV and AIDS Act and the Employment Rights Act expanded the legal protections at relevant levels where a dearth of legislative gap was felt. The Equal Opportunities Act, a recent complement to the principles of equality and non discrimination, expanded the grounds for non discrimination to include; disability, sexual orientation, marital status and age which are missing from the Bill of Rights.¹³⁰ Combating of Trafficking in Persons Act¹³¹ has also introduced protective regimes to address issues of trafficking.

These and other progressive legislations are commendable and undeniably enhance the protection of the rights under the African Charter. However, as much as ascertained by relevant officers from their personal experiences and official records,¹³² these laws were not adopted or amended with the deliberate consideration to give effect to the rights under the Charter. They are not also legislative measures to comply with the recommendations or resolutions of the African Commission.¹³³ On the other hand some of these legislations were adopted to give effect to international treaties and derived notable inspirations too. For example; the Protection from Domestic Violence Act and the Sex Discrimination Act and other law revisions initiated by the Ministry of Gender

¹²⁷ Act 6 of 1997.

¹²⁸ Act 19 of 1998.

¹²⁹ Act 12 of 2003.

¹³⁰ See Art 2

¹³¹ Act 2 of 2009.

¹³² Information from legal drafting, advising, research officers of the Attorney General's Office ;in particular interviews with Mrs PR Chitto, Principal State Counsel, 5 September 2011; D Beessoondoyal, State Counsel, 20 September 2011, Ms J Lau Yuk Poon (n 104 above). Also, a close study of the recommendations of the African Commission in the concluding observations shows no correspondence.

¹³³ As above

were inspired by the CEDAW and intended to give effect to the rights there in.¹³⁴ The Combating of Trafficking in Persons Act is officially enacted to give effect to the UN Protocol to Prevent Suppress and Punish Trafficking in Persons. The Criminal Code Amendment Act incorporated the definition of torture under CAT while criminalising torture.¹³⁵

3.4.2 Law reform projects

Mandated with law review and reform, the Law Reform Commission (LRC) has issued several researches on areas of law reform. These researches make greater use of international human rights instruments as well as the European Convention. The jurisprudence of the European Court, and the British and other foreign case law with similar influence are extensively used.¹³⁶ In as much as the law reform studies are rich with international and foreign experiences, they do not reflect any inspiration from the African Charter or the jurisprudence of the African Commission. It is well noted that the African Charter is not referred or even mentioned cursorily in any of the researches available on record.¹³⁷ Disappointingly, the Charter is not considered to add much to what is already enshrined under the major international human rights instruments.¹³⁸

As far as ascertained, legislative behavior evidence neglect of the African Commission's Resolution¹³⁹ that urges States towards integration of the African Charter in their national laws. Apart from factors attributed to the behaviour of role players' in legislative process, external factors have also determined impact on legislative actions. The absence of judicial application of the African Charter implicates on lack of legislations with direct or indirect influence of the Charter. If laws were tested and challenged in light of the Charter through judicial application, they would have informed legislative actions. In the same vein, if the African Commission had the chance to call for legislative measures through the communications mechanism, legislative actions may

¹³⁴ Discussion with a member of the drafting team Ms Paten (n 117 above) confirmed that the drafting was inspired by CEDAW principles.(Interview on 6 September 2011);see also Ministry of Gender *Task Force Report* (2001), unpublished, Ministry of Gender.

¹³⁵ Sec 78.

¹³⁶ Interview with Mr S Kadel, Legal Research Officer, LRC, 8 September 2011.

¹³⁷ LRC activity reports on record (1997-2011) and Issue Papers and Newsletters (2007-2011) are reviewed.

¹³⁸ Mr Kadel (n 136 above).

¹³⁹ Resolution on the Integration of the Provisions of the African Charter on Human and Peoples' Rights in to National Laws (1989).

likely have been impacted by the Charter. The Nigerian experience shows tangible impacts on legislative actions such as repeals and amendments of specific laws were recorded as a result of the Commission's decisions on communications.¹⁴⁰

3.5 Executive actions

For the brevity of this study, it is not plausible to cover impact on executive action at institutional level bearing in mind the executive is an umbrella for many human rights implementing institutions. Therefore, choice is made to focus on policies as they are key in defining executive actions; and in many ways executive behavior and practice is a translation there from. On the other hand, it will be relevant to assess the executive's approach to state reporting and concluding observations as they are also highly linked to state behavior in relation to the African Charter.

3.5.1. Policies

Similar with legislative actions, the African Charter cannot be claimed to have influenced policies. Few policies and policy related documents that directly engage human rights are picked to illustrate the assertion.

The comprehensive Government Plan¹⁴¹ has incorporated a wide number of human rights implementation components. The Programme provides for the adoption of important laws, policies and national action plans. These components facilitate the realisation of the rights in the African Charter albeit, without intention. Three examples are selected from the Programme for further discussion. One, the executive plan to initiate Children's Bill and the Juvenile Offenders Bill are CRC inspired measures to comply with the recommendations of the CRC Committee.¹⁴² Another, the commitment to design a National Action Plan on Family and National Action Plan to Combat Domestic Violence is CEDAW inspired and resulted from strong lobbying by the Ministry of Gender.¹⁴³ Also, the National Preventive Mechanism that should focus on combating torture is clearly spelt out in the Programme as a measure to implement the

¹⁴⁰ See Okafor (n 32 above) 127-134.

¹⁴¹ Government Programme (2005-2010) (on file with author).

¹⁴² Ombudsperson for Children Annual Report (2010-2011) 112-113.

¹⁴³ Interview with Ms M Bali, Head, Gender Unit, Ministry of Gender, 8 September 2011.

State's obligation under the Optional Protocol to CAT.¹⁴⁴ Examination of the Programme evidences no specific components are purposively derived from obligations under the Charter.

The Foreign Policy¹⁴⁵ vowed respect for human right and democracy and adherence to the principles of the UN Charter. A further scrutiny of the policy document does not provide any tangible link to the African Charter or cooperation with regional human rights bodies.

The Gender Policy¹⁴⁶ can claim link to the African human rights system only for listing the African Women's Protocol among the guiding instruments. Yet, no reference is made to the relevant principles of neither the African Charter nor even the Protocol whilst the policy document refers to the CEDAW as the main instrument for the policy.

The National Human Rights Action Plan (NHRAP 2008) and the current revision of the NHRAP do not include specific components that will enhance the promotion and implementation of the African Charter.¹⁴⁷

3.5.2 State Reporting

Reporting under article 62 is the major monitoring mechanism under the African Charter which enables to measure domestic influence. Reporting has two-fold accountability; at the national level and before the international community.¹⁴⁸ Therefore, state reporting is expected to be a meaningful exercise; a reflection of all relevant stakeholders and an interdepartmental input, not that of one department's or one expert's write up assignment.¹⁴⁹

In the current practice of Mauritius, the Prime Minister's Office coordinates state reporting partnering with the Attorney General's Office. Normally line ministries take part

¹⁴⁴ See Government Programme (n 141 above) para 40.

¹⁴⁵ Available at <<http://www.gov.mu/portal/goc/mfasite/files/splan.pdf>> accessed 2 October 2011.

¹⁴⁶ The National Gender Policy Framework (2008).

¹⁴⁷ Interview with Ms BR Cader, Acting Principal Assistant, Prime Minister's Office, 5 September 2011.

¹⁴⁸ Viljoen (n 36 above) 369-370.

¹⁴⁹ Viljoen (n 36 above) 371.

in the information pooling.¹⁵⁰ The study, however, observed that engaging interdepartmental dialogue is less throughout the process. Further, no channel of interaction between government and NGOs has been in place¹⁵¹ and for worse, the NHRC has not played any meaningful role in the reporting system. The African Commission has also expressed concern about such non participatory reporting process.¹⁵² Many stakeholders still remain unaware of the reporting process; and the previous reports submitted to the Commission are not also published or disseminated.

Late reporting is easily discernable from the big gap between the periods of submission that the second time of report submission was in 2008 after the 1st report submitted in 1996. Official explanations assert delays in reporting were not peculiar to the African Charter rather such delays in reporting generally occurred in the past due to slowed information gathering and preparation coupled with multiple reporting obligations.¹⁵³

3.5.3 Compliance with the recommendations of the African Commission

Since the complaint mechanism has not been seized with regard to Mauritius, the only recommendations of the African Commission to the government are those in the concluding observations and the recommendations of the Promotional Mission to Mauritius (2006).¹⁵⁴ As review and analysis of the specific recommendations is not viable here, the discussion hence will only flash on state actors' responsiveness.

With regard to concluding observations, the current approach shows the emergence of encouraging practice. Interdepartmental dissemination of the concluding observations (on the 2008 report) of the African Commission has been carried out.¹⁵⁵ Analysis of the concluding observations is recently prepared to evaluate progress achieved in line with

¹⁵⁰ Ms Cader (n 147 above).

¹⁵¹ Interview with Mr L Couronne, Director, Amnesty International (6 September 2011); Ms Cader (n 147 above).

¹⁵² Concluding observations (n 77 above) para 36.

¹⁵³ Ms Cader (n 147 above); interview with Ms S Nurmahomed, Second secretary, Ministry of Foreign Affairs, 5 September 2011.

¹⁵⁴ African Commission on Human and Peoples' Rights *Mission report of the promotional visit to Mauritius*,(2006),available at [http://www.achpr.org/english/Mission_ reports/Mauritius/ Mission% 20 Report_Mauritius.pdf](http://www.achpr.org/english/Mission_reports/Mauritius/Mission%20Report_Mauritius.pdf) (accessed 4 June 2011).

¹⁵⁵ Ms Cader (n 147 above).

the recommendations and identify gaps to be addressed.¹⁵⁶ Such approach enables the government to take tangible steps in addressing the concerns indicated. However, the practice has not yet developed toward public dialogue through dissemination of concluding observations to NGOs or the public.

The Promotional Mission, after constructive dialogues with high ranking government officials and non governmental actors, had also called for several legislative and non legislative measures including steps to 'popularise the African Charter'.¹⁵⁷ Nonetheless, any organised follow up measures were not taken that enable to trace the impact of the Mission. In fact, many relevant officers are uninformed of the Mission itself, the report and the recommendations. The key officials contacted by the Mission are replaced and the Mission remained disconnected from the relevant institutions.

3.6 National Human Right Institutions (NHRIs)

3.6.1 Key role of NHRIs

NHRIs are instrumental in promotion and protection of human rights in their respective jurisdictions. They are key partners with international or regional human rights systems. The African Commission has also adopted a resolution to grant affiliate status¹⁵⁸ wherein it emphasised that NHRIs are 'an essential partner in the implementation of the Charter at national level'.¹⁵⁹ It is also underlined that the Commission 'seeks the cooperation of national institutions in fulfilling its mandate of promoting and protecting human and peoples' rights'.¹⁶⁰ Beyond quasi judicial mandate, NHRIs are bestowed with key competences that include reporting, monitoring, advisory, law review and promotional.¹⁶¹

¹⁵⁶ See 'Analysis of recommendations made by the African Commission the 2 - 5 periodic reports of Mauritius', (unofficial, Prime Minister's Office) (on file with author).

¹⁵⁷ See Mission report (n 154 above) 33-36.

¹⁵⁸ Resolution on Granting Affiliate Status to National Human Rights Institutions in Africa (1998).

¹⁵⁹ As above.

¹⁶⁰ As above.

¹⁶¹ UN Principles relating to the Status of National Institutions (the Paris Principles) (1993) A, para 3 (a-g).

3.6.2. The practice of NHRIs of Mauritius

The National Human Rights Commission (NHRC) of Mauritius is a statutory body established by the Protection of Human Rights Act.¹⁶² The NHRC has also affiliate status with the African Commission.¹⁶³ Disappointingly, a review of the NHRC's reports witnessed that the African Charter and the Commission are not at interaction with its activities as one can find no Charter focused activity.¹⁶⁴ The human rights education programmes of the NHRC focus on the Constitution and may fairly cover international instruments; and with regret the Charter is not an agenda in any of these activities.¹⁶⁵ For worse, officers do not have exposure to the African system; and they also give high regard to the UN human rights system. Ideally, the NHRC is expected to participate in state reporting or prepare its own report; and even more assist, advise and monitor the implementation of concluding observations.¹⁶⁶ It is nonetheless, trite that the NHRC has not been actively involved in the state reporting under the Charter which the Commission has also regretted.¹⁶⁷ Whereas, it is witnessed that NHRC actively engage in the UPR and other UN mechanisms.¹⁶⁸ The NHRC could have played key role in harmonising the national laws with the norms of the Charter and even further lobbying for domestication of the Charter seizing the opportunity of its duties under the Paris Principles.

The Ombudsman's Office is a constitutionally mandated body with quasi judicial, defined powers and functions.¹⁶⁹ The Office does not in any way use the African Charter in its activities. This is mainly attributed to the Office being overwhelmed with 'routine' complaints and its functions also being wrongly perceived to be purely procedural where

¹⁶² Act 19 of 1998.

¹⁶³ Status granted at 31st Ordinary Session,(May 2002) (see Directory of National Human Rights Institutions with affiliated status available at <http://www.achpr.org/english/_info/directory_ngo_en.html> (accessed 12 September 2011).

¹⁶⁴ The NHRC reports found on the record reports for the years 2004 -2008 are reviewed.

¹⁶⁵ Informal discussions with Mr T Garburrin, Human, Rights Officer, NHRC & Ms P Gokhool, NHRC, on internship (5 September 2011); Ms Narayan (n 104 above)

¹⁶⁶ Paris Principles (n161 above) Part A, para 3 (a-g).

¹⁶⁷ Concluding Observations (n 77 above) para 36.

¹⁶⁸ See NHRC report (n 88 above).

¹⁶⁹ See secs 96-102 of the Constitution.

the African Charter has no relevance.¹⁷⁰ The office deems its quasi judicial functions in light of domestic laws and administrative procedures.

3.7 NGOs

NGOs in Africa and beyond have commendably played significant role in enhancing the domestic impact of the African Charter through active interaction with the African Commission.¹⁷¹ NGOs have actively participated in the state reporting procedure and also in education and dissemination of the Charter.¹⁷² Most note worthily, they have contributed towards the protection of Charter rights by seizing the communications mechanism.¹⁷³ It is appropriately underlined:¹⁷⁴

The development of the African Commission's jurisprudence would not have been possible without the proactive role played by NGOs in ensuring that communications alleging violations were submitted to the Commission, in most cases on behalf of individuals and groups of peoples who on their own could not reach the Commission.

An examination of the interaction between NGOs in Mauritius and the African Commission fails to find correlation with the regional trend. The study noted that many NGOs focus on social services than human rights advocacy. With regards the prominent human rights NGO in Mauritius, Amnesty International, the African Charter has not been an agenda.¹⁷⁵ Trainings on human rights instruments occasionally may have a cursory mention of the African Charter albeit, without proper focus on the normative contents as done with the UN conventions.¹⁷⁶ Other human rights advocacy works are also highly inspired and guided by the UN human rights treaties. Admittedly, the African system has not been used properly in the work of the organisation.¹⁷⁷ Review of Amnesty's publications,¹⁷⁸ and training and awareness raising materials show no reference to the

¹⁷⁰ Interview with Mr M Zeadally, Senior Investigations Officer, Ombudsman's Office & informal discussion with the Honourable Ombudsman Mr SM Hatteea (15 September 2010).

¹⁷¹ Viljoen (n 36 above) 406-412.

¹⁷² As above.

¹⁷³ Nyandunga (n 34 above) 267.

¹⁷⁴ As above.

¹⁷⁵ Interview with Mr Couronne (n 151 above); interview with Ms A Bhikajee, Human rights education officer, Amnesty International Mauritius (6 September 2011).

¹⁷⁶ Ms Bhikajee (n 171 above).

¹⁷⁷ Mr Couronne (151 above),

¹⁷⁸ Mainly DIME; a monthly newspaper published by Amnesty to promotion of human rights issues.

African Charter. For the first time with the authors input Amnesty's newspaper has offered coverage of the African Charter;¹⁷⁹ and trainings on the African Charter delivered.¹⁸⁰

Amnesty or other NGOs have not considered seizing the communications procedure. In fact, the mechanism is not familiar to the NGO community. Given the fact that Amnesty has an observer status¹⁸¹ with the African Commission and has been engaged with actively,¹⁸² much is expected from Amnesty Mauritius to enhance the domestic impact of the African Charter and thereby facilitate the realisation of Charter rights in the lives of the people.

3.8 Academic practice

3.8.1 Law School Education

University of Mauritius is the only academic institution in Mauritius that offers human rights course as part of the compulsory curriculum¹⁸³ which is part of the undergraduate law programme. In spite of the fact that the course syllabus provides for a brief coverage of the African Charter, the main focus of the human rights course is on the Constitution and international human rights instruments. Occasionally, the African human rights system may be discussed in a cursory fashion depending on the lecturer.¹⁸⁴ The jurisprudence of the Privy Council, the Supreme Court and those of the European Court enjoy wider coverage in the lectures driven by practical considerations of equipping students for the reality of the legal practice they will join.¹⁸⁵ As a result, the African Commission's decisions are not considered relevant to the Mauritian context. Only few students who took part in the newly started co-curricular activity – the African Human

¹⁷⁹ 'Les instruments Africains des droits de l'homme' *DIME Maurice* 4 October 2011 34 (Copy on file with author).

¹⁸⁰ The author joined the human rights training team and covered training on the African Charter in the training programmes between 12 September - 4 October 2011.

¹⁸¹ Status granted at the 3rd Session (April 1988), see Directory of NGOs with observer status available at <http://www.achpr.org/english/_info/directory_ngo_en.html> (accessed 20 September 2011).

¹⁸² For example see communications submitted by Amnesty; *Amnesty International v Sudan* (2000) AHRLR 297 (ACHPR 1999) & *Amnesty International (on Behalf of Banda & Chinula) v Zambia* 2000 AHRLR 325 (ACPHR 1999).

¹⁸³ There are only two universities in Mauritius that offer law degree courses.

¹⁸⁴ Interviews with lecturers Ms O Lim Tung & Mr P Bissessure (10 September 2011); also interviews with part time lecturers ; Mr Armoogum (n 115 above) & Justice Domah (n 100 above),

¹⁸⁵ Mr Armoogum (n 115 above) & Mr Bissessure (n 184 above).

Rights Moot Court Competition – claimed exposure to the jurisprudence of the Commission during their preparation.¹⁸⁶ Majority of students remain unfamiliar with the African Charter and the case law of the Commission.¹⁸⁷

The study also noted that the University Library has very negligible collection of reference materials linked to the entire topic of African human rights.

3.8.2 Academic writings

A review of academic journals, publications and researches by academicians could not result in a single relevant piece of academic work on the African human rights system. The topic is far from the agenda of academic writings which regrettably was verified by academicians.¹⁸⁸ Admittedly, law students are not also inspired or encouraged to write their LLB dissertations on the topic. The reason behind, as explained by the students as well as the lecturers, is the lack of proper coverage in their human rights course.¹⁸⁹

As for lecturers, the lack of exposure to the African system and their legal education in Europe being influenced by the European system is said to trite their focus on the African system. It is pointed out that only recently through the interactions with the Centre for Human Rights, University of Pretoria that the African Human Rights System came in to attention.

3.9 Conclusion

The discussions under this chapter have attempted to map the level of influence the African Charter has exerted at different spheres of the domestic system of Mauritius. As far as could be ascertained, the influence of African Charter is invisible in relevant government and non government affairs. Adjudications and litigations, laws making and reform, executive policies and actions, academic engagements, and the agendas of NGOs and NHRIs are disconnected from the Charter. A number of important factors may have combined to impede the expected influence. The next chapter will engage in

¹⁸⁶ Discussion with students & former student 10-14 September 2011.

¹⁸⁷ Interviews (n 184 above) ; discussions with Dr RP Gunpath Head of the Law Department confirmed that the Human Rights Course does not focus on African system.

¹⁸⁸ Dr Gunpath (n 187 above) & Ms Lim Tung (n 183 above).

¹⁸⁹ A review of all the LLB dissertations witnessed less than five collections related to the entire topic of African human rights.

discussing and analysing such relevant impeding factors and further investigating positive factors with potential to facilitate the influence of the Charter.

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CHAPTER FOUR

CHALLENGES AND OPPORTUNITIES

4.1 Introduction

The impact of a human rights system in a particular country is highly shaped by the attending factors; positive or negative, internal or external. The aim of the discussion under this chapter is thus, to identify the factors that constitute challenge and opportunity to either impede or enhance the influence of the African Charter in Mauritius. However, focus is only on domestic factors in line with the delineation of the study.

As the foregoing discussions establish, the role of the African Charter on the domestic system is insignificant, the primary exercise should therefore, be to further investigate why. This chapter will first engage in investigating and analysing the challenges and proceed to exploring the opportunities.

4.2 Challenges

4.2.1 Awareness

An overall empirical observation of the study shows awareness on the African Charter is a rare item in Mauritius. Many who work in relevant government departments are unaware. Key officers at the NHRC, the LRC, Attorney General's Office and the Prime Minister's Office though have acquaintance to the Charter in general terms, have minimal exposure to the system. Interestingly, many are informed of the international human rights instruments such as; the ICCPR, ICESCR, CEDAW and the CRC. The high awareness on UN human rights instruments within the government can be attributed mainly to the variety of workshops and trainings attended at national, regional and international level; and to some extent to the reporting process to the treaty bodies as well.¹⁹⁰ On the contrary, the same group has not been offered with chances to attend workshops and seminars focusing on African Charter or African human rights system.

¹⁹⁰ Mr Kadel (n 136 above) ; Mrs Cader (n 147 above); Mr Garburrun (n 165 above).

The reporting process for the African Commission has not also been offering much to elevate their awareness level.

NGO staff, though well interacting with international human rights instruments and mechanisms, their familiarity with the African Charter is from quite a distance.¹⁹¹ This has impeded their contribution towards the promotion of the African Charter at domestic level and their interaction with the African Commission.

Members of the legal profession practicing in different capacities do not have meaningful awareness of the African Charter system. Firstly, the large majority amongst the legal community has no human rights background. Secondly, the majority have studied in Europe; and if have human rights orientation, it is mainly that of the European human rights system and the international system. Members of the judiciary are also no exceptions. Very few lawyers whose human rights education covered African Charter and few state lawyers who take part in state reporting process could be finger counted for their familiarity with the African system.¹⁹² Lawyers in the academic sphere are relatively better aware albeit, very limited in view of their role on human rights education.

4.2.2 Attitudes

The study observed the general public shares a dominant sentiment that African mechanisms are for 'Africa' not for Mauritius; and the issues of 'Africa' are not shared by Mauritius.¹⁹³ The attitude that African system is not relevant to Mauritian context is deep rooted among many key actors. Many have not yet internalised that Mauritius is a party to the African Charter and is bound thereby in all sense of the meaning.

Another attitude challenge is the general view that the UN human rights system is top in the hierarchy and more effective, persuasive and more relevant. This instilled insensitivity towards the importance of the African Charter resulting in its neglect at many levels.

Some actors also perceive their roles detached them from the African human rights system. For example, state lawyers in the prosecution and litigation filed, see their work deeply immersed in the application of the domestic laws and they feel there is no much

¹⁹¹ Mr Couronne (n 151 above).

¹⁹² Mr Armoogum (n 115 above); Ms Chittoo (n 132 above).

¹⁹³ Group discussions with public servants & members of the public (between 15-30 September 2011).

room for the Charter.¹⁹⁴ Officers of the Ombudsman share the view that their work is more of procedural which does not need interaction with the African Charter.¹⁹⁵ Experts in the Ministry of Gender understand their work only in light of the CEDWA.

The general satisfaction with the 'good' laws and institutions and the overall better human rights record of the country has impacted how the rights in the African Charter are perceived. Not few feel that 'we already have them all' in our laws. Also, the fact that the Bill of Rights is modeled by the European Convention has built confidence among relevant actors as to its comprehensiveness or effectiveness.

Media's association of Africa with civil war, gross human rights violations, post election violence, humanitarian crisis, etc contributed to lack of positive aspirations of an African human rights system.¹⁹⁶

4.2.3 Extra legal dynamics

A set of geographical, socio cultural, economic and political factors affected the influence of the African Charter. The physical location of Mauritius being detached from Africa mainland is a geographic factor that shaped the public's perception as 'non Africans'. A large proportion of the population fails to picture Mauritius as part of Africa.

Most importantly, the majority of the population is of an Asian origin with dominant Asian culture and religion.¹⁹⁷ The gravitational pull from India is strong in Mauritius where the national context possesses a much stronger Indian flavor.¹⁹⁸ The Asian socio cultural make up and orientation of the population is also translated in to government institutions which weakens the State's perception of its identity as 'African'.

On the other hand, government system, political culture and international relations are more of European infused. The parliamentary system is a Westminster model¹⁹⁹ and the whole political structure is patterned to a large extent on the British system.²⁰⁰ France also has strong economic ties and provides Mauritius with its largest source of

¹⁹⁴ Mrs Leckinig & Mr Armoogum (n 115 above).

¹⁹⁵ Interviews (n 170 above).

¹⁹⁶ Group discussion with reporters of *l'express* (21 October 2011).

¹⁹⁷ See the background discussion under page 3.

¹⁹⁸ TH Eriksen 'Indians in New Worlds: Mauritius and Trinidad' (1992) *Social and Economic Studies* 1 available at <http://folk.uio.no/geirthe/Indians.html> (accessed 23 October 2011).

¹⁹⁹ See <<http://www.gov.mu/portal/site/pmsite/menuitem>> (accessed 21 August 2011).

²⁰⁰ See Metz (n 15 above).

financial aid.²⁰¹ Foreign relations as well as trade and economic partnerships of Mauritius are strongly tied to Britain, France and India.²⁰² Mauritius has minimal interactions with African states; except a strong one with South Africa that emerged only lately since the 1990s.²⁰³

In short, though Mauritius forms part of Africa, different set of social and cultural influences are at work contributing to the lack of African sentiment among the Mauritian society and government which also reinforced lack of ownership of the African Charter.

4.2.4 Lack of strong ‘activist forces’²⁰⁴

One of the big challenges to domestic influence of the African Charter in Mauritius is the lack of strong activist forces that play significant roles towards the promotion of the rights in the Charter. All the activist forces that exhibited creative and dynamic roles in other African counties are missing in Mauritius.

The domestic influence of the African Charter in Mauritius to a large extent is diminished by the lack of vibrant local or international human rights NGOs that aggressively promote the rights in the African Charter. In countries where the impact of the Charter is visible is mostly where NGOs played significant role as activist forces. The vibrant human rights NGOs acting ‘as intelligent transmission lines between the African system and the key domestic institutions’ has significantly ‘facilitated the domestic promise of the African System with in Nigeria’.²⁰⁵

Strong law societies and lawyers in other African countries have been activist forces in enhancing the impact of the African Charter. Ideally, lawyers as ‘social engineers’ are expected to play significant role in human rights promotion. Lawyers associations are expected to ‘engage leading institutions of the state’ through dynamic efforts.²⁰⁶ Among the Mauritian legal community such element is a scarce caliber. As exclaimed by Bibi,²⁰⁷

²⁰¹ As above.

²⁰² As above.

²⁰³ As above

²⁰⁴ The term is borrowed from Okafor (n 32 above) used to refer to activist role players who challenge system and fight for human rights.

²⁰⁵ Okafor (n 32 above) 149.

²⁰⁶ Aturu (n 121 above) 13.

²⁰⁷ Mr Bibi (n 118 above).

'the learned lawyers and the Bar need to be unchained from business lawyering and be baptised in human rights lawyering'.

The 'passiveness' of the legal community to the most is attributable to the lack of lawyers with human rights trainings and the absence of a strong human rights wired academic community that acts as a catalyst in the legal profession. Du Plessis illuminates the role of academics and academic institutions as 'constitutional interpreters', and as agents in civil society, the judiciary and the State.²⁰⁸ The Academics in Mauritius are not engaged in active human rights or academic writings that challenge the system. Whereas, academicians in other jurisdictions play significant roles in the human rights field. In South Africa for example; academicians have acted as driving force for many human rights initiatives; have played instrumental role in constitutional negotiations and are credited for South Africa's justiciable Bill of Rights.²⁰⁹ Such activist academics have not yet born in Mauritius.

4.2.5 Dominance of the European system

The legal system is infused by European system due to close attachment to the British and French legal systems. The Bill of Rights is borrowed from the European Convention and developed through the jurisprudence of the European Court. The Privy Council of England is still maintained as the highest appellate body which strengthened the attachment with the British legal tradition and also with the European human rights system through the Council's use of the jurisprudence of the European Court. The long held legitimacy of the Privy Council, and highest regard and adherence to the decisions has highly influenced domestic jurisprudence.²¹⁰ This in a way contributed to the neglect of the jurisprudence of the African Commission. Beyond that, the need to exhaust appeal at the Council has impeded communications to the African Commission.

²⁰⁸ L Du Plessis 'Legal academics and the open community of constitutional interpreters' (1996)12 *South Africa Journal of Human Rights* 214-229.

²⁰⁹ As above.

²¹⁰ See WV Rangan 'The Privy Council a necessity or an anachronism', unpublished ,Bar finals course dissertation, University of Mauritius (1991)

The legal education of lawyers is highly influenced by the European system resulted from their education in England and France.²¹¹ One driving force for legal education in Europe was the absence of law school in the country in the old days. Due to the deep attachment with the British legal and political system, British law schools were the preference of most lawyers. More strong reason is that until recently only lawyers called to the Bar of England and Wales were accredited to practice in Mauritius.²¹²

Thus, legal culture in general is not infused by African values and African conception of human rights. This lies at the core of the legal profession's constraints to develop interest and exposure with regards to African human rights system.

4.2.6 Non domestication

Domestication is another critical factor that hinders the impact of the African Charter. Despite Mauritius being a party to the African Charter for almost 20 years, one of the major reasons for lack of visible influence of the African Charter can be attributed to the fact that it has not become an integral part of domestic law. The legal system does not also offer indirect incorporation through imperative rules of interpretative use of the Charter. Mauritius being a dualist state, domestication in to the domestic law will give the Charter a force of law for binding application in domestic litigations and adjudications.

4.2.7 Policy framework

A clear political commitment manifested in government policy to promote and integrate the African Charter is key to enhance its domestic impact. Such a commitment to give emphasis to the Charter in the National Human Rights Action Plan (NHRAP) or any other relevant policy is lacking.

One of the major obligations of Mauritius under the African Charter is to adopt legislative or other measures to give effect to the Charter.²¹³ Such one 'other measure' is a well designed package of policies, programmes or action plans under which the government commits itself towards clearly defined targets. A gap in such policies, programmes and action plans poses challenge to the domestic impact of the Charter.

²¹¹ Around the 20 lawyers contacted for the study at different fields of the profession are educated in Europe dominantly in the UK.

²¹² See Law Practitioners Act 55 of 1984 (Amended 20/93; 6/95; 13/96).

²¹³ See Art 1 of the African Charter.

4.3 Opportunities

4.3.1 Institutional frameworks

i) The Human Rights Department

The Human Rights Department of the Prime Minister's Office, though not legally set up, is a *de facto* human rights body mandated by the Cabinet to coordinate national human rights activities.²¹⁴ The Department's focused mandate on human rights activities presents advantage for integration of efforts towards the State's duty under the African Charter. The opportunity that is combined with the high position of the Prime Minister's Office cannot be underrated. It serves as instrumental force to coordinate different governmental departments and high ranking government officials including members of the Cabinet and the Parliament. The emerging good practice of the Department giving due attention to state reporting and concluding observations is also a potential. Properly nurtured, the practice liberates the reporting process from a formality to a meaningful exercise, and thereby enhances the domestic impact of the African Charter. Lack of capacity in terms of human resource and trained human rights officer challenges the efforts of the Department.²¹⁵

ii) Law Reform Commission

As an institution focusing on law reviews and reforms, the LRC plays significant role in informing relevant actors through its research papers. The LRC can potentially be used to conduct compatibility review of domestic laws to inform and shape harmonisation with the African Charter. The instrumental researched insights of the LRC will facilitate the influence of the Charter in legislative actions. This is important in light of the state's obligation under the Charter to take legislative measures to give effect to the rights in the African Charter. The recommendations of the African Commission on legislative measures, the gaps discussed in this study and many others to be investigated can be addressed by the LRC. The lack of awareness and interaction of the staff with the African system may continue to limit its role.

²¹⁴ A Cabinet decision to that effect was passed in 2008 (Ms Cader (n 147 above)).

²¹⁵ Ms Cader (n147 above).

iii) National Human Rights Commission

The NHRC's affiliate status with the African Commission is a positive factor that boosts its interaction with the African Commission and assists national institutions' exposure to the African Charter and the system. The opportunity of attending the Commission's sessions facilitates for the NHRC a forum to draw constructive lessons from the Commission and other African countries as well. In fulfillment of the aspirations of the Commission, this will place the NHRC in a better position 'to play an advisory role to the government'²¹⁶ in the promotion and protection of the rights under the Charter. Moreover, NHRIs with affiliate status are required by the African Commission to submit reports to the Commission every two years on its activities in the promotion and protection of the rights enshrined in the Charter.²¹⁷ This will create a continuous accountability and caution for the NHRC to integrate the African Charter, the resolutions and decisions of the African Commission in the works of the NHRC. In this way, the NHRC will be able to 'assist the Commission in the promotion and protection of human rights at national level'.²¹⁸

iv) Professional training institutes

Two important legal professionals training institutions affiliated with the Supreme Court present a great potential for the legal profession. The Council of Legal Education (COLE)²¹⁹ is a professional training center that administers practical courses for prospective law practitioners. The Institute for Judicial and Legal Studies (IJLS) is another institutional opportunity for professional training of lawyers which is introduced by a new Act;²²⁰ which is yet to be established. The Institute is charged with the objective of providing 'Continuing Professional Development Programme' to enhance the knowledge and skills of members of the legal profession.²²¹ These institutions can be used for integration of the African Charter in legal trainings and education which will address the dearth of exposure to the system. The Supreme Court's position is also an added potential to boost the reach of these institutions.

²¹⁶ Resolution on Affiliate status (n 158 above).

²¹⁷ As above.

²¹⁸ As above.

²¹⁹ Established by the Law Practitioners Act (n 211 above) (see Art 11).

²²⁰ Institute for Judicial and Legal Studies Act of 26 of 2011.

²²¹ Art 2 of the Act (n 220 above).

The Police Force Training School and Prison Officers Training School are human rights friendly institutions with well organised human rights training programmes in place.²²² The human rights training curriculums are highly oriented by international human rights instruments. Their content can be enhanced to cover the African Charter. To realise the opportunity, the author is involved in collaborations to introduce African Charter elements in their trainings.

4.3.2 Legal frameworks

The justiciable Bill of Rights²²³ is a good opportunity for the enhancement of the rights in the African Charter. The African Commission's extensive jurisprudence on civil and political rights can be used to complement the gaps in the civil and political rights provisions of the Constitution. This of course is highly dependent on active judiciary that is ready to engage in constitutional interpretation in light of the Charter provisions as well as the jurisprudence of the Commission.

The gap filling laws on equality, non discrimination and protection of women contribute toward the promotion and protection of the rights under the African Charter despite the constitutional lacunae. The welfare state and the corresponding progressive laws providing for socio economic guarantees are promising foundations to embed the norms of the African Charter in the domestic system and even more to translate them in to justiciable constitutional guarantees.

4.3.3. Judicial and litigation practice

The judiciary's as well as lawyers' commendable tradition of reliance on international and regional human rights instruments and jurisprudence is a rare opportunity. The African Commission has also appreciated the development of rich human rights jurisprudence by the Mauritian Judiciary.²²⁴ This, combined with deliberate efforts toward enhancing judicial attention on the African Charter and the case law of the Commission, facilitates the environment for the application of the African Charter.

However, if not tackled, sensitivity and lack of practical trainings will continue to limit judges to bring the African Charter in the court room.

²²² Training curriculum and manuals reviewed by the author.

²²³ Art 17 of the Constitution.

²²⁴ Concluding observations (n 88 above) para 9.

The Chief Justice's membership in the African Commission has to some extent offered advantage for Supreme Court judges to share his experiences at the African Commission.²²⁵ It has a potential to reach to all judges at different level and engage them with the African Charter as well as the Commission's jurisprudence.

4.3.4 NGO initiatives

The Human Rights Training Center run by Amnesty offers a well organised forum for trainings which can be targeted to focus on African Charter. Amnesty's better network and institutional credibility facilitates greater reach to the public, government stakeholders as well as civil societies. This can be wisely utilised to boost awareness among different groups and to create networks for the promotion and integration of the African Charter.

The new Mauritius Chapter of SPEAK Human Rights Initiative, with a team of lawyers experienced in international human rights litigations, sparks hope for the promotion of the African Charter. The organisation has a mandate 'to bridge the gap between human rights violations and access to justice through pro bono services' and therefore 'considers the possibility of seizing the communications mechanism at the African Commission'.²²⁶

4.3.5 Law School

The recently established partnership with the Center for Human Rights, University of Pretoria and the participation in the African Human Rights Moot Court Competition has served to break the ice for the University of Mauritius. This partnership can be exploited to ensure knowledge and experience transfer from the rich expertise of the Center. The Moot Competition and other similar co-curricular activities give students the opportunity to engage with the African human rights system.

A new postgraduate programme on International and Human Rights Law which is under design offers opportunity for integrating the African human rights system. Being a specialised course, with the incorporation of appropriate components, it facilitates for a

²²⁵ The Chief justice shares ideas to Supreme Court colleagues from the sessions of the Commission (Justice Domah (n 104 above)).

²²⁶ Interview with Ms P Bissoonauthsin, Legal analyst, SPEAK Human Rights Initiative Mauritius, 15 September 2011.

focused training on the African system. In the long run it will enhance the proportion of legal professionals with the relevant training who can serve as agents in promoting the African Charter at different levels in the country.

4.4 Conclusion

This chapter attempted to identify and briefly analyse the challenges that contributed to the invisibility of the African Charter in domestic institutions and practice. Institutional, legal and extra legal; state and non state factors are charted out to explain the evidence under chapter 3. Equally important, the domestic system offers notable opportunities that enhance the impact of the African Charter, if only exploited by the relevant actors with concerted effort. The following last chapter will be an effort to highlight how best these opportunities can be used combined with other recipes to rise above the challenges and realise the domestic impact of the Charter in Mauritius.

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CHAPTER FIVE

RECIPES FOR DOMESTIC IMPACT IN MAURITIUS

5.1 Introduction

The discussions in the forgoing three chapters attempted to gauge the level of impact exerted by the African Charter in the domestic system through analysing the behaviours, actions and practices of key actors. The overall evidence presents a picture, not that of tangible impact, rather invisibility of the Charter at the national level. Important domestic institutions and actors for the enforcement and realisation of the rights in the Charter are far disconnected from the system. So, two decades in Mauritius, where is the African Charter? is regrettably answered with minimal achievements to count.

However, the domestic system has fertile grounds that can be exploited in the new decade to come. The following section presents some practical recommendations that may be used as inputs in the effort to boost the domestic impact of the African Charter.

5.2 Some recipes

5.2.1 State actors

i) Reporting

Government should meaningfully and proactively engage all stakeholders including NHRIs and NGOs in the reporting process. Consultative meeting of all stakeholders should be encouraged to enrich reports and use the opportunity to sensitise relevant officers. In this regard government needs to set up an inter-ministerial committee to facilitate inter governmental dialogue.

Publication and wider dissemination of reports and concluding observations must be given due consideration. Media coverage of the reporting and concluding observations should be motivated.

ii) Political Commitment

The State has committed under the African Charter to adopt necessary measures to give effect to the rights in the Charter and promote those through teaching, education and publication and ensure that they are understood.²²⁷ To realise this obligation and address the demonstrated gaps in awareness, attitude, professional trainings, laws, policies and practices, a clear political commitment through concrete policies and action plans are needed. Such frame works are linchpin to facilitate the integration of the African Charter and African Commission's work in domestic practices including the media. In this regard, the National Human Rights Action Plan needs be designed to play key role in taking tangible steps.

The Prime Minister's Office needs to embark in effective use of its coordinating mandate to design effective strategies to promote the African Charter and thereby enhance domestic impact. Given much has to be done, setting up a sub-committee or a working group specifically mandated for the African human rights system will be an effective approach to strategise and coordinate.²²⁸ Cabinet members should also take informed responsibilities to integrate the African Charter in their respective ministerial policies and programmes.

iii) Legislative measures

Domestication: Mauritius being a dualist state, domestication, though does not solely guarantee, will facilitate direct application in litigations and judicial decisions. Given the strong influence of the European system, domestication will give it a force of law to vie for judicial attention.

Legislative review and reform: Every state party has undertaken to take legislative measure to translate the promises of the African Charter in the domestic sphere. Honoring this commitment, a comprehensive law review should shape amendment of legislations which do not meet African Charter standards and adopting new legislations as required to fill gaps in existing laws. In this regard particularly the LRC should play a leading role in informing all government actors through its research papers.

²²⁷ See arts 1 and 25.

²²⁸ For example a National Humanitarian Law Committee has been recently set up with the coordination of the Human Rights Unit under the Prime Minister's Office (Ms Cader (n 147 above))

Constitutional amendment: Government must consider revision of the Bill of Rights to integrate the underlying norms of the African Charter. Constitutional study need to be commissioned by the government through the LRC, the academics and other relevant experts and institutions to insightfully inform reforms. It is also stressed that the gaps indicated in this study must be taken in to consideration to shape revision of the Bill of Rights.

iv) Judiciary

Given the lack of judicial attention, sensitisation seminars and judicial training programmes at all levels of the judiciary must be undertaken. In this regard, the Institute (IJLS) to be established should have training focus for judges on the African Charter.

Judges also should be proactive to acquaint themselves with the fundamentals of the African Charter and the jurisprudence of the African Commission. Taking lessons from the experience of their African peers, they need to facilitate the realisation of the promises of the Charter to the lives of the people through dynamic application of the norms and the jurisprudence.

As the chief of the judiciary and a member of the African Commission, the Chief Justice is in a unique position to play instrumental role and this need to be exploited. Initiatives should be encouraged under his auspices to facilitate integration of the jurisprudence of the African Commission in court judgments.

v) NHRC

NHRC should play key role in promoting and enhancing domestic influence of the African Charter by exploiting the 'unique position [it] occup[ies] between government, civil society, and NGOs'.²²⁹ The NHRC in particular, having affiliate status with the African Commission, should serve as transmission agent bringing the Commission's works home and integrate them in to national agenda. In due regard of its mandate under the Paris Principles, the NHRC must commission promotional activities such as awareness raising workshops, trainings, publications, media campaigns, celebration of

²²⁹ S Anne 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 (4) *Human Rights Quarterly* 908.

the African Human Rights Day, and networking with law societies, academicians, NGOs and professional training institutions. Further, NHRC need to design clear action plan to assist government to tackle the demonstrated challenges impeding the domestic impact of the African Charter. Special trainings targeting key government officials involved in policy and high level decision- making and law making need to be prioretised to address the critical lack of awareness and knowledge in government.

vi) Professional training institutions

Professional training institutions need to integrate the African Charter in their training programmms at pre-service as well as in-service level. In order to address the gap they also need to engage in continuous and intensive trainings. COLE and IJLS in particular should collaborate with the Chief Justice and design practical jurisprudence oriented courses for judges and lawyers.

5.2.2 Non state actors

i) Lawyers

The critical lack of awareness and sensitivity among the Mauritian legal community with regards to the African Charter needs to be addressed. The Bar Association and the Law Society must initiate seminars that will enable lawyers (including their State counterparts) to interact with the African system. Teaming up with prominent NGOs in the human rights sector, they should organise national workshops to infuse members in human rights litigation and the jurisprudence of the African Commission. The Bar Association and the Law Society must also mobilise their members to identify landmark cases that need to be submitted to the African Commission. These associations should further serve as strong activist forces through networking with their peers in African countries and developing human rights agenda.

ii) NGOs

NGOs should be proactive to integrate the African Charter in their advocacy and lobbying, human rights education, and training and campaign programmes. NGOs should aware their staff about the works of the African Commission and the available mechanisms for promotion and protection of human rights. They should also actively

participate in the state reporting process, and use the opportunity to interact with the African system by submitting shadow reports.

In particular Amnesty, given its credibility, wider membership and reliable funding, should take the lead in organising national sensitisation workshops and creative promotional activities. Domesticating its rich experience from other countries, Amnesty needs to closely work with the media, local NGOs, lawyers associations and other professional networks. Specific interventions such as identifying cases that may need to be submitted to the African Commission; lobbying for the domestication of the African Charter, and integration its norms in ongoing law reform activities need to be prioritised.

SPEAK, through its litigation based approach, should explore and seize litigation possibilities to enhance the impact of the Charter in litigation and adjudication practices. SPEAK should also embark on practical steps with the considerations of Communications.

iii) The Law School and academicians

The critical death of academicians and literatures focusing on the African human rights system must be addressed. Most importantly, the Law Department at the University of Mauritius must see to it that proper coverage and emphasis is accorded to the African Charter in the curriculum, the lectures and other academic activities. Co-curricular activities that offer opportunities to introduce the good practices and the decisions of the African Commission must be designed by the Department. This should be backed by developing the library collection with literatures on the African system. Academicians must also make extra effort to interact with the African system. They should commit to contribute relevant academic writings on the topic and also innovatively encourage research among students.

In order to address the training and exposure gap among the academicians, the Law Department should consider strong partnerships with relevant African academic institutions. It should also encourage and design scholarship programmes for the staff to study on the African system.

5.2.3 The African Commission

Taking note of the big awareness gap in Mauritius with regard to the African Charter, a promotional mission is, therefore, important 'to ensure that the people of Africa are aware of the rights guaranteed under the African Charter'²³⁰ and to dialogue with relevant domestic actors. The African Commission should also form a dialogue forum with the NHRC and Amnesty to urge them to play their roles as 'partners' through their observer status. Moreover, as the Commission has laid down in the Mauritius Plan of Action, workshops on national institutions are part of its promotional activities.²³¹ Such forums must be facilitated to share experiences among NHRIs and assist and guide the NHRC of Mauritius to engage actively in promoting the Charter.

5.3 Conclusion: Realising the promise

The African Charter is indeed relevant to Mauritian people at many levels. The Government of Mauritius has also made it clear by committing to realise the promises of the Charter to its people. The commitment is not just that of moral, but also legal, a commitment under the law of African nations. Not just for the sake of it, but for the significant elements the Charter adds to the success of Mauritius and the lives of the people.

The study therefore, calls for relevant domestic institutions and actors to play the ball, score the goal! Bring the African Charter home! Spray the fragrance of its 'uniqueness' to the lives of the people!

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Word count 18,269

²³⁰ Nyanduga (n 34 above) 267.

²³¹ See African Commission, the Mauritius Plan of Action (1996-2001).

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Interviews

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Mrs BR Cader, Acting Principal Assistant, Prime Minister's Office, 5 September 2011

Mr L Couronne, Director, Amnesty International Mauritius, 6 September 2011

Ms A Bhikajee, Human rights education officer, Amnesty International Mauritius, 6 September 2011

Ms S Nurmahomed Second secretary, Ministry of Foreign Affairs, 5 September 2011

Ms Bali, Head, Gender Unit, Ministry of Gender, 8 September 2011

Honourable Justice N Matadeen, Supreme Court, 8 September 2011

Mr S Kadel, Legal Research Officer, Law Reform Commission, 8 September 2011

Ms RN Narayen, Chairperson, Sex Discrimination Division, NHRC (also, a former Supreme Court Judge) 9 Sept 2011

Ms Mootoo Leckinig, Assistant DPP, Director of Public Prosecutions Office, 8 September 2011

Mr M Armoogum State Counsel, Director of Public Prosecutions Office, 8 September 2011

Ms O Lim Tung, Lecturer, Law Department, University of Mauritius, 10 September 2011

Mr P Bissessure, Lecturer, Law Department, University of Mauritius, 10 September 2011

Dr RP Gunputh Head of the Law Department, University of Mauritius, 10 September 2011

Honourable Justice S B Domah, Supreme Court, 12 September 2011

Mr M Zeadally, Senior Investigations Officer, Ombudsman's Office, 15 September 2011

Mr J C Bibi, Barrister & human rights activist, 21 September 2011

Ms P Bissoonauthsin, Legal analyst, SPEAK Human Rights Initiative Mauritius, 15 September 2011

Ms M J Lau Yuk Poon, Assistant Parliamentary Council, Attorney General's Office, (also, a former judge of the Intermediary Court) 20 September 2011

Ms D Beessoondoyal, State Counsel, Attorney General's Office, 20 September 2011

Mr P Roopun, Deputy Speaker, National Assembly of the Republic of Mauritius, 20 October 2011

Discussions

Group discussion with students (former students) of University of Mauritius, 10 - 14 September 2011

Group discussions with public servants, 15 - 30 September 2011

Group discussion with media (*l'express* journalists), 21 September 2011

Group discussion with members of the public 15 - 30 October 2011

Informal discussion with Mr T Garburrin, Human, Rights Officer, NHRC, 5 September 2011

Informal discussion with Ms P Gokhool, NHRC, intern, 5 September 2011

Informal discussion with Mrs N Bundhun, Barrister, 12 Septemeber 2011

Informal discussion with Mr V Chooshna Barrister, 12 Septemeber 2011

Informal discussion with K Narayan, administrative secretary, Mauritius Bar Coucil, 12 September 2011

Informal discussion with Honourable Obmbudsman Mr SM Hatteea, 15 September 2010

Annex

Annex I Interview guides

Interview guide 1: For Judges

(Adaptable for court officers as necessary)

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter accessible at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Are you aware of the Commission's session and visit held in Mauritius?
5. Are you aware of any Mauritian serving in the Commission?
6. Are you aware of the state's periodic reports and Commission's concluding observations?
7. Have you attended any training or workshop related to the Charter or the Commission's works?
8. Was your formal law education human rights focused/related?
If yes, did you have a course related to the African human rights system?
9. Do any of your colleagues have formal human rights education? or relevant background on the African human rights system?
If yes, did you have the chance to share information and experience?

III. Practical knowledge and experience

10. Do you think there is any difference between other international/regional human rights instruments and the Charter is? *if yes, examples?*
11. Do you see any gap where the Constitution can be complemented by the Charter? *If yes, examples?*
12. Do you refer to the Charter for your work?
13. Has there been any decision making reference to the Charter?
- a) *If yes, i) give examples*
- ii) how much was the outcome of the case(s) impacted by such application?
- b) *If no, what are the reasons for lack reference Charter in court judgments?*
14. Are there decisions that refer to international human rights instruments?
- a) *If yes, i) give examples*
- ii) how much was the outcome of the case(s) impacted by such application?
- b) *If no, what are the reasons for lack reference Charter in court judgments?*
15. Are there decisions that referred to the Commission's decisions?
- a) *If yes i) give examples*
- ii) have you worked on any of such cases?
- iii) how much was the outcome of the case(s) impacted by such application?
- b) *If no, what are the reasons for lack reference Charter in court judgments?*
16. Are there decisions that referred to decisions of any international or regional human rights body?
- a) *If yes, i) give examples*
- ii) how much was the outcome of the case(s) impacted by such application?
- b) *If no, what are the reasons for lack reference?*
17. Have you been part of any law reform discussions?
- If yes, has the Charter been taken in to consideration in the discussions?*
- 18 Do you lecture at the law school?
- a) *If yes, do you lecture on human rights or related modules?*

b) *If yes*, do you cover the African human rights system?

i) *If yes*, to what extent is the coverage?

ii) *If no*, why ?

19. Has the Chief Justice's membership in the Commission gave you practical information about the Charter or the Commission's jurisprudence?

a) *If yes*, give examples?

IV. Attitude

20. Do you see the Charter relevant to the context of Mauritius? How/ why?

21. Do you see the African Charter & Commission's decisions relevant to your work?
How/ why ?

22. What international instruments/bodies you think are more relevant than the African Charter?

23. If there are any (Q 21), in what way are they more relevant?

24. Do you think the Charter/ Commission's work is more relevant to other African Countries than Mauritius?

V. Recommendations

25. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

1. Court decisions
2. Office documentations
3. Library collections

Interview guide 2: For practicing lawyers (*Lawyers Association*)

(Adaptable for state lawyers in litigation work as necessary)

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Are you aware of the Commission's session and visit held in Mauritius?
5. Are you aware of any Mauritian serving in the Commission?
6. Are you aware of the state's periodic reports and Commission's concluding observations?
7. Have you attended any training or workshop related to the Charter or the Commission's works?
8. Was your formal law education human rights focused/related?
If yes, did you have a course related to the African human rights system?
9. Do any of your colleagues have formal human rights education? or relevant background on the African human rights system?
If yes, did you have the chance to share information and experience?

III. Practical knowledge and experience

10. Do you think there is any difference between other international/regional human rights instruments and the Charter ? *if yes, examples?*
11. Do you see any gap where the Constitution can be complemented by the Charter? *If yes, examples?*
12. Do you refer to the Charter and/or Commission's decisions in your litigations?
 - a) *If yes, i) give examples*
 - ii) how much was the outcome of the case(s) impacted by such application?

- b) *If no*, what are the reasons for lack reference?
13. Are you aware of any domestic court judgment making reference to the Charter and/or Commission's decisions?
- a) *If yes*, i) give examples
- ii) how much was the outcome of the case(s) impacted by such application?
- b) *If no*, what do you think are the reasons for lack reference Charter in court judgments?
14. Are you aware of any domestic court judgment that refer to other international/regional human rights instruments (and/or decisions of international/regional human rights bodies)?
- a) *If yes*, i) give examples
- ii) how much was the outcome of the case(s) impacted by such application?
- b) *If no*, what are the reasons for lack reference Charter in court judgments?
15. Have you (any of your colleagues) considered submitting communications to the Commission? (Bear in mind there are no communications submitted to the Commission from Mauritius)
- ai) *If yes*, what impeded submission?
- bi) *If no*, what are the reasons?
16. Have you (any of your colleagues) ever submitted cases before an international body?
- i) *if yes*, which ones? & what were the considerations to prefer those forums?
- ii) *If no*, are the reasons similar to the case of the Commission?
17. Have you been part of any human rights activism?
- i) *If yes*, has the Charter been of any use?
- ii) *If no*, what are the reasons?
18. Do you have lawyers' (Bar Association/law society) publications?
- If yes*, do they focus on human rights? Do they promote rights in the Charter?

19. Do you lecture at the law school?
- a) *If yes*, do you lecture on human rights or related modules?
 - b) *If yes*, do you cover the African human rights system?
 - i) *If yes*, to what extent is the coverage?
 - ii) *If no*, why ?
20. Do you (your association) have any network with other African lawyers and law societies?
- a) *If yes*, which ones? What is the relevance to your work?
 - b) *If no*, what are the possible reasons?
21. Do you (your association) network with other international lawyers and law societies?

IV. Attitude

22. Do you see the Charter relevant to the context of Mauritius? How/ why?
23. Do you see the African Charter & Commission's decisions relevant to your work?
How/ why ?
24. What international instruments/bodies you think are more relevant than the African Charter?
25. If there are any (Q 21), in what way are they more relevant?
26. Do you think the Charter/ Commission's work is more relevant to other African lawyers than Mauritius?

V. Recommendations

27. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

- 1) Publications
- 2) Case briefs
- 3) Documentations
- 4) Workshop / training materials

Interview guide 3: Law Reform Commission

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Do you access the resolutions of the Commission?
5. Are you aware of the Commission's session and promotional visit held in Mauritius?
6. Are you aware of any Mauritian serving in the Commission?
7. Are you aware of the state's periodic reports and Commission's concluding observations?
8. Have you attended any training or workshop related to the Charter or the Commission's works?
9. Was your formal law education human rights focused/related?
If yes, did you have a course related to the African human rights system?
10. Do any of your colleagues have formal human rights education? or relevant background on the African human rights system?
If yes, did you have the chance to share information and experience?

III. Practical knowledge and experience

11. Do you think there is any difference between other international/regional human rights instruments and the Charter is? *If yes, examples?*
12. Do you see any gap where the Constitution can be complemented by the Charter?
If yes, examples?
13. Do you see any area where the domestic law can be/should be inspired by the Charter?
If yes, examples?

14. Do you refer to the Charter for your work?
15. Do refer to international human rights instruments?
- a) *If yes*, i) which ones?
ii) to what extent ?
- b) *If no*, what are the reasons?
16. Does your law review research make use of the Charter?
- a) *If yes*, in what areas (give specifics)?
- b) *If no*, what are the reasons?
17. What sources are the common inspirations for your research/review work ?
- a) explain why?
- b) give practical examples
18. Has there been any law review for compatibility with the Charter?
- a) *If yes*, what was the outcome?
- b) *If no*, what are the reasons?
19. Has there been any law review for compatibility with international human rights instruments?
- a) *If yes*, what was the outcome?
- b) *If no*, what are the reasons?
20. Has there been any law review to comply with the concluding observations/recommendations of the Commission?
- a) *If yes*, give specific examples?
- b) *If no*, why?
21. Has there been any law review to comply with the concluding observations/recommendations of other international human rights body?
- a) *If yes*, give specific examples?
- b) *If no*, why? (Same reasons as above?)

22. Does your office network with other African/international institutions of similar nature or function as yours?

a) *If yes* , which ones ? what's their relevance to your work?

b) *If no*, what are the possible reasons?

IV. Attitude

23. Do you see the Charter relevant to the context of Mauritius? How/ why?

24. Do you see the African Charter & Commission's decisions relevant to your work?

How/ why ?

25. What international instruments/bodies you think are more relevant than the African Charter?

26. If there are any (Q 21), in what way are they more relevant?

27. Do you think the Charter/ Commission's work is more relevant to other African Countries than Mauritius?

V. Recommendations

28. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

- 1) Annual Reports
- 2) workshop materials
- 3) Researches
- 4) Office documentations
- 5) Proposed laws

Interview guide 4: National Human Rights Commission (*Office of the Ombudsman & the Human Rights Department as necessary*)

(*Bear in mind that the NHRC has observer status with the African Commission*)

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Do you access the resolutions of the Commission?
5. Are you aware of the Commission's session and promotional visit held in Mauritius?
6. Are you aware of any Mauritian serving in the Commission?
7. Are you aware of the state's periodic reports and Commission's concluding observations?
8. Have you attended any training or workshop related to the Charter or the Commission's works?
9. Was your formal law education human rights focused/related?
If yes, did you have a course related to the African human rights system?
10. Do any of your colleagues have formal human rights education? or relevant background on the African human rights system?
If yes, did you have the chance to share information and experience?

III. Practical knowledge and experience

11. Do you think there is any difference between other international/regional human rights instruments and the Charter is? *If yes, examples?*
12. Do you see any gaps where the Constitution can be complemented by the Charter?
If yes, examples?
13. Do you refer to Charter for your work?

14. Do refer to international human rights instruments?
- a) *If yes*, i) which ones?
 - ii) to what extent ?
 - b) *If no*, what are the reasons?
15. Do you (your office) have human rights education and advocacy programmers?
- a) *If yes* i) do you make use of the Charter? why (*If no*)? / how much (*if yes*)?
 - ii) Have you (your office) disseminated copies of the Charter or awareness raising materials on the Charter? why (*If no*)? / how much (*if yes*)?
 - b) *If no*, what are the reasons for lack of human rights education and advocacy programmers in general?
16. Do you (your office) have research programmes?
- a) *If yes* i) do you make use of the Charter?
 - ii) why (*If no*)?/ how much (*yes*)?
 - b) *If no*, what are the reasons?
17. Do you have law review programmes (or involve with other institutions with the same programmes)?
- a) *If yes* i) do you make use of the Charter?
 - ii) why (*If no*)?/ how much (*yes*)?
 - b) *If no*, what are the reasons?
18. Have you (your office) participated in state reporting under the Charter?
- a) *If yes*, what was your role? any specific contributions?
 - b) *If no*, why?
19. Have you (your office) submitted any report to the Commission?
- a) *If yes*, what was the relevance for your work?
 - b) *If no*, why?
20. Have you (your office) assisted the government on implementation of the concluding observations/resolutions of the Commission?

- a) *If yes, give specific examples?*
 - b) *If no, why?*
21. Has your office published/disseminated the state reports and concluding observations?
- a) *If yes, give specific examples?*
 - b) *If no, why?*
22. Has the observer status with the Commission influenced your work?
- a) *If yes, in what way (give specifics)?*
 - b) *If no, what do you think are the reasons?*
23. Does your office network with African/other NHRIs institutions of similar nature or function as yours?
- a) *If yes , which ones ? what's their relevance to your work?*
 - b) *If no, what are the possible reasons?*

IV. Attitude

24. Do you see the Charter relevant to the context of Mauritius? How/ why?
25. Do you see the African Charter & Commission's decisions relevant to your work?
How/ why ?
26. What international instruments/bodies you think are more relevant than the African Charter?
27. If there are any (Q 21), in what way are they more relevant?
28. Do you think the Charter/ Commission's work is more relevant to other African Countries than Mauritius?

V. Recommendations

28. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

- 1) Annual Reports
- 2) Educational publications
- 3) Training/workshop materials
- 4) Researches
- 5) Office documentations

Interview guide 5: Attorney General's Office

(State lawyers: legal advising/drafting/research)

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Do you access the resolutions of the Commission?
5. Are you aware of the Commission's session and promotional visit held in Mauritius?
6. Are you aware of any Mauritian serving in the Commission?
7. Are you aware of the state's periodic reports and Commission's concluding observations?
8. Have you attended any training or workshop related to the Charter or the Commission's works?
9. Was your formal law education human rights focused/related?
If yes, did you have a course related to the African human rights system?
10. Do any of your colleagues have formal human rights education? or relevant background on the African human rights system?
If yes, did you have the chance to share information and experience?

III. Practical knowledge and experience

11. Do you think there is any difference between other international/regional human rights instruments and the Charter is? *If yes, examples?*
12. Do you see any gaps where the Constitution can be complemented by the Charter?
If yes, examples?
13. Do you see any area where the domestic law can be/should be inspired by the Charter?
If yes, examples?

14. Do you refer to the Charter for your work?
15. Do refer to international human rights instruments for your work?
- a) *If yes*, i) which ones?
ii) to what extent ?
 - b) *If no*, what are the reasons?
16. Does your legal advice /drafting/research make use of the Charter?
- a) *If yes*, in what areas (give specifics)?
 - b) *If no*, what are the reasons?
17. What sources are the common inspirations for your legal advice /drafting work ?
- a) explain why?
 - b) give practical examples
18. Has there been any legal advice /drafting work for compatibility with the Charter?
- a) *If yes*, what was the outcome?
 - b) *If no*, what are the reasons?
19. Has there been any legal advice /drafting work for compatibility with international human rights instruments?
- a) *If yes*, what was the outcome?
 - b) *If no*, what are the reasons?
20. Has there been any legal advice /drafting work to comply with the concluding observations/recommendations of the Commission?
- a) *If yes*, give specific examples?
 - b) *If no*, why?
21. Has there been any legal advice /drafting work to comply with the concluding observations/recommendations of other international human rights body?
- a) *If yes*, give specific examples?
 - b) *If no*, why? (same reasons as above?)

23. Has there been any parliamentary or cabinet discussion related to your work that takes consideration of the Charter/Commission's recommendations?

a) *If yes*, give specific examples?

b) *If no*, what do you think are the reasons?

24. Has there been any parliamentary or cabinet discussion related to your work that takes consideration of the international instrument/international body's recommendations?

a) *If yes*, give specific examples?

b) *If no*, what do you think are the reasons (same reasons as above?)

IV. Attitude

25. Do you see the Charter relevant to the context of Mauritius? How/ why?

26. Do you see the African Charter & Commission's decisions relevant to your work?
How/ why ?

27. What international instruments/bodies you think are more relevant than the African Charter?

28. If there are any (Q 21), in what way are they more relevant?

29. Do you think the Charter/ Commission's work is more relevant to other African Countries than Mauritius?

V. Recommendations

30. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

- 1) Annual Reports
- 2) Publications
- 3) Researches
- 4) Explanatory memorandums
- 5) Draft/proposed bills
- 6) Office documentations
- 7) Library collections

Interview guide 6: Parliament /Cabinet contact person (adaptable as necessary)

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Do you access the resolutions of the Commission?
5. Are you aware of the Commission's session and promotional visit held in Mauritius?
6. Are you aware of any Mauritian serving in the Commission?
7. Are you aware of the state's periodic reports and Commission's concluding observations?
8. Have you attended any training or workshop related to the Charter or the Commission's works?
9. Do you have formal law education?
If yes, was your law education human rights focused/related?
If yes, did you have a course related to the African human rights system?
10. Do any of your colleagues have human rights education? or relevant background on the African human rights system?
If yes, did you have the chance to share information and experience?

III. Practical knowledge and experience

11. Do you think there is any difference between other international/regional human rights instruments and the Charter is? *If yes, examples?*
12. Do you see any gaps where the Constitution/domestic law can be complemented by the Charter?
If yes, examples?

13. Has the Charter been of any use in your work?
- a) *If yes*, how/to what extent ?
 - b) *If no*, what are the reasons?
14. Have other international human rights instruments been of any use in your?
- a) *If yes*, i) which ones?
 - ii) how/to what extent ?
 - b) *If no*, what are the reasons?
15. Has there been any deliberation or legal advice from relevant office for compatibility with the Charter?
- a) *If yes* ,what was the outcome?
 - b) *If no*, what are the reasons?
 - c) is it the same in case of other international human rights instruments?
16. Has there been any deliberation or legal advice from relevant office to comply with the concluding observations/recommendations of the Commission?
- a) *If yes*, give specific examples?
 - b) *If no*, what are the reasons?
 - c) is it the same in case of other international human rights instruments?
17. Has there been any legislation/policy reform/adoption to give effect to the African Charter? (or resolutions of the Commission)
18. Has there been any government programme to give effect to the African Charter? (or resolutions of the Commission)
19. Has there been any bill/proposed policy rejected for incompatibility with the Charter?
- a) *If yes*, give specific examples?
 - b) *If no*, what are the reasons?
 - c) is it the same in case of other international human rights instruments?
20. Are you aware of the ratification history of the Charter?
- If yes*
- a) How was the process?
 - b) What were the motives for ratification?
 - c) What was the reason for the delay in ratification (after ten years of adoption)?

IV. Attitude

21. Do you see the Charter relevant to the context of Mauritius? How/ why?
22. Do you see the African Charter & Commission's decisions relevant to your work?
How/ why ?
23. What international instruments/bodies you think are more relevant than the African Charter?
24. If there are any (Q 21), in what way are they more relevant?
25. Do you think the Charter/ Commission's work is more relevant to other African Countries than Mauritius?

V. Recommendations

26. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

- 1) Annual Reports
- 2) Researches
- 3) Parliamentary discussions/questions
- 4) Ministerial/Cabinet discussions
- 5) laws passed/proposed bills
- 6) Government policy/programme documents
- 7) Library collections

Interview guide 7: For NGOs

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Do you access the resolutions of the Commission?
5. Are you aware of the Commission's session and promotional visit held in Mauritius?
6. Are you aware of any Mauritian serving in the Commission?
7. Are you aware of the state's periodic reports and Commission's concluding observations?
8. Have you attended any training or workshop related to the Charter or the Commission's works?
9. Do you have a formal law education?
 - If yes ,was your law education human rights focused/related?
 - If yes, did you have a course related to the African human rights system?*
10. Do any of your colleagues have formal human rights education? or relevant background on the African human rights system?
 - If yes, did you have the chance to share information and experience?*

III. Practical knowledge and experience

11. Do you think there is any difference between other international/regional human rights instruments and the Charter is? *If yes, examples?*
12. Do you see any gaps on the legal system where it can be complemented by the Charter?
 - If yes, examples?*
13. Do you refer to Charter for your work? (explain more)

14. Do refer to international human rights instruments?
- a) *If yes*, i) which ones?
 - ii) to what extent ?
 - b) *If no*, what are the reasons?
15. Do you (your office) have human rights education and advocacy programmers?
- a) *If yes* i) do you make use of the Charter? why (*If no*)? / how much (*if yes*)?
 - ii) Have you (your office) disseminated copies of the Charter or awareness raising materials on the Charter? why (*If no*)? / how much (*if yes*)?
 - b) *If no*, what are the reasons for lack of human rights education, promotion and advocacy programmers in general?
16. Do you (your organisation) have research programmes?
- a) *If yes* i) do you make use of the Charter?
 - ii) why (*If no*)?/ how much (*yes*)?
 - b) *If no*, what are the reasons?
17. Have you (your organisation') ever organised any workshop or related to the Charter?
- a) *If yes*, what was the significance?
 - b) *If no*, what are the reasons?
18. Do you (your organisation) involve in lobbying for law/policy reform?
- a) *If yes* i) is the work inspired by the Charter?
 - ii) Why (*If no*)? / How much (*yes*)?
 - b) *If no*, what are the reasons?
19. Have you (your organisation) participated in state reporting under the Charter?
- a) *If yes*, what was your role? Any specific contributions?
 - b) *If no*, why?
20. Have you (your organisation) submitted shadow reports to the Commission?
- a) *If yes*, i) what was the relevance for your work?
 - ii) has it brought any impact at the domestic level?

- b) *If no, why?*
21. Have you (your office) assisted the government on implementation of the concluding observations/resolutions of the Commission?
- a) *If yes, give specific examples?*
- b) *If no, why?*
22. Has your office published/disseminated the state reports and concluding observations?
- a) *If yes, give specific examples?*
- b) *If no, why?*
23. Has your organisation considered submitting communications to the Commission?
(Bear in mind there are no communications submitted to the Commission from Mauritius)
- i) *If yes, what impeded submission?*
- ii) *If no, what are the reasons?*
24. Has your organisations ever submitted cases before an international body?
- i) *if yes, which ones? & what were the considerations to prefer those forums?*
- ii) *If no, are the reasons similar to the case of the Commission?*
25. Do you have human rights focused publications ?
- If yes, do they promote rights in the Charter?*
- If no, why ?*
26. Does your organisation network with other African human rights NGOs? How /why?
27. Does your organisation network with other international INGOs and local civil society organizations? How /why?
28. Does your organisation have any working relationship with the Commission? How /why?
29. **(For Amnesty only)** are you aware of Amnesty's observer status? Has the observer status of your organisation with the Commission influenced your work?
- a) *If yes, in what way (give specifics)?*

b) *If no*, what do you think are the reasons?

IV. Attitude

30. Do you see the Charter relevant to the context of Mauritius? How/ why?
31. Do you see the African Charter & Commission's decisions relevant to your work?
How/ why ?
32. What international instruments/bodies you think are more relevant than the African Charter?
33. If there are any (Q 21), in what way are they more relevant?
34. Do you think the Charter/ Commission's work is more relevant to other African Countries than Mauritius?

V. Recommendations

35. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

- 1) Annual Reports
- 2) Educational publications
- 3) Training/workshop materials
- 4) Researches
- 5) Office documentations
- 6) Resource centre

Interview guide 8: For academicians

I. Introduction

- Introduce the study (the research questions, objectives, relevance)

II. Awareness

1. Do you have the African Charter at your office?
2. Are you aware of the works of the African Commission?
3. Do you access the decisions of the Commission?
4. Do you access the resolutions of the Commission?
5. Are you aware of the Commission's session and promotional visit held in Mauritius?
6. Are you aware of any Mauritian serving in the Commission?
7. Are you aware of the state's periodic reports and Commission's concluding observations?
8. Have you attended any training or workshop related to the Charter or the Commission's works?
9. Was your formal law education human rights focused/related?
If yes, did you have a course related to the African human rights system?
10. Do any of your colleagues have formal human rights education? or relevant background on the African human rights system?
If yes, did you have the chance to share information and experience?

III. Practical knowledge and experience

11. Do you think there is any difference between other international/regional human rights instruments and the Charter is? *If yes, examples?*
12. Do you see any gap where the Constitution/laws can be complemented by the Charter?
If yes, examples?
13. Do you lecture on human rights related course?
a) If yes, i) do you cover African human rights system? to what extent ?

- b) *If no*, why?
14. Do lecture on international human rights system?
- a) *If yes*, i) which ones? & to what extent ?
- b) *If no*, what are the reasons?
16. Do you have academic writings/publications on human rights?
- a) *If yes* i) does it make use of the Charter?
- ii) why (*If no*)?/ how much (*yes*)?
- iii) have you personally ever contributed on African Charter?
- b) *If no*, what are the reasons?
17. Have you been part of human rights related research?
- a) *If yes*, how much has integrated the Charter?
- b) *If no*, what are the reasons?
18. Are you aware of any student thesis on human rights?
- a) *if yes* was it inspired by the African Charter ?
- i) *if yes* have you had the chance to supervise one of those researches
- b) *if no* what are the reasons for lack of thesis on the topic?
19. As academician do you involve in law review research, activism or lobbying for law/policy reform?
- a) *If yes* i) is the work inspired by the Charter?
- ii) why (*If no*)?/ how much (*yes*)?
- b) *If no*, what are the reasons?
20. Have you been invited or participated at any stage of the state reporting process under the Charter?
- a) *If yes*, what was your role/ contribution?
- b) *If no*, what are the possible reasons?
20. Does your organisation network with other African academic institutions & human rights institutions?
- a) *If yes* which ones? How?
- b) *if no* what are the possible reasons?

IV. Attitude

21. Do you see the Charter relevant to the context of Mauritius? How/ why?
22. Do you see the African Charter & Commission's decisions relevant to your work?
How/ why ?
23. What international instruments/bodies you think are more relevant than the African Charter?
24. If there are any (Q 21), in what way are they more relevant?
25. Do you think the Charter/ Commission's work is more relevant to other African Countries than Mauritius?

V. Recommendations

26. Ask if the interviewee wishes to recommend on how to enhance the influence of the African Charter in relation to their work

VI. Conclusion

- Check if there are points that need further explanation
- Summarise the discussion and verify findings
- Check if there are points the interviewee wishes to add or clarify

VII. Check list of documents

- 1) Curriculum
- 2) Academic publications
- 3) Researches
- 4) Library collection

Annex II Questionnaires

Questionnaire 1

This questionnaire is prepared for the purpose of conducting a research assessing the impact of the African Charter on Human and People's Rights and the Protocol on Women's Rights on the human rights practices of Mauritius.

Your institution is a very instrumental source for the success of the research output. You are kindly requested to extend your kind cooperation filling out this questionnaire.

Thank you very much for your time and valuable inputs.

Institution: _____

Position: _____

1. Do you have the copies of the Charter available at office?

Yes No

2. Does your work directly or indirectly relate to human rights?

Yes No

3. Have you worked on any project related to the African Charter?

Yes No

➤ If yes or sometimes please list examples

4. How often do you make reference of international human rights instruments in your daily work?

a) Always b) sometimes c) never

➤ If yes or sometimes please list examples/if never please explain

5. Have you ever attended any lecture or workshop on international human rights instruments?

- a) Yes b) No

➤ If yes or sometimes please list examples/if no please explain

6. Have they ever attended any lecture or workshop on the African Charter?

- b) Yes c) No

➤ If yes or sometimes please list examples

7. Do you have any formal human rights training?

- a) Yes b) No

8. Was the African Charter part of your formal academic curriculum?

- a) Yes b) No

9. Are you aware of the works of the African Commission?

- a)Yes b) No

➤ If yes or sometimes please list examples

8 . Are you aware of any of the decisions of the African Commission on any case?

- a) Yes b) No

➤ If yes please list examples/explain whether they were relevant to your work

10. Have you had any chance to refer to the resolutions of the African Commission?

- a) Yes b) No

➤ If yes or sometimes please list examples/if no please explain

11. Are you aware any of the reports submitted by Mauritius to the African Commission?

- a) Yes b) No

12. Does your institution participate in reporting?

- a) Yes b) No

12. Are you aware of the concluding observations of the Commission on the periodic reports submitted by Mauritius?

- a) Yes b) No

13. Are you aware of any activities of your institution to implements the concluding observations of the Commission?

- a) Yes b) No

➤ If yes or sometimes please list examples/if no please explain

Questionnaire 2

Institution _____

Position _____

(to be used for rapid assessment during group discussions and others discussions as appropriate - **after first round assessment**)

	Questions	Yes (agree)	No (Disagree)
1	Is your work related to human rights? (directly or indirectly)		
	Does your work interact with the African human rights system?		
1	Do you have the copies of the African Charter available at office? or other reference materials on the Charter		
2	Do you refer to African Charter for your work?		
3	Have you ever attended any lecture or workshop on the Charter?		
4	Are you aware of the existence of the African Human Rights Commission? And the African Human Rights Court?		
5	Are you aware of the works of the African Commission?		
6	Do you think Mauritius has signed /ratified the African Charter?		
7	Are you aware of the relationship/ role of Mauritius with/in the African Human rights system		
6	Are you aware of any of periodic reports submitted by the government of Mauritius?		
7	Are you aware of any of the concluding observations of the Commission on the report of Mauritius?		

8	Do you (your institution) participate in state reporting process?		
8	African Charter is not very relevant for Mauritius' context (the culture and society is different ; there is no gross human rights violation, poverty, civil war etc like other African countries)		
9	Mauritius has already accepted important international human rights instruments so no need to add African instruments		
10	Mauritius has good laws and system so no much need for African Charter		
11	The African System is not effective so much focus should be on UN human rights system		
12	For Mauritius European human rights system is more relevant than African because constitution modeled by European convention		

Annex III Checklist of field assessment sources

I Check list of institutions contacted

	Name of Institution	No of informants	Remark
√	Amnesty International Mauritius	4	Few other NGOs assessed through amnesty
√	Attorney General's Office	4	
√	Bar Association of Mauritius	5	
√	The Council of Legal Education	1	
√	Director of Public Prosecutions Office	3	
√	Law Reform Commission	1	Only 2 experts make up the office
√	Ministry of Foreign Affairs	1	
√	Ministry of Gender, Child Development and Family Welfare	4	
√	National Human Rights Commission	3	Chairperson unavailable
√	Sex Discrimination Division, NHRC	1 (deputy chairperson)	Has only one legal expert
√	Supreme Court of Mauritius	4 (judges)	2 court officers 2 former judges
√	Police Force Training School of Mauritius	2	
	Prison Service	1	
	Prime Minister's Office	1	Human Rights focal person

√			
√	Ombudsman's Office	2	Including the Ombudsperson
√	National Assembly	1	Deputy speaker
√	University of Mauritius	4 (academic staff)	Group discussion with students
√	Media	4 (<i>lexprsss weekly</i>)	<i>lexprsss weekly is the dominant newspaper</i>

II. Check list of documents reviewed

	Name of Institution	Remark
√	Amnesty International Publications	
√	Law Reform Commission Issue Papers and Newsletters	available on record are 2007-20011
√	Law Reform Commission Annual Reports	available on record are 1997-2011
√	National Human Rights Commission Annual Reports	available on record are 2004 - 2008
√	Ombudsman Office Annual Reports	
√	Parliamentary Questions and Sessions	Selected by theme
X	Attorney General's Office comments and advices on bills	Confidential /supplemented by key informant interview/
√	Mistry of Forgien Affairas official documents	List of ratifications was accessible others (ratification policy) confidential Foreign Policy from government website
--	Prime Minister's Office official documents	- Government programme 2005-2010 - Cabinet documents were confidential
√	National Gender Policy Frame Work	2008
X	National Human Rights Action Plan (2008)	Could not be found on any government record /supplemented by key informant interview/
√	Court Judgments	1992-2011
√	University of Mauritius Law Department Curriculum	
	Police Training School	

√	Curriculum	
√	Council of Legal Education Curriculum	
√	Academic Publications/Journals	Online collections included
√	LLB Dissertations	Available in the Main Library collection are 1996-2008
√	African Commission Promotional Visit Report (Mauritius)	
√	State Reports to the African Commission ((Mauritius)	1 st (1996); 2 nd -5 th combined (2008)
√	Concluding Observations of the African Commission on the periodic reports submitted (Mauritius)	
√	Analysis of the African Commission's Recommendations	Human Rights Department (unofficial)

III. Check list of libraries/resource centers visited

	Name of Institution	Remark
√	University of Mauritius Library	
√	Supreme Court Library	
√	Attorney General's Office Library	
√	Ministry of Gender Documentation Center	
√	Amnesty Human Rights Resource Center	
√	Bar Association of Mauritius Resource Center	