



LAW REFORM COMMISSION

Report and Draft Bill on « Anonymity of Individuals in Court Judgments »

[LRC_ R&P 172, June 2023]

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- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
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- (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
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EXECUTIVE SUMMARY

Report and Draft Bill on « Anonymity of Individuals in Court Judgments »

[LRC_ R&P 172, June 2023]

In its Discussion Paper dated May 2022, the Law Reform Commission has compared the current law in Mauritius concerning anonymity of individuals in court judgments with the corresponding legislation in the UK, Canada, France and Germany. Reforms have then been proposed to strengthen the law regarding anonymity in court judgments, especially so as to advance the interests of children and to protect victims of sexual offences.

Indeed, our world is becoming increasingly digitised, and the surge of technological advancements has led to a concurrent rise in the availability and circulation of personal information. Internet, social media, and other digital platforms hold an enormous amount of information, much of which is personal and sensitive. This shift has significantly eroded privacy, leaving individuals open to the exploitation of their personal information. Maintaining the right to privacy is a critical task in this technologically-driven era. This is particularly true for individuals who are most vulnerable, such as children, victims of sexual offences, or others who may be adversely affected by unwanted exposure. These individuals often lack the resources or knowledge to protect themselves adequately and are consequently more susceptible to invasions of their privacy.

In this context, anonymisation emerges as a potent tool, serving as a protective barrier to shield these individuals from unnecessary public exposure. Anonymising the identities of children and victims of sexual offences in court judgments, for instance, becomes a critical step toward respecting and protecting human dignity. Without it, these individuals may be subject to harmful consequences, including humiliation, social stigma, and various forms of harassment, which could arise from the public disclosure of their personal details.

Anonymisation also upholds the principle of the right to be forgotten, particularly in the digital age. The right to be forgotten is the concept that individuals have the civil right to request their personal information be removed from internet searches and other directories under certain circumstances. Anonymisation in court judgments assists in preserving this right by ensuring sensitive information does not remain accessible and indexed on the web.

Following a referral from the Hon. Attorney General, the Commission is now submitting the current Report and draft bill in support of its recommendations made under the above-mentioned Discussion Paper.

EXPLANATORY NOTE

1. The Hon. Attorney General has, under Section 6 (1) of the Law Reform Commission Act, requested the LRC to submit a draft bill in support of its recommendations, following submission of the Discussion Paper on « Anonymity of Individuals in Court Judgments ».
2. Indeed, in the said Discussion Paper, the Law Reform Commission explores the critical necessity and potential approaches for protecting the identities of vulnerable parties within court judgments, particularly focusing on children and victims of sexual offences.¹ This is an area of significant concern, as the current legal framework inadequately shields these individuals, leading to potential harm, including stigma, violation of privacy rights, and the deterrence of individuals from reporting offences due to fear of public exposure.²
3. The rationale behind such statement is that the disclosure, in particular with regards to the identity of victims and witnesses, can exacerbate trauma, complicate recovery, discourage future disclosures, and inhibit cooperation with relevant authorities.³ Besides, with regards to the disclosure of the identity of offenders, there is always the possibility that the victim's family may hurt the offender when the latter is known to the former.⁴ In addition, the disclosure can stigmatise young offenders, which has been found to hinder the rehabilitation of youth.⁵

¹ In August 2012, the Commission published an Issue Paper on "Party and Witness Anonymity in Civil Proceedings", which focuses on Rule 39.2 of the UK Civil Procedure Rules 1998 and which provides that a court must be given the power to order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

² In the case of *XXX v Camden London Borough Council* [2020], it was stated that the disclosure of the identity of offenders, victims and witnesses in court judgments is a sensitive issue that must be handled with respect, privacy and care

³ Jones Lisa, David Finkelhor, and Jessica Beckwith, 'Protecting victims' identities in press coverage of child victimization' [2010] 11(3) *Journalism* 347

⁴ Emmanuel Derleux, 'Is the anonymization of court decisions compatible with freedom of expression?' *Lextenso* (27 April 2021)

⁵ Bala Nicholas and Sanjeev Anand. *Youth Criminal Justice Law*, 3rd ed. Toronto (Irwin Law, Toronto, 3rd edn 2012) 381

4. However, the damages that are caused due to the disclosure can be eliminated through the anonymisation of the identity of individuals in court judgments.⁶ As stated by Justice John Paul Stevens, anonymity is a shield from the tyranny of the majority.⁷ Furthermore, it should not be forgotten that various international rules and regulations share concerns about the right to privacy, which is tied with a right to be anonymous.
5. For instance, the United Nations' Universal Declaration of Human Rights states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation".⁸ Similar statements are included in the United Nations Human Rights Committee's International Covenant on Civil and Political Rights,⁹ the European Convention on Human Rights' for the Protection of Human Rights and Fundamental Freedoms,¹⁰ and the Inter-American Commission on Human Rights' American Convention on Human Rights.¹¹
6. Anonymisation generally stems from one of two sources of law: (1) they may be imposed by the court, by virtue of their inherent jurisdiction, or (2) they may be set out in statute. Of the statutory anonymisation, some are at the discretion of the court (discretionary anonymisation), while others leave a court no leeway – they must impose the anonymisation as set out in the statute (automatic anonymisation).
Anonymisation based on inherent jurisdiction includes the power of the courts to impose anonymisation in situations other than those provided by statute.
7. In comparison to other jurisdictions, in Mauritius, there is the existence of simply "discretionary anonymisation" in limited circumstances. A cornerstone of our justice system is that, as a general rule, all proceedings of every court should be held in public¹²

⁶ *B v Bragg Communications Inc* [2012] SCC 46

⁷ *McIntyre v Ohio Elections Commission* [1995] 514 U.S. 334

⁸ Universal Declaration of Human Rights 1948, article 12

⁹ United Nations Human Rights Commission, International Covenant on Civil and Political Rights 1966, articles 17, 19, 21-22

¹⁰ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, articles 8, 10-11

¹¹ Organization of American States, American Convention on Human Rights 1969, Chapter II, articles 11, 13, 15-16

¹² Section 10(9) of the Constitution of Mauritius 1968

and members of the public can have access to the judgments that have been rendered in those courts as they are posted on the website of the Supreme Court of Mauritius.¹³ However, there are some statutory exceptions to the above general rule which have been listed down below.

8. Section 18B of the Courts Act 1945 provides that the publication of information related to proceedings before any Court *sitting in private* shall amount to contempt of Court where: (a) the proceedings relate to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant; (b) the Court sits in private for reasons of national security during that part of the proceedings about which the information in question is published; (c) the information relates to a secret process, discovery or invention which is in issue in the proceedings; or (d) the Court expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.¹⁴
9. Besides, according to section 27(2) of the Children's Act 2020, no person shall, in relation to a child witness, child victim or child offender, publish or broadcast in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies or tends to identify, the child.¹⁵
10. Furthermore, under section 27(3) of the Children's Act 2020, it is stated that a Court may, so as to protect the privacy of a child, order that the child be referred to by his initials or a pseudonym in any part of any legal proceedings which is made public.¹⁶
11. In Mauritius, the anonymisation of the identity of a child in a court judgment generally depends on the offence and issue surrounding the legal proceeding. Similarly, in the Mauritian justice system, the names of adults were anonymised in the court judgments of *XX v XY* [2016] SCJ 465¹⁷ and *L. S.T. v M. J. T.* [2017] SCJ 202,¹⁸ which related to

¹³ The Supreme Court of Mauritius, < <https://supremecourt.govmu.org/judgment-search> >

¹⁴ Section 18B of the Courts Act 1945

¹⁵ Section 27(2) of the Children's Act 2020

¹⁶ Section 27(3) of the Children's Act 2020

¹⁷ *XX v XY* [2016] SCJ 465

¹⁸ *L. S.T. v M. J. T.* [2017] SCJ 202

the custody and rights of access to the child of the applicant and respondent. The two court judgments expressly provide that: “This is an edited and anonymised version of the judgment communicated to the relevant parties. Recourse has been had to such a version for the protection of the interest of the child concerned. Only this version should be used for any reporting purposes”.

12. Thus, Mauritian law concerning anonymisation of individuals in court judgments is not well established and there is an uncertainty as to when anonymity should be applied. This is most probably because anonymisation in court judgments is often at the discretion of the courts.

13. Anonymisation is more widely present and well established in other jurisdictions. In the UK, the anonymisation of individuals in court judgments can occur automatically or at the discretion of the Court depending upon the circumstances surrounding the court proceeding.¹⁹ Moreover, in the UK, section 49 of the Children and Young Persons Act 1933 (“CYPA”) places an automatic restriction on reporting information that identifies or is likely to identify any person under the age of 18 who is concerned in Youth Court proceedings as a victim, witness or defendant.²⁰ Also, Section 45A of the YJCEA permits the criminal courts to prevent any information being included in a publication during the lifetime of an under-18 victim or witness which is likely to lead members of the public to identify that victim or witness as being concerned in the proceedings.²¹

14. In Canada, the law dealing with anonymity of individuals in court judgments is mainly found in the (i) Criminal Code 1985;²² (ii) the Youth Criminal Justice Act 2000;²³ (iii) the Child, Youth and Family Services Act 2017;²⁴ and (iv) at common law. Section

¹⁹ The Sexual Offences (Amendment) Act 1992 provides for the automatic lifelong anonymity of the victims and alleged victims of sexual offences by prohibiting the publication or broadcast of their identity, or information that might make their identity apparent, including their address or picture.

²⁰ Section 49 of the Children and Young Persons Act 1933 (“CYPA”)

²¹ *ibid*

²² Criminal Code 1985

²³ Youth Criminal Justice Act 2000

²⁴ Child, Youth and Family Services Act 2017.

486.5 of the Criminal Code 1985 provides the court with the authority to make an order directing that any information that could identify the victims, witness and justice system participants shall not be published in any document or broadcast or transmitted in any way if the judge or justice is satisfied that the order is necessary for the proper administration of justice.²⁵ Under Section 486.4 of the Criminal Code 1985, only child victims and witnesses of primarily sexual offences allegedly committed by an adult accused may benefit from a publication ban to protect their identity.²⁶ The bans under section 486.4 play an important part in protecting victims by removing the fear of publication of their names should they report the offence.²⁷ Similarly, section 486.4 (3) of the Criminal Code 1985 provides that in proceedings in respect of an offence of child pornography, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of 18 years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.²⁸

15. In France, until recently, the names of individuals were published in court judgments. Nevertheless, this is no longer the case since 25 March 2019 following significant amendments to relevant legislation. Indeed, as provided under Article L10 of the *Code de Justice Administrative* 2000 (“CJA”)²⁹ and Article L111-13 of the *Code de L’organisation Judiciaire* 1978 (“COJ”):³⁰ “... les nom et prénoms des personnes physiques mentionnées dans un jugement, lorsqu’elles sont parties ou tiers, sont occultés préalablement à la mise à la disposition du public. Lorsque sa divulgation est de nature à porter atteinte à la sécurité ou au respect de la vie privée de ces personnes ou de leur entourage, est également occulté tout élément permettant d’identifier les parties, les tiers, les magistrats et les membres du greffe”.³¹ Furthermore, Article L10-1 of the CJA 2000 reads as follows: “Les tiers peuvent se faire délivrer copie des

²⁵ Section 486.5 of the Criminal Code 1985

²⁶ Section 486.4 of the Criminal Code 1985

²⁷ *R v Adams*, [1995] CanLII 56 (SCC), [1995] 4 SCR 707, per Sopinka J, at para 25

²⁸ Section 486.4 (3) of the Criminal Code 1985

²⁹ Code de Justice Administrative (“COA”) 2000

³⁰ Code de l’organisation judiciaire (“COJ”) 1978

³¹ Article L10 of the CJA 2000 and Article L111-13 of the COJ 1978

*jugements, sous réserve des demandes abusives, en particulier par leur nombre ou par leur caractère répétitif ou systématique. Les éléments permettant d'identifier les personnes physiques mentionnées dans le jugement, lorsqu'elles sont parties ou tiers, sont occultés si leur divulgation est de nature à porter atteinte à la sécurité ou au respect de la vie privée de ces personnes ou de leur entourage”.*³² As regards to minors, under Article L513-4 of the Code de la Justice Pénale des Mineurs 2021, it is provided that: “*La publication, par tout moyen, du compte rendu des débats devant les juridictions de jugement compétentes à l'égard des mineurs est interdite.*

Toutefois, lorsque l'audience est publique, le compte rendu des débats peut faire l'objet d'une publication mais sans que les nom et prénom du mineur ne soient indiqués, même par une initiale, sauf si l'intéressé donne son accord à cette mention.

La publication, par tout moyen, de tout texte ou de toute illustration concernant l'identité et la personnalité des mineurs délinquants est également interdite.

*Le jugement ou l'arrêt rendu en audience publique à l'encontre du mineur peut être publié, mais sans que les nom et prénom du mineur soient indiqués, même par une initiale.”*³³

16. In Germany, the practice since the time of the *Reichsgericht* (that is, since 1879) has been for the courts to anonymise individuals in court judgments and to refer to them by the initials of their surnames or of their firm or company name.³⁴ A decision of the German Federal Administrative Court (*Bundesverwaltungsgericht*, BVerwG) implicitly confirmed the practice of anonymising published court decisions based on the principles of privacy and data protection.³⁵ Furthermore, the Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) in 2015 stated that court decisions must be published with the personal data of the parties redacted to protect their right to decide when and within what limits information about their private lives should be communicated to others.³⁶

³² Article L10-1 of the CJA 2000

³³ Article L513-4 of the Code de la Justice Pénale des Mineurs 2021

³⁴ *Application by Guardian News and Media Ltd and others in Her Majesty's Treasury (Respondent) v Mohammed Jabbar Ahmed and others (FC) (Appellants)* [2010] UKSC 1

³⁵ Federal Administrative Court (*Bundesverwaltungsgericht*), decision of 26 February 1997, doc. Nr. 6 C 3/96

³⁶ BVerfG, docket no. 1 BvR 857/15, Sept. 14, 2015, BVerfG website (in German)

17. It can be observed that in Mauritius the law concerning anonymity of individuals in court judgments is not well established, compared to what can be witnessed in the UK, Canada, France and Germany. Therefore, taking inspiration from other jurisdictions, the Commission is recommending some reform proposals.

Recommendation 1: Automatic anonymisation of the identity of children

18. A court judgment revealing the identity of children can “act like a symbolic millstone around a youngster’s neck.”³⁷ The consequences of the identity of child offenders published in court judgments are profound.³⁸ These children are frequently hated and they and their families are threatened with violence. They are prevented from attending school, and are subject to such strict residency requirements that many are in effect banished from their neighbourhood.³⁹ Besides, their identities being usually known prevent them from securing jobs.⁴⁰
19. In much the same way, the publication of the identity of already traumatised child victims in court judgments can cause regression and a sense of reliving the trauma, which can seriously hamper rehabilitation.⁴¹ Child witnesses may fear that if their identity is revealed to the offenders, their associates or the public generally, then they or their friends and family will be at risk of serious harm. As a result, they might not be willing to participate in court proceedings.⁴²
20. Therefore, taking inspiration from other jurisdictions, especially from section 49 of the UK Children and Persons Act 1933, the Commission is proposing that there should be

³⁷ Riya Saha Shah and Lauren Fine, “Failed Policies, Forfeited Futures: A National Scorecard on Juvenile Records” (Philadelphia, PA: Juvenile Law Center, 2014): 6

³⁸ Nicole Pittman, “Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US” (Human Rights Watch, May 2013), 51

³⁹ *ibid*

⁴⁰ The Negative Impact of Registries on Youth: Why Are Youth Different than Adults?, *Justice Policy Institute* (September 2, 2008)

⁴¹ Ann Skelton “What’s in a Name? Identity of Children in Criminal Proceedings Heads to Court” (Oxford Human Rights Hub Blog, 9 March 2017) <<https://ohrh.law.ox.ac.uk/whats-in-a-name-identity-of-children-in-criminal-proceedings-heads-to-court>>

⁴² *ibid*

an automatic anonymisation of any matter that could lead to the identification of child victims, witnesses and offenders in court judgments.

21. By automatic anonymisation, the Commission intends that the anonymisation should be mandatory, which implies that (i) the court must implement it and the court should have no jurisdiction to oppose, restrict or lift the anonymisation and (ii) the children in the court proceedings do not have to apply for the anonymisation.
22. According to the Commission, the matters that should be anonymised, include in particular— (a) the child’s name, (b) his address, (c) the identity of any school or other educational establishment attended by him, (d) the identity of any place of work, and (e) any still or moving picture of him.
23. Besides, the Commission recommends that the identity of a person over 18 years old should be anonymised in a court judgment if that person was under 18 years old at the time of the court proceedings.
24. Therefore, in achieving the above objective, it is recommended to repeal Section 27 (3) of the Children’s Act, and replacing it by the following provisions:

“(3) A Court shall, in order to protect the privacy of a child, order that during that child’s lifetime, the child be referred to by his initials or a pseudonym in any part of any legal proceedings and publications which are made public.

(3A) No information relating to any child concerned in proceedings or publications to which this Act applies shall, during and after that child’s lifetime, be included in any court judgment or publications if it is likely to lead members of the public to identify him as someone concerned in the proceedings, unless when such information forms a significant part of the court’s reasoning.

(3B) For the purposes of this Section, “publications” shall have the same meaning as “writing” under Section 206 (2) of the Criminal Code”.

Recommendation 2 – Automatic Anonymisation of Victims of Sexual Offences

25. Anonymity may protect against the exacerbation of trauma experienced by victims of sexual offences, which may occur as a result of publicity relating to the case. Therefore, taking inspiration from section 1 of the UK Sexual offences (Amendment) Act 1992, the Commission is proposing that anything that could lead to the identification of a victim of sexual offence should be automatically anonymised in a court judgment.

26. Thus, it is proposed to insert, in the Criminal Procedure Act, a new Section 130A, which would read as follows: “Where an offence under Sections 249 or 250 of the Criminal Code has been committed against a person, no information relating to that person shall during and after that person’s lifetime be included in any publication or court judgment, if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.”

CONCLUSION

27. The legal landscape has evolved significantly in recent years to reflect the societal consensus on the necessity for stricter safeguards for children and victims of sexual offences. Automatic anonymisation of identities within court judgments, an emerging strategy in data protection and privacy, is a potent instrument in this ongoing quest. In the Mauritian justice system, the exceptional circumstances in which court judgments are anonymised may arise only where the court is recognised by law as having discretion in that regard. Otherwise, as a general rule, court judgments are not anonymised on publication in Mauritius, while in the UK, Canada, France and Germany, the principle of anonymisation is better settled and they also have automatic anonymisation in place which is mandatory and which do not need to be applied by the individuals in the court proceedings.
28. The tension between an individual's right to privacy and the public interest in transparent and open justice is a crucial consideration. Traditionally, the identities of individuals involved in court proceedings are disclosed, preserving the principle of public hearings. Nonetheless, exceptions exist for victims of sexual offences and children, where the identity disclosure may cause harm and undue distress, contravening the principle of "best interest of the child" and rights to personal security.
29. Everyone is entitled to dignity, privacy, and protection. This principle is especially important for vulnerable individuals, such as children and victims of sexual offences. These people should not be subjected to undue harm or distress, which disclosure of identity in court judgments can cause. The automatic anonymisation of identities safeguards their inherent human dignity. Moreover, the mental health impact of being a named victim or participant in a court judgment can be severe. By anonymising identities, we mitigate this potential harm, offering these individuals a chance to recover and rebuild their lives without the stigma or stress of public exposure.
30. Furthermore, anonymisation can prevent secondary victimisation, where victims of sexual offences are further traumatised by media exposure or societal stigma. Protecting their identities reduces the risk of them being revictimized by society and provides them

with the necessary privacy to pursue justice. Likewise, automatic anonymisation can encourage more victims to report crimes. Fear of public exposure often discourages victims from coming forward. If identities are guaranteed to be anonymised in court judgments, this barrier is removed, promoting justice and accountability.

31. The Commission is therefore proposing that the identity of children and victims of sexual offences should be automatically anonymised in court judgments.
32. The reason for such a tough stance with regards to anonymisation of the identity of children and victims of sexual offences is that their public identification is irreversible and can cause both immediate and long-term distress and harm. Thus, the introduction of automatic anonymisation of identities in court judgments is a critical step towards respecting privacy rights of children and victims of sexual offences.
33. Trust in the justice system is vital. Knowing that identities will be automatically anonymised, especially in cases involving children and victims of sexual offences, can promote faith in the system and its commitment to protecting the vulnerable. For children and victims of sexual offences, it is essential to offer them a chance to reintegrate into society without prejudice. Anonymisation helps to avoid lifelong labels, enabling these individuals to move forward without their past being a matter of public record.
34. Automatic anonymisation of the identity of children and victims of sexual offences in court judgments is not just a desirable course of action; it is a moral and legal imperative.

ANNEX

**THE ANONYMITY OF INDIVIDUALS IN COURT JUDGMENTS
(MISCELLANEOUS) PROVISIONS BILL**

(No. of 2023)

Explanatory Memorandum

The object of this Bill is to amend a number of enactments to provide for the anonymisation of the identity of children and victims of sexual offences in court judgments.

**THE ANONYMITY OF INDIVIDUALS IN COURT JUDGMENTS
(MISCELLANEOUS) PROVISIONS BILL**

(No. of 2023)

ARRANGEMENT OF CLAUSES

Clauses

- 1. Short title**
- 2. Children's Act amended**
- 3. Criminal Procedure Act amended**
- 4. Courts Act amended**
- 5. Commencement**

A BILL

To amend a number of enactments to provide for the anonymisation of the identity of children and victims of sexual offences in court judgments

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Anonymity of Individuals in Court Judgments (miscellaneous) provisions Act.

2. Children's Act amended

The Children's Act is amended, in Section 27, by repealing subsection (3) and replacing it by the following subsections -

(3) A Court shall, in order to protect the privacy of a child, order that during that child's lifetime, the child be referred to by his initials or a pseudonym in any part of any legal proceedings and publications which are made public.

(3A) No information relating to any child concerned in proceedings or publications to which this Act applies shall, during and after that child's lifetime, be included in any court judgment or publications if it is likely to lead members of the public to identify him as someone concerned in the proceedings, unless when such information forms a significant part of the court's reasoning.

(3B) For the purposes of this Section, "publications" shall have the same meaning as "writing" under Section 206 (2) of the Criminal Code.

3. Criminal Procedure Act amended

The Criminal Procedure Act is amended by inserting, after Section 130, the following new Section -

130A. Where an offence under Sections 249 or 250 of the Criminal Code has been committed against a person, no information relating to that person shall during and after that person's

lifetime be included in any publication or court judgment, if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.

130B. For the purposes of this Section, “publication” shall have the same meaning as “writing” under Section 206 (2) of the Criminal Code.

4. Courts Act amended

The Courts Act is amended in Section 197 by inserting the following subsection –

(3) No information relating to any child or any victim of sexual violence concerned in proceedings to which this Act applies shall, during and after that person’s lifetime, be included in any such judgment if it is likely to lead members of the public to identify him as someone concerned in the proceedings, unless when such information forms a significant part of the court’s reasoning.

5. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.