



LAW REFORM COMMISSION

Issue Paper on “Protection of the Rights and Interests of Elderly Persons in Mauritius”

[LRC_R&P 176, December 2023]

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EXECUTIVE SUMMARY

Issue Paper on “Protection of the rights and interests of elderly persons in Mauritius” [LRC_ R&P 176, December 2023]

Globally, the population of people aged 65 and above is experiencing a faster growth when compared to other age groups. Declining fertility rates, coupled with a higher life expectancy worldwide, would inevitably lead to an ageing population. As such, having enhanced laws catering to the protection and assistance to elderly persons is of paramount importance.

In the context of Mauritius, a rapidly aging population presents an urgent need to address the rights and interests of the elderly. With increased life expectancy and decreasing fertility rates, Mauritius is facing a demographic transition that has profound implications on the socio-economic structure of the society. The elderly in the nation, similar to many other societies, often face age-related stigma and discrimination, which undermine their rights and interests.

The traditional family structure, which was the primary source of support for the elderly, is increasingly under strain due to urbanisation, migration, and changing family dynamics. This presents a significant challenge for the elderly who may not have access to adequate care and support.

The objective of this Issue Paper is to examine certain strategies and legislative reforms of how elderly persons could better be protected and assisted in Mauritius. The Law Reform Commission has explored the theory behind elder abuse and its consequences upon elderly people (I); examined the current legal framework regarding the protection of elderly persons in Mauritius (II); analysed the law concerning the protection of elderly persons in Japan, India, South Korea, South Africa and France (III); laid down a comparative approach between the current legislation in Mauritius and the other jurisdictions (IV) and has finally assessed the relevant initiatives and legislative strategies that can be implemented in Mauritius to better protect elderly people (V).

The research underscores the importance of viewing the elderly not just as passive recipients of care, but as active contributors to society, whose rights and interests must be respected and protected. By addressing these issues, Mauritius can ensure that it is prepared for the demographic transition and is able to provide a supportive, respectful, and inclusive environment for its elderly population.

This Issue Paper is meant to facilitate consultations and discussions with stakeholders and generate further analysis on aspects reviewed. It shall be followed by Working Papers on specific aspects before final recommendations for change are made to Hon. Attorney General.

INTRODUCTION

1. The Organization for Economic Cooperation and Development (OECD) as well as the United Nations define the term “*Elderly Population*” as people who are aged 65 years or above.¹ It has been predicted by the United Nations that the rate of “*population ageing*”, which is defined as a rise in the median age of the population,² in the 21st century will exceed that of the previous century.³ Indeed, this phenomenon is being experienced globally, due to a decline in the fertility rate and increasing longevity, thus generating rising numbers of older persons and a continuously growing share of older persons in the population.⁴
2. According to the World Population Prospects for the year 2019, the ageing population across the world has been growing faster than other age groups and it is expected that globally, 1 in 6 people will be over 65 years by 2050.⁵ It has further been speculated that the number of elderly people would be doubled to 1.5 billion in 2050. The table in Annexe 1 shows the expected increase in the number of elderly people across regions by 2050.
3. Besides, the United Nations Department of Economic and Social Affairs Population Division has projected that older people will account for more than one fifth of the population in 2100 for 155 countries, covering 61% of the world’s population.⁶
4. The dynamic and diverse island nation of our country, known for its rich culture and impressive economic growth, now faces an emerging societal issue: the protection of the rights and interests of its rapidly growing elderly population.

¹ “*Elderly Population*” (OECD) <https://data.oecd.org/pop/elderly-population.htm>

² “*Population and Vital Statistics, Republic of Mauritius*” (2019, Statistics of Mauritius).

³ “*World Population Ageing: 1950-2050*” (United Nations Population Division).

⁴ “*Ageing: Global Population*” (World Health Organization) <https://www.who.int/news-room/questions-and-answers/item/populationageing#:~:text=Why%20is%20the%20population%20ageing,people%20who%20are%20over%2060>

⁵ World Population Prospects 2019: Highlights (ST/ESA/SER.A/423) https://population.un.org/wpp/Publications/Files/WPP2019_Highlights.pdf

⁶ *Ibid.*

5. It is undeniable that the elderly people are exposed to abuse, including, *inter alia*, neglect and ill-treatment.
6. Therefore, with a view to contemplate about strategies regarding how to provide better protection to elderly people in Mauritius, this Issue Paper:
 - I. explores the theory behind elder abuse and its consequences upon elderly people;
 - II. examines the current legal framework regarding the protection of elderly persons in Mauritius;
 - III. analyses the law concerning the protection of elderly persons in Japan, India, South Korea, South Africa and France;
 - IV. lays down a comparative approach between the current legislation in Mauritius and the other jurisdictions; and
 - V. prior to concluding, assesses the relevant initiatives and legislative strategies that can be implemented in Mauritius to better protect elderly people.
7. The overarching aim of this Issue Paper is to provide an in-depth understanding of the complexities surrounding the protection of the rights and interests of the elderly in Mauritius. It seeks to highlight the gaps in current policies and practices, and propose strategies to address them. This includes a critical examination of the current legislative and policy framework, social support systems, and societal attitudes towards the elderly. As the elderly population continues to grow, it is paramount to ensure that their rights and interests are protected, and their contributions to society are recognised and valued. This Issue Paper emphasises the importance of a holistic, inclusive, and culturally sensitive approach to aging that respects the dignity and autonomy of the elderly, and fosters an environment in which they can continue to thrive and contribute to the social fabric of Mauritius.

I. **SILENT SUFFERING: UNMASKING THE HIDDEN CRISIS OF ELDERLY ABUSE**

8. Elder abuse is most commonly defined as “*a single or repeated act, or lack of appropriate act occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.*”⁷ It may be categorised into the following: neglect, physical abuse, sexual abuse and psychological abuse.⁸
9. In the words of the sociologist David Pilgrim, “The abuse of elderly people is one of the most hidden and under-reported social problems in our society”.⁹ This statement is hauntingly accurate, as abuse can range from physical and psychological maltreatment to financial exploitation and neglect. Looking at it from a broader sociological perspective, elder abuse is a manifestation of ageism, one of the least recognised forms of prejudice. As noted by Robert Butler, who coined the term, “ageism” is a process of systematic stereotyping and discrimination against people because they are old.¹⁰ It is a deep-seated societal issue that fuels the conditions allowing elder abuse to persist.
10. Historically, the issue of elder abuse has been largely hidden from public view, with the first formal recognition of the problem in scientific literature only emerging in the late 20th century. In the seminal work “Granny Battering” by Baker,¹¹ the issue was acknowledged as a societal concern. However, its roots lie much deeper within societal structures and attitudes.
11. In traditional societies, elders were respected for their wisdom and experience, with the family structure providing them security and care. However, with the advent of industrialisation and urbanisation, societal attitudes towards the elderly underwent a significant shift. The focus on youthfulness and productivity, coupled with the

⁷ World Health Organization (2002)

⁸ “Guidance Note: Session on “Abuse, Violence and Neglect of Older Persons””(Workshop on the Social Integration and the Rights of Older Persons in the Asia-Pacific region, 2014)
<<https://www.un.org/esa/socdev/documents/ageing/workshop/GuidanceNoteAbuseViolenceNeglect.pdf>>

⁹ Pilgrim, D. (2012). Understanding Mental Health: A Critical Guide. Routledge.

¹⁰ Butler, R. (1969). Age-ism: Another form of bigotry. The Gerontologist, 9(4), 243-246.

¹¹ Baker, M. (1975). Granny battering. Modern Geriatrics, 5(8), 20-24.

breakdown of traditional family structures, led to a rise in ageism and the marginalisation of older adults.¹²

12. The societal implications of elder abuse are profound. It not only inflicts physical and emotional distress on the elderly, but it also fractures family relationships and erodes the fabric of our social institutions. The impact on healthcare systems and social services is also significant, with increased healthcare costs and resource utilisation associated with elder abuse.¹³
13. It has been estimated by the World Health Organization that over the past year, 1 in 6 people aged 60 years or older have been subject to some form of abuse¹⁴. This estimation emanates from a 2017 review of 52 studies in 28 countries from varied regions.¹⁵ This shows that elder abuse is a global phenomenon and is bound to increase as many countries are facing an ageing population, including Mauritius.
14. While perpetrators of elder abuse have generally been characterised as family members, friends and acquaintances,¹⁶ who may have an emotional or financial relation of dependency with the victim, strangers, too, may prey on older persons or commercial organisations that defraud older clients. In many cases, the abusers are individuals who, in the “duty of care”, abuse, or neglect their older charges.¹⁷
15. Elder abuse severely impacts its victims, ranging from a deterioration of general health conditions, lifelong emotional consequences as well as death in cases of failure in the provision of basic needs such as medication, nutrition and heating. These considerations reflect a multiplicity of forms and consequences of violence against older persons.

¹² Achenbaum, W. A., & Bengtson, V. L., *Re-engaging the disengagement theory of aging: On the history and assessment of theory development in gerontology*, *The Gerontologist*, 34(6), 756-763, 1994.

¹³ Dong, X., *Elder Abuse: Systematic Review and Implications for Practice*. *Journal of the American Geriatrics Society*, 63(6), 1214-1238, 2015.

¹⁴ World Health Organisation, “Abuse of older people” < <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people> >

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ “Missing voices – Views of Older Persons on Elder Abuse”, World Health Organization, INPEA, Geneva, 2002

16. Elder abuse is seen as a grave human rights violation which necessitates imperative action.¹⁸ It is a multidimensional issue, encompassing physical, emotional, and sexual abuse, as well as neglect and financial exploitation. Such abuse not only causes harm and distress to the victims, but also undermines their dignity, autonomy, and fundamental human rights.
17. From a sociological perspective, elder abuse can be seen as a product of ageism, societal norms, and power dynamics. Ageism, or discrimination based on age, often results in the marginalisation of the elderly, making them more vulnerable to abuse. Societal norms and expectations about aging and the role of the elderly can also contribute to the perpetration and acceptance of elder abuse. Power dynamics, whether based on gender, socio-economic status, or caregiver-patient relationships, can further exacerbate the risk of abuse. The consequences of elder abuse are profound, affecting not only the individual victims, but also their families and society at large. For the victims, elder abuse can lead to physical injuries, psychological trauma, loss of trust and self-esteem, and increased risk of mortality. It can strain family relationships, contribute to social isolation, and impose a significant burden on health and social care systems.
18. Globally, a variety of legislative, policy and programmatic approaches have been pursued with the aim to address, or partly address, if at all, elder abuse.¹⁹ Legislative solutions include laws and regulations designed to protect the elderly from abuse. For example, many countries have laws that make elder abuse a crime, with penalties ranging from fines to imprisonment. Some have specific laws that address elder abuse, while others include provisions within broader laws related to domestic violence or human rights. Mandatory reporting laws have also been implemented in some regions,

¹⁸ World Health Organization. Noncommunicable Diseases and Mental Health Cluster & International Network for the Prevention of Elder Abuse (INPEA). (2002). *“Missing voices: views of older persons on elder abuse.”* <https://apps.who.int/iris/bitstream/handle/10665/67371/WHO_NMH_VIP_02.1.pdf?sequence=1&isAllowed=y>

¹⁹ For instance, in China, the Law on the Protection of the Rights and Interests of the Elderly prohibits maltreatment of older persons providing legal protection against abuse. In Japan, the Act on Prevention of Elder Abuse, Support for Caregivers of Elderly Persons and other Related Matters requires the state to protect older persons and prevent elder abuse through support mechanisms, including the implementation of training programmes for caregivers on issues of elder abuse and adequate care. In Nepal, the Senior Citizens Act prohibits forcing senior citizens to beg, or become monks or hermits. The Singapore Penal Code contains specific provisions that pertain to protecting older persons from financial, physical and sexual abuse.

requiring certain professionals (like health care providers) to report suspected cases of elder abuse. Policy approaches have encompassed guidelines and standards to detect, prevent, and respond to elder abuse. This includes training for professionals who work with the elderly, such as social workers, nurses, and physicians. Additionally, many countries have adopted policies to promote the rights of the elderly, such as the right to live free from abuse and neglect. Programmatic methods typically involve initiatives that aim to provide direct services to older adults and their families. These may include community education programs to raise awareness about elder abuse, hotlines for reporting abuse, and support services for victims, like counselling and shelter. Other programs focus on prevention, such as financial literacy programs to prevent financial exploitation.

19. Despite these initiatives, elder abuse remains a significant problem globally. A major challenge is that elder abuse often goes unreported due to factors such as fear, stigma, or lack of awareness. Also, existing laws and policies may not be adequately enforced or may lack the necessary resources for effective implementation.

20. While various legislative, policy, and programmatic approaches have been pursued globally to address elder abuse, these efforts are still falling short. Greater commitment is needed from governments, communities, and individuals to prioritise the issue, allocate sufficient resources, and implement effective strategies. This could include strengthening existing laws and policies, improving training for professionals who work with the elderly, increasing public awareness, and expanding support services for victims.

II. CURRENT LEGAL FRAMEWORK PROTECTING ELDERLY PERSONS IN MAURITIUS

21. In Mauritius, the Protection of Elderly Persons Act 2005 was enacted with a view to setting up a legal and administrative framework for greater protection and assistance to elderly persons. This Act was promulgated in recognition of the unique vulnerabilities of the elderly and the need for specific legislative measures to ensure their protection and assistance.

22. During the Second reading of the Bill in 2005, the then Minister of Social Security, National Solidarity & Senior Citizen Welfare and Reform Institutions moved for the Protection of Elderly Persons Bill be read a second time and laid out the main object of the Bill which is to provide for –

- The setting up of a legal and administrative framework, to ensure that greater protection and assistance are available to elderly persons;
- Making of it an offence for any person to commit an act of abuse on an elderly person or to wilfully fail to provide an elderly person under his care with adequate food, medical attention, shelter and clothing, and
- Conferment on the District Court and the Magistrates for Rodrigues power to make protection orders where it is shown that an elderly person is the victim of abuse and is in need of protection or assistance.

23. The Minister also pointed out that the legislation would aim essentially at promoting the welfare of the elderly and, at the same time, ensuring that there is always an enabling environment conducive to a reasonable level of care and security. He emphasised on the word ‘security’.²⁰ As to the then Attorney General and Minister of Justice & Human Rights, he reiterated the point that with the advent of consumerism and the prevalence of individualism in the modern society, which has led to the slow demise of the extended

²⁰ The Minister also stated that, at that time, there was no high incidence of elderly abuse in the society with the exception of few periodic cases of rape, theft and manslaughter which prompted the then Government to come forward with the Bill.

The Minister also reckoned that the family system has shifted from extended to nuclear and with industrialisation, women, who were considered as traditional care givers, have moved to the labour market.

family system, which hitherto existed in Mauritius, senior citizens are left more and more isolated and are getting increasingly more and more vulnerable to abuses and to various forms of violence both mental and physical. Therefore, the object of the Bill is to set up the legal and administrative framework to ensure adequate protection and assistance is available to elderly persons in need. A protection of the elderly network, which would comprise a monitoring committee and Elderly Protection Unit and the Elderly Watch would be set up to ensure, promote and sustain the physical, psychological, emotional, social, cultural and economic protection of elderly persons.

24. The Act provides a comprehensive legal and administrative framework for the protection of elderly persons. It defines elderly persons as those aged 60 and above, and outlines their rights to dignity, respect, and freedom from abuse, neglect, and discrimination. The Act explicitly prohibits the abuse, neglect, and ill-treatment of elderly persons, making it a punishable offence.
25. The legislation interprets an “elderly person” as someone who has attained the age of 60.²¹
26. Section 3 of the Act makes provision for the setting up of a ‘Protection of the Elderly Network’²², with the objective to ensure, promote and sustain the physical, psychological, emotional, social and economic protection of elderly persons²³ and for ensuring, promoting and sustaining the well-being of elderly persons so that they are able to play a meaningful part in society.²⁴
27. Furthermore, the Act provides for the establishment of a Monitoring Committee,²⁵ whose functions are firstly, to supervise the Elderly Person’s Protection Unit’s operations and of every Elderly Watch and direct its officers as it may deem necessary²⁶ and secondly, to provide adequate resources and facilities for the proper operation of the

²¹ Protection of Elderly Persons Act 2005 (Mauritius), s 2.

²² Protection of Elderly Persons Act 2005, s 3 (1).

²³ Protection of Elderly Persons Act 2005, s 3 (3)(a).

²⁴ Protection of Elderly Persons Act 2005, s 3(3)(b).

²⁵ Protection of Elderly Persons Act 2005, s 4.

²⁶ Protection of Elderly Persons Act 2005, s 4 (2)(a).

Unit and of every Elderly Watch.²⁷ A Rodrigues Committee for the Elderly has been set up in Rodrigues²⁸ and which functions similarly as the Monitoring Committee in Mauritius.²⁹

28. The Welfare and Elderly Persons’ Protection Unit was set up following the enactment of the Protection of Elderly Persons’ Act 2005. The main functions of the Welfare and Elderly Persons’ Protection Unit are to deal with complaints from elderly persons who need assistance or protection and take such measures as may be necessary and to organise public awareness and sensitisation campaigns on the rights of the elderly and the need to provide them with assistance and protection. The Protection of Elderly Persons’ Act 2005 was further amended in 2016 to empower the officers of the Welfare and Elderly Persons’ Protection Unit to summons suspected persons of abuse and if found guilty, these persons are liable to a fine of not less than 5,000 rupees and not exceeding 10,000 rupees and to imprisonment for a term not exceeding 6 months.
29. According to section 6 of the Act, the functions of the Elderly Persons’ Protection Unit are to organise public awareness and sensitisation campaigns concerning elderly persons’ rights and the need to assist and protect them;³⁰ to receive complaints from elderly persons who are in need of assistance and protection and to take necessary measures;³¹ to apply to the Court for a protection order, where necessary, in case there exists a real danger to, or threat on, the life of an elderly person;³² to assist in arranging for the admission of an elderly person to a residential care home³³ and to ensure that every Elderly Watch and other relevant bodies or authorities are furnished with proper feedback regarding the situation of elderly persons, who are, or may be, in need of assistance or protection.³⁴

²⁷ Protection of Elderly Persons Act 2005, s 4 (2)(b).

²⁸ Protection of Elderly Persons Act 2005, s 5 (1).

²⁹ Protection of Elderly Persons Act 2005, s 5 (2).

³⁰ Protection of Elderly Persons Act 2005, s 6 (2)(a).

³¹ Protection of Elderly Persons Act 2005, s 6 (2)(b).

³² Protection of Elderly Persons Act 2005, s 6 (2)(c).

³³ Protection of Elderly Persons Act 2005, s 6 (2)(d).

³⁴ Protection of Elderly Persons Act 2005, s 6 (2)(e).

30. In addition, the Monitoring Committee shall designate an Elderly Watch in every region.³⁵ Each Elderly Watch shall promote the welfare of the elderly persons in the region for which it is responsible;³⁶ provide support to families in need of assistance and protection of elderly persons;³⁷ attempt to prevent acts of abuse on elderly persons³⁸ and to report cases of frequent abuse of an elderly to an officer of the Unit.³⁹
31. The Court is empowered under the Act, to issue an elderly persons’ protection order in a bid to restrain someone from engaging in any conduct which may constitute an act of abuse and to order that person to be of good behaviour towards the elderly person.⁴⁰
32. The Act further specifies those offences which may constitute an act of abuse. For instance, any person who intentionally, either physically or verbally ill-treats an elderly person;⁴¹ subjects an elderly person to prolonged mental or emotional harassment;⁴² or wilfully causes pecuniary loss or material prejudice to an elderly person,⁴³ shall commit an act of abuse. Moreover, any person who commits an act of abuse;⁴⁴ wilfully fails to provide an elderly person under his care with adequate food, medical attention, shelter and clothing;⁴⁵ or fails to comply with a protection order,⁴⁶ shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years. Moreover, other Statutes afford protection to elderly persons, *inter alia*, the Protection from Domestic Violence Act,⁴⁷ the Equal Opportunities Act,⁴⁸ or the Mental Health Care Act.⁴⁹

³⁵ Protection of Elderly Persons Act 2005, s 8 (1).

³⁶ Protection of Elderly Persons Act 2005, s 8 (2)(a).

³⁷ Protection of Elderly Persons Act 2005, s 8 (2)(b).

³⁸ Protection of Elderly Persons Act 2005, s 8 (2)(c).

³⁹ Protection of Elderly Persons Act 2005, s 8 (2)(d).

⁴⁰ Protection of Elderly Persons Act 2005, s 9 (1).

⁴¹ Protection of Elderly Persons Act 2005, s 11 (1)(a).

⁴² Protection of Elderly Persons Act 2005, s 11 (1)(b).

⁴³ Protection of Elderly Persons Act 2005, s 11 (1)(c).

⁴⁴ Protection of Elderly Persons Act 2005, s 11 (2)(a).

⁴⁵ Protection of Elderly Persons Act 2005, s 11 (2)(b).

⁴⁶ Protection of Elderly Persons Act 2005, s 11 (2)(c).

⁴⁷ Given that the definition of domestic violence under the Act is as follows: ““domestic violence” includes any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof (...)”.

⁴⁸ As the definition of “status” in the Act includes: “age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation (...)”.

⁴⁹ As special care is provided to elderly persons who are admitted as patients at a Mental Health Care Centre, as long as they are treated in special units.

33. With regard to elderly persons’ mental well-being, the Government of Mauritius has introduced a Basic Old Age Pension scheme to all citizens of Mauritius attaining the age of 60 and over to ensure their income security and also to assist them with healthcare expenses. The more so, there is also the Enhanced Basic Retirement Pensions (for severe handicap) whereby, elderly persons who are totally blind or who suffer from a total paralysis or who need the constant care and attention of another person benefits from it. As such, the Government offers carers’ allowance to these elders who needs the constant care and attention of another person.⁵⁰ The Government has enacted the Mental Health Act 1998 to specifically provide for the necessary infrastructure for mental health care, the conditions of admission of persons suffering from mental problems, the treatment and the conditions of living of patients at mental health care centres, protection of mental patients, their rights and the principles applicable to accused persons who plead mental disorder or are found to be unfit to plead to a criminal charge, inclusively elderly persons’ mental healthcare.⁵¹ The Mental Health Act 1998 establishes a Mental Health Board under Section 4 as well as a Mental Health Commission under Section 5. The Mental Health Board has as functions to promote standards of good practice and efficacy of mental healthcare, protect patients’ rights and promote physical, inspect every centre at an interval of not less than 6 months and mental health of patients, promote measure for appropriate care of mental health patients and make recommendations to its parent Ministry in the context of guidelines for the planning and management of mental health care, measures for the sound financial management of mental health care and measures on continuing professional development and training of medical, nursing and paramedical staff. As for the Mental Health Commission, the latter is responsible for matters relating to the consent of security patients (Section 17 of the Mental Health Act

⁵⁰ Carer’s Allowance for Beneficiaries of Basic Retirement Pension. Available online at <https://socialsecurity.govmu.org/Pages/Department/Carer%27s-Allowance---BRP.aspx>

⁵¹ The Mental Health Care Act 1998 further extends its provisions with regards to protection of patients and their property. In view thereof, this Act establishes a separate specialized unit for each category of patients including elderly patients and where the need for protection arises, the Mental Health Commission submit a report to the Ministère Public who shall cause an inquiry to be made and where necessary, apply to the Judge in Chambers for an “ouverture de tutelle” and subsequently for the appointment of a “tuteur” and a “subrogé tuteur” in respect of the patient (Section 27 of the Act refers). The Act penalizes any medical officer, psychiatrist, officer or other employee of a centre who commits any act of abuse or cruelty towards any patient or security patient and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

1998), plan of treatment (Section 18 of the Mental Health Act 1998), temporary leave (Section 21 of the Mental Health Act 1998), discharge of patients. The Mental Health Commission shall also enquire complaints received from patients, their relatives and members of the public including a complaint that a patient is being admitted or kept at a centre against his will; investigate any breach or suspected breach of discipline, professional misconduct and violation of human rights or patients’ rights; determine, on the basis of evidence, whether the complaints and charges against a medical officer or psychiatrist, any other officer, or any other person, have been proved; refer to the police any suspected criminal offence under this Act; notify the Board, after an enquiry, of any breach or violation of human rights; review matters relating to admission, treatment, leave, discharge and continued treatment of security patients who are unfit to stand trial by reason of mental disorder or who have been found not to be guilty by reason of mental disorder.

34. The Government of Mauritius has also put in place a Medical Unit under the Ministry of Social Integration, Social Security and National Solidarity to cater for the health of elders including mental healthcare. The Medical Unit consists of 332 Medical Officers, 60 Nursing Officers, 9 Physiotherapists and 7 Occupational Therapists and it has as vision to ensure that all elderly persons must be in good health, enjoy an optimum quality of life and be independent. The mission of the Medical Unit is to provide to all Elderly Persons medical and paramedical services, preventive, promotive, curative and rehabilitative services, and health education. The Medical Unit provides other services as listed below:

- Visit to Infirmaries – Medical Officer, Nursing Officer, Physiotherapists and Occupational Therapists perform weekly visit to Charitable Institutions to provide medical and paramedical services;
- Domiciliary visit to Elders over 90 years old and Bedridden Elders – Medical Officers perform monthly visit to assess the state of health of Elders aged 90 years and above as well as to bedridden elders to ensure that they are in good health and in receipt of carer’s allowance. The more so, elders above 90 years, who are bedridden or severely disabled in receipt of carer’s allowance, are permanently

provided with the services of Physiotherapists and Occupational Therapists upon the recommendation of the Medical Officer;

- Setting up of health clubs in the community through the network of Elderly Day Care Centres. There are 24 Health Clubs around Mauritius.
- Health Promotion and Disease Prevention – Health talks are carried out twice in a month where Elderly of the Community attends. Each month, an activity concerning a specific health problem is being tackled.
- Vaccination for the Elderly.

35. The Government, *inter alia*, has launched a new “carnet de santé” for elderly people on 23 March 2023 which offers multiple important health information and practical advice. This health card will also enable to register all vital information related to the health and well-being of each and every elderly person allowing for comprehensive, integrated and quality care and follow-up.⁵²

36. The Government has, insofar, constructed several recreation centres across the island for the mental wellbeing of elders. These initiatives also led to constructing day care centres as well as subsidising residential care homes to preserve the mental well-being of the elders so that they do not feel lonely. It is to be noted that a Grant-in-Aid is provided by Government to 22 charitable institutions caring for the elderly, whereby no fee is paid by the inmates.⁵³

37. As said before, the Government has set up the Welfare and Elderly Persons’ Protection Unit (WEPPU) under Section 6(1) of the Protection of Elderly Persons Act 2005 in order to protect the mental wellbeing of elderly persons from abuse, that is, against ill-treatment be it physical, verbal, emotional harassment and financial prejudice. The main functions of the WEPPU⁵⁴ are to deal with complaints from elderly persons who need assistance or protection and take such measures as may be necessary; organise public

⁵² National Integrated Care for Older People (ICOPE) 2022-2026. Available online at https://www.afro.who.int/sites/default/files/2023-03/National%20Integrated%20Care%20for%20Older%20People%20%28ICOPE%29%202022-2026_Mauritius.pdf

⁵³ *Ibid*

⁵⁴ Section 6(2) of the Protection of Elderly Persons Act 2005.

awareness and sensitisation campaigns on the rights of the elderly; apply to the Court for a protection order where it deems necessary, that is, in circumstances where there is a real danger to, or threat on, the life of an elderly person; assist in arranging for the admission of an elderly person to a residential care home, where required; and ensure that every Elderly Watch and other appropriate bodies or authorities get a proper feedback on the situation of elderly persons who are, or may be, in need of protection or assistance. There is a network of 20 Elderly Watch organisations in Mauritius which operates at the level of the Community to ensure, promote and sustain the physical, psychological, emotional, social and economic protection and well-being of older persons.

38. In addition, the WEPPU offers other services such as intervention in reported cases of Elder Abuse through proper mediation, negotiation, family conferencing and referrals; general supervision and control over Residential Care Homes; and organisation of activities for the wellbeing of the senior citizens at Elderly Day Care Centres.

39. Alongside the WEPPU, the Government has also set up a Senior Citizens Council⁵⁵ which has as objectives to improve the well-being and social integration of elderly people so as to encourage them to lead an active and healthy life in dignity and in full enjoyment of their rights and independence. One of the functions of the Senior Citizens Council towards ensuring the mental well-being of elderly people are to promote activities and projects for the welfare of senior citizens for example organising competition and tournaments among elders in the form of entertainment, maintain effective communication with them and set up and manage homes, day care centres, recreation centres and other institutions for them. Following a meeting with the Administrative Secretary of the Senior Citizens Council of the Senior Citizen Council,⁵⁶ ageism was identified as a prevalent issue, manifesting in discrimination and stigmatisation in the workplace and various societal settings. Concerns were also

⁵⁵ Corporate Body established in 1985 and governed by the Senior Citizens Council Act 1995 as amended on 06 July 2011 and operates under the aegis of the Ministry of Social Integration, Social Security and National Solidarity (MSS).

⁵⁶ The Commission wishes to thank R. Patpur, Administrative Secretary of the Senior Citizens Council, for his views on the issue of protection of rights of elderly persons.

expressed over the ill-treatment of elderly persons by their children and the misappropriation of pensions, despite existing protections such as the Welfare and Elderly Persons’ Protection Unit (WEPPU). The Council called for legal provisions to safeguard pensions and special accommodations in banks and hospitals, recognising the elderly’s vulnerability. The isolation and inadequate living conditions of some elderly individuals, along with the poor standards of certain private homes, were also areas of concern. Finally, challenges were acknowledged in utilising technological solutions like mobile apps due to a lack of access and technological literacy among many elderly individuals, emphasising the need for education and more accessible resources. These diverse concerns together outline a multifaceted picture of the issues affecting elderly persons, calling for comprehensive legal and social interventions.

40. It is to be noted that there are hotlines set up to cater for the above by the Welfare and Elderly Persons’ Protection Unit. The 172 is operational from 09:00 to 16:00 hrs and the 199 is operational on 24 hours/7-day basis.⁵⁷
41. There is also a free mobile application named ‘*sekirite*’ which has the objective to offer prompt response to elderly persons who are victims of abuse. The application comprises a panic button which should be used in case of emergencies. With a click, elderly persons can alert the closest police station and received help as quickly as possible. It allows the police to locate the user easily. Officers of the Ministry will also receive the alert and will provide all the necessary support to the elderly persons, accordingly.⁵⁸

⁵⁷ The Welfare and Elderly Persons’ Protection Unit (Ministry of Social Integration, Social Security and National Solidarity) < <https://socialsecurity.govmu.org/Pages/Services/Elderly-protection-unit.aspx> >

⁵⁸ *ibid*

III. LEGISLATION CONCERNING THE PROTECTION OF ELDERLY PERSONS IN OTHER JURISDICTIONS

JAPAN

42. The Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons was enacted in 2005 and is divided into five Chapters: Chapter I deals with general provisions, Chapter II focusses on the prevention of elder abuse by caregivers, support for caregivers and other matters, Chapter III concerns the prevention of elder abuse by long-term care facility managerial staff, while Chapters IV and V relate to miscellaneous and penal provisions respectively.
43. The purpose of the Act is *“to contribute to the protection of the rights and interests of elderly persons by advancing policy measures including elder abuse prevention and support for caregivers of elderly persons, by setting forth the responsibilities of the State, to prevent elder abuse, providing for measures for protecting elderly persons suffering from elder abuse, and providing for support measures for alleviating the burden borne by the caregivers, that are aimed at contributing to the prevention of elderly abuse by caregivers.”*⁵⁹
44. The Act defines an “elderly person” as a person who is 65 years of age or older,⁶⁰ while the term “elder abuse” means elder abuse by a caregiver and elder abuse by a long-term care facility managerial staff.⁶¹
45. Elder abuse by a caregiver may take the following forms: assault upon an elderly person such that their body is or is likely to be injured;⁶² a substantial failure to take care of an elderly person, including severely depriving the elderly person of food or leaving them unattended for prolonged periods of time in a way that would weaken the elderly

⁵⁹ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005 of Japan, Chap I, Art. 1.

⁶⁰ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 2 (1).

⁶¹ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 2 (3).

⁶² Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 2 (4)(i)(a).

person;⁶³ verbally abusing an elderly person;⁶⁴ committing an indecent act against an elderly person, or making the latter engage in an indecent act,⁶⁵ or by unjustly disposing of an elderly person’s property by a caregiver or relative, or any other unjust acquisition of economic benefits from an elderly person.⁶⁶

46. The State and the local governments must endeavour to put in place the necessary systems, such as strengthening partnership among the relevant government agencies, other relevant organisations and private organisations, and providing support to private organisations, in order to prevent elder abuse, to swiftly and appropriately protect elderly persons from elder abuse and to provide appropriate support for caregivers.⁶⁷ They must provide training to officials of the relevant government agencies or take any other necessary measures to maintain adequate specialised employees who are in charge of such duties, and to improve their competency.⁶⁸

47. In a bid to prevent elder abuse by their caregivers and for the protection of elderly persons suffering from elder abuse by their caregivers, a municipality needs to provide consultations, guidance and advice for such elderly persons and caregivers.⁶⁹ Additionally, any person, having found an elderly person who is likely to have been abused by a caregiver, and if the elderly person’s life is seriously threatened, is under an obligation to promptly report this to the relevant municipality.⁷⁰

48. After having received a report, the municipality or mayor must promptly and temporarily accommodate the elderly person whose life or health is likely to have been materially endangered due to elder abuse by their caregiver into a facility, or must properly file a request for a trial.⁷¹

⁶³ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 2 (4)(i)(b).

⁶⁴ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 2 (4)(i)(c).

⁶⁵ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 2 (4)(i)(d).

⁶⁶ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 2 (4)(ii).

⁶⁷ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 3 (1).

⁶⁸ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap I, Art. 3 (2).

⁶⁹ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap II, Art. 6.

⁷⁰ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap II, Art. 7 (1).

⁷¹ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap II, Art. 9 (2).

49. In order to properly implement the measures to prevent elder abuse by caregivers, to protect elderly persons abused by a caregiver and to provide support for caregivers, a municipality must endeavour to maintain a sufficient number of municipal employees specialised in elder abuse.⁷²
50. The Act further caters for measures to prevent elder abuse by long-term care facility managerial staff, by providing training to their staff, and establishing a system for handling complaints from elderly persons to whom the service pertaining to the long-term care service is being provided, as well as complaints from their family members.⁷³
51. The Act puts an obligation upon the State to analyse elder abuse cases and to conduct research and studies on methods for properly handling elder abuse, methods for properly taking care of elderly persons, and any other matters that contribute to the prevention of elder abuse, the protection of elderly persons who have been abused, and to provide support to caregivers.⁷⁴

⁷² Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap II, Art. 15.

⁷³ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap III, Art. 20.

⁷⁴ Act on the Prevention of Elder Abuse and Support for Caregivers of Elderly Persons 2005, Chap IV, Art. 26.

INDIA

52. In India, there exists the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which caters for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.
53. The Act contains seven Chapters, principally dealing with maintenance of parents and senior citizens,⁷⁵ establishment of old age homes,⁷⁶ provisions for medical care of senior citizens,⁷⁷ protection of life and property of senior citizens⁷⁸ and offences and procedures for trial.⁷⁹
54. “Senior citizen” has been defined as ‘any person being a citizen of India, who has attained the age of sixty years or above.’⁸⁰
55. The Act empowers a senior citizen, including a parent,⁸¹ who is unable to maintain himself from his own earning or out of the property owned by him, to make an application for maintenance⁸² under section 5 of the Act,⁸³ in case of parent or grandparent, against one or more of his children not being a minor;⁸⁴ a childless senior citizen, against his relative,⁸⁵ as referred in clause (g) of section 2.⁸⁶ Such an obligation upon the

⁷⁵ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, of India, Chap II.

⁷⁶ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap III.

⁷⁷ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap IV.

⁷⁸ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap V.

⁷⁹ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap VI.

⁸⁰ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap I, s 2 (h).

⁸¹ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap I, s 2 (d) defines a “parent” as ‘a father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.’

⁸² The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap I, s 2 (b) defines “maintenance” as including ‘provisions for food, clothing, residence and medical attendance and treatment.’

⁸³ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap II, s 5.

⁸⁴ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap II, s 4 (i).

⁸⁵ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap II, s 4 (ii).

⁸⁶ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap I, s 2 (g) defines a “relative” as ‘any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.’

children or relative, as the case may be, to maintain a senior citizen, extends to the needs of such citizen so that he may lead a normal life.⁸⁷

56. The Tribunal,⁸⁸ upon being satisfied that a senior citizen is being neglected or a refusal by the children or relatives, as the case may be, to maintain the senior citizen, may be ordered to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.⁸⁹ Nevertheless, the maximum maintenance allowance that the Tribunal may order must not exceed ten thousand rupees monthly.⁹⁰

57. The Act further provides that the State Government may establish and maintain such number of old age homes at accessible places, as it may deem necessary in order to accommodate in such homes a minimum of one hundred and fifty indigent⁹¹ senior citizens.⁹²

58. Medical support for senior citizens is guaranteed under the Act. In essence, the State Government must ensure that as far as possible, each senior citizen is provided with a bed in Government hospitals or those funded fully or partially by the Government;⁹³ separate queues must be arranged for senior citizens;⁹⁴ expansion of facility for the treatment of chronic, terminal and degenerative diseases for senior citizens⁹⁵ as well as that concerning research activities for chronic elderly diseases and ageing.⁹⁶

59. Moreover, the Act caters for the protection of property of senior citizens:

⁸⁷ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap II, s 4 (2).

⁸⁸ According to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap I, s 2 (j), “Tribunal” means the ‘Maintenance Tribunal.’

⁸⁹ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap II, s 9 (1).

⁹⁰ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap II, s 9 (2).

⁹¹ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap III, s 19 explains “indigent” as ‘any senior citizen who is not having sufficient means, as determined by the State Government, from time to time, to maintain himself.’

⁹² The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap III, s 19 (1).

⁹³ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap IV, s 20 (i).

⁹⁴ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap IV, s 20 (ii).

⁹⁵ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap IV, s 20 (iii).

⁹⁶ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap IV, s 20 (iv).

“Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee shall provide the basic amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.”⁹⁷

60. The Act also condemns anybody, having the care or protection of a senior citizen, who abandons the latter, with imprisonment of either description for a term not exceeding three months or a fine not exceeding five thousand rupees or with both.⁹⁸

⁹⁷ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap V, s 23 (1).

⁹⁸ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Chap VI, s 24.

REPUBLIC OF KOREA (SOUTH KOREA)

61. The Welfare of Senior Citizens Act came into force in 1997 with a view to contributing towards the promotion of the health and welfare of senior citizens through the prevention or early detection of diseases affecting senior citizens, maintenance of mental and physical health through proper treatment and recuperation and formulation of appropriate measures to ensure stable lives of senior citizens.⁹⁹
62. The Act dedicates sixty statutory provisions in an attempt to fulfil its purpose.
63. The Act refers to ‘*senior citizens*’ as those persons aged 65 years or older. “*Elder abuse*” is defined as “*any act of physical, mental, emotional, and sexual violence, and economic exploitation of, or atrocities against, or desertion or neglect of, senior citizens.*”¹⁰⁰
64. The State and local governments are under an obligation to promote the health and welfare of senior citizens.¹⁰¹ In this respect, the Minister of Health and Welfare must conduct a fact-finding survey on the current status concerning the health and welfare of senior citizens every three years and announce the results publicly.¹⁰²
65. Furthermore, a full or partial subsidisation with regards to expenses incurred in relation to preventive education, early detection, medical treatment of geriatric illnesses may be provided by the State or local governments, taking into consideration the geriatric patients’ financial ability.¹⁰³
66. The Act caters for the establishment and operation of seven welfare facilities for senior citizens, namely residential welfare facilities;¹⁰⁴ medical welfare facilities;¹⁰⁵ leisure welfare facilities;¹⁰⁶ commuting-system welfare facilities for senior citizens at home;¹⁰⁷

⁹⁹ Welfare of Senior Citizens Act 1997 (South Korea), Chap I, Art. 1.

¹⁰⁰ Welfare of Senior Citizens Act 1997, Chap I, Art. 1-2-4.

¹⁰¹ Welfare of Senior Citizens Act 1997, Chap I, Art. 4 (1).

¹⁰² Welfare of Senior Citizens Act 1997, Chap I, Art. 5 (1).

¹⁰³ Welfare of Senior Citizens Act 1997, Chap I, Art. 27-4 (1).

¹⁰⁴ Welfare of Senior Citizens Act 1997, Chap IV, Art. 31-1.

¹⁰⁵ Welfare of Senior Citizens Act 1997, Chap IV, Art. 31-2.

¹⁰⁶ Welfare of Senior Citizens Act 1997, Chap IV, Art. 31-3.

¹⁰⁷ Welfare of Senior Citizens Act 1997, Chap IV, Art. 31-4.

elder protection agencies;¹⁰⁸ agencies helping senior citizens land a job¹⁰⁹ and finally, shelters for elder abuse victims.¹¹⁰

67. Residential welfare institutions include the following: an institution for senior citizens intended to provide senior citizens admitted thereto with meals and other conveniences for their daily life;¹¹¹ a communal living home for senior citizens, which is an institution intended to provide senior citizens with home-like residential environment, meals and other conveniences essential for their daily life¹¹² and a welfare house for senior citizens, intended to provide conveniences for their daily life, such as convenient residence, guidance of life and advice, and safety management, through a lease of a residential institution.¹¹³

68. Medical and welfare institutions could either be a sanatorium for senior citizens, that is, an institution intending to provide meals, medical treatment, and other convenience necessary for the daily lives of senior citizens admitted thereto, in need of help owing to geriatric illnesses, such as dementia and paralysis having taken a heavy toll on their mental and physical abilities;¹¹⁴ or a medical treatment and communal living home for senior citizens, catering for a home-like environment, meals, medical treatment and other convenience necessary for the daily lives of those senior citizens suffering from dementia or paralysis, who need help.¹¹⁵

69. Leisure and welfare institutions for senior citizens include such welfare centres for senior citizens that provide various information and services to senior citizens related to their hobbies, interests and social activities.¹¹⁶

70. A “*commuting-system welfare facility for the senior citizens at home*”, means an institution providing at least one of the following: visiting medical treatment services

¹⁰⁸ Welfare of Senior Citizens Act 1997, Chap IV, Art. 31-5.

¹⁰⁹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 31-6.

¹¹⁰ Welfare of Senior Citizens Act 1997, Chap IV, Art. 31-7.

¹¹¹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 32 (1) 1.

¹¹² Welfare of Senior Citizens Act 1997, Chap IV, Art. 32 (1) 2.

¹¹³ Welfare of Senior Citizens Act 1997, Chap IV, Art. 32 (1) 3.

¹¹⁴ Welfare of Senior Citizens Act 1997, Chap IV, Art. 34 (1) 1.

¹¹⁵ Welfare of Senior Citizens Act 1997, Chap IV, Art. 34 (1) 2.

¹¹⁶ Welfare of Senior Citizens Act 1997, Chap IV, Art. 36 (1).

for providing various convenient services for senior citizens, who spend all day at home, suffering from physical and mental illnesses;¹¹⁷ day and night protection services, to promote stability in life and the maintenance and improvement of physical and mental functions of the physically and mentally-challenged elderly, or those with disabilities, and to lighten the physical and mental burden of their families by providing various convenient services to senior citizens whose families are unable to protect them due to any unavoidable cause, by admitting them to protection facilities for a short period of time;¹¹⁸ short-term protection services, to promote welfare of senior citizens and their families by admitting the physically and mentally-challenged elderly or those with disabilities who require temporary protection¹¹⁹ and visiting bath service, which visits senior citizens at home with bathing equipment to bathe them.¹²⁰

71. The person establishing and operating a welfare institution for senior citizens must employ such caregivers whose duties would entail providing support for physical activities or household activities of senior citizens.¹²¹
72. The grounds concerning the disqualifications for caregivers have also been mentioned in the Act, and include, *inter alia*, such persons who are mentally incompetent;¹²² addicted to narcotics, marijuana, or psychotropic drugs¹²³ or under adult guardianship.¹²⁴
73. In a bid to prevent elder abuse and to initiate interconnection among regions, the State must establish and operate Korea Elder Protection Agency, which is in charge *inter alia* of the following affairs: policy proposals,¹²⁵ research on and the development of programs to protect the human rights of senior citizens;¹²⁶ public relations campaign for the prevention of elder abuse and the productions and distribution of educational

¹¹⁷ Welfare of Senior Citizens Act 1997, Chap IV, Art. 38 (1) 1.

¹¹⁸ Welfare of Senior Citizens Act 1997, Chap IV, Art. 38 (1) 2.

¹¹⁹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 38 (1) 3.

¹²⁰ Welfare of Senior Citizens Act 1997, Chap IV, Art. 38 (1) 4.

¹²¹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-2 (1).

¹²² Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-13 (1).

¹²³ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-13 (2).

¹²⁴ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-13 (3).

¹²⁵ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (1) 1.

¹²⁶ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (1) 2.

materials related thereto;¹²⁷ management of regional elder protection agencies and offering business support thereto;¹²⁸ in-depth education for counsellors at regional elder protection agencies;¹²⁹ operation of the Central Review Committee for Elder Abuse Cases for the mediation of disputes concerning elder abuse.¹³⁰

74. A few measures have been targeted in order to ensure prompt identification, protection of and medical care for abused elderly and to prevent elder abuse, including, *inter alia*, the setting up of a hotline to report elder abuse and for the receipt of reports on suspected cases of elder abuse;¹³¹ on-site investigations into suspected cases of elder abuse;¹³² counselling for elder abuse victims and abusers¹³³ as well as for persons belonging to the families of the victims of alleged elder abuse and relevant institutions;¹³⁴ keeping and maintaining records following the provision of counselling;¹³⁵ educating the general public to prevent elder abuse¹³⁶ and the perpetrators of elder abuse in order to prevent recurrence.¹³⁷

75. The Act also lists down those prohibited acts that no one must commit against any person aged 65 years or older such as acts of inflicting violence or injury on senior citizens;¹³⁸ acts including sexual violence or harassment;¹³⁹ acts of desertion of senior citizens under his/her own protection or supervision, or of non-interference neglecting basic needs, including food, clothing and shelter and medical treatment;¹⁴⁰ acts of making senior citizens ask for alms, or asking for alms by taking advantage of senior citizens;¹⁴¹ acts of using money or valuables donated or provided to senior citizens for a purpose other

¹²⁷ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (1) 3.

¹²⁸ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (1) 5.

¹²⁹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (1) 6.

¹³⁰ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (1) 8.

¹³¹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (2) 1.

¹³² Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (2) 2.

¹³³ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (2) 3.

¹³⁴ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (2) 4.

¹³⁵ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (2) 5.

¹³⁶ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (2) 6.

¹³⁷ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-5 (2) 7.

¹³⁸ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-9 1.

¹³⁹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-9 2.

¹⁴⁰ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-9 3.

¹⁴¹ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-9 4.

than their original purpose¹⁴² and acts of emotional abuse through abusive language, intimidation, threats, which is harmful to the mental health of senior citizens.¹⁴³

76. A shelter for elder abuse victims may be established and operated by the State and a local government, in order to protect senior citizens who have been harmed by elder abuse.¹⁴⁴

77. Such a shelter shall be responsible for assisting elder abuse victims by protecting and providing them with food and lodging;¹⁴⁵ offering healing programs, such as professional psychological counselling to help elder abuse victims recover psychological stability;¹⁴⁶ providing elder abuse victims with basic medical expenses incurred in treating physical and mental harm caused by abuse¹⁴⁷ and providing professional counselling services to perpetrators of elder abuse in order to prevent reoccurrence of abuse and restore the original family.¹⁴⁸

78. In addition, the Act sets out the penalty provisions for infringing the law. For instance, any person who has inflicted violence or injury on a senior citizen shall be punished by imprisonment with labour for not more than seven years or by a fine not exceeding 70 million won.¹⁴⁹ As regards to acts concerning the harassment or neglect of senior citizens or forcing them to ask for alms, they are punishable by imprisonment with labour for not more than five years or by a fine not exceeding 50 million won.¹⁵⁰

¹⁴² Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-9 5.

¹⁴³ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-9 6.

¹⁴⁴ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-19 (1).

¹⁴⁵ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-19 (2) 1.

¹⁴⁶ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-19 (2) 2.

¹⁴⁷ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-19 (2) 3.

¹⁴⁸ Welfare of Senior Citizens Act 1997, Chap IV, Art. 39-19 (2) 4.

¹⁴⁹ Welfare of Senior Citizens Act 1997, Chap VII, Art. 55-2.

¹⁵⁰ Welfare of Senior Citizens Act 1997, Chap VII, Art. 55-2 (1) 2.

SOUTH AFRICA

79. African Countries have often been characterised by political, economic and social instability, poverty, calamities and health issues such as epidemics and other diseases.¹⁵¹ As such, elder abuse is one of the exacerbating problems in Africa. The laws governing the rights and protection of older persons are explicitly enshrined in the Older Persons Act 2006.¹⁵²
80. The Act has provided a specific definition to “*older person*” as “*a person who, in the case of a male, is 65 years of age or older and, in the case of a female, is 60 years of age or older.*” It establishes a framework of how to effectively deal with the plight of older persons in South Africa through empowerment and protection of older persons, promotion and maintenance of their status, rights, well-being, safety and security, and provide for matters connected therewith. It has as objects to: maintain and promote the status, well-being, safety and security of older persons; maintain and protect the rights of older persons; shift the emphasis from institutional care to community-based care in order to ensure that an older person remains in his or her home within the community for as long as possible; regulate the registration, establishment and management of services and the establishment and management of residential facilities for older persons; and combat the abuse of older persons.¹⁵³
81. The Act reiterates the rights of the Older Person contemplated in Chapter 2 of the 1996 Constitution of the Republic of South Africa which provides for the Bill of Rights that elderly persons shall: participate in community life in any position appropriate to his or her interests and capabilities; participate in intergenerational programmes; establish and participate in structures and associations for older persons; participate in activities that enhance his or her income-generating capacity; live in an environment catering for his

¹⁵¹ Ferreira, M. (2001). Ageing in Africa: Increasingly a human rights issue. Paper read in the 20th Biennial Conference on the Law of the World, Dublin, Ireland, October 1-5, 2001.

Ferreira, M. (2003). Elder abuse in Africa: How rare, common, or different? Paper read in the International Conference on Geriatric Care in Africa, Cape Town, South Africa, March 6-8, 2003.

¹⁵² Older Persons Act 13 of 2006 of South Africa. <https://www.justice.gov.za/legislation/acts/2006-013_olderpersons.pdf>

¹⁵³ Older Persons Act 2006 (South Africa), s 2.

or her changing capacities; and access opportunities that promote his or her optimal level of social, physical, mental and emotional well-being.

82. Hence, the Act binds all organs of State and all officials, employees and representatives of organs of State, both natural or juristic persons to respect, protect and promote the rights of older persons.¹⁵⁴

83. The Act also extends its provisions with regard to elder abuse since older persons are faced with a number of challenges because of their vulnerabilities.

84. The Act describes “*abuse*” of an older person as any conduct or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to an older person.¹⁵⁵ In addition, the Act incriminates abuse upon an elderly person,¹⁵⁶ by prescribing that any person who abuses an elderly person shall commit an offence. Further, the Act provides that any person who believes that an older person is subjected to abuse, he/she must immediately alert the concerned authorities. Once the offence of abusing an older person is proven, the Court convicts the accused under aggravating circumstance for sentencing purpose.¹⁵⁷

¹⁵⁴ Older Persons Act 2006, s 4.

¹⁵⁵ Older Persons Act 2006, s 30 (2).

¹⁵⁶ Older Persons Act 2006, s 30 (1).

¹⁵⁷ Older Persons Act 2006, s 26.

FRANCE

85. In France, “*old people*” is defined as those having attained the age of 60. According to the demographics of France as of January 2022, it has been observed that the country is facing a prominent increase in its ageing population. In view of the Report on the French Ageing Policy (2017),¹⁵⁸ people aged more than 60 years will reach 24 million by 2060 in France including almost 5 million of the French citizens aged above 85 years.
86. Alongside this observation, France has designed and adopted a new law pertaining to the Adaptation of the Society to Ageing, known as the Adapting Society to an Ageing Population Act 2015 (*Loi n° 2015-1776 du 28 décembre 2015 relative à l'adaptation de la société au vieillissement*),¹⁵⁹ to cater for its ageing population as well as committing to the United Nations’ Madrid International Plan of Action on Ageing 2002 (MIPAA). The Act came into force in France on the 1st January 2016, with the aim to cater for the ageing population of France with regard to long-term care, that is, meeting the needs of elder people in terms of accommodation facilities, transport, social and civic life and support in case of loss of autonomy. The Act is based on the following three main pillars:¹⁶⁰ Anticipation of loss of autonomy, Prevention and combating isolation among old people (*Articles 3 to 8*); Adapting society to ageing (*Articles 9 to 40*) and Supporting older people facing loss of autonomy, with a priority given to home-based care (*Articles 41 to 68*).
87. Article 3 of the Act stipulates the preventive measures regarding the loss of autonomy of elderly person. It diagnoses the needs of the elderly people and identifies the initiatives to be taken to combat the risks factors for loss of autonomy accordingly. Following initiatives identified, a coordinated programme and preventive policies are defined together with the funding allocated. It also establishes the conditions required for an elderly person to benefit from the aid designed for the loss of autonomy and they

¹⁵⁸ Ministère des Solidarités et de la Santé (2017). Report on the French Ageing Policy <https://unece.org/fileadmin/DAM/pau/age/country_rpts/2017/FRA_Report_ENG.pdf>

¹⁵⁹ Adapting Society to an Ageing Population Act 2015. LOI n° 2015-1776 du 28 décembre 2015 relative à l'adaptation de la société au vieillissement. <<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000031700731/>>

¹⁶⁰ European Social Policy Network (ESPN) (2016). France anticipates ageing society through new piece of legislation. Blanche Le Bihan, French School of Public Health (EHESP), CRAPE - Arènes (UMR 6051)

vary according to geographical area of residence. As a result, an evaluation exercise is conducted to certify the eligibility of the elderly person under loss of autonomy.

88. Moreover, Articles 3 to 5 of the Act promote collaboration with home care institutions and caregivers of elderly people and insurance companies to implement the preventive actions. They are also concerned with: providing better services and access to relevant equipment, new technologies, technical and health assistance, and the funding mechanism with regard to the implementation of the preventive actions.
89. Further, Articles 6 and 7 of the Act specifically elaborate on the social pension fund/scheme and the preventive actions where relevant mechanisms are put in place to manage the social security scheme, exchange of information which is deemed necessary to assess the situation at national level for access to social benefits and aids and precautionary measures to be implemented to limit the loss of autonomy of elderly people, for instance: promoting good health among elders and elderly-friendly environments, maximising the preservation of autonomy for elderly people, and training professional carers in preventing the loss of autonomy and strengthening research in this field.
90. Article 8 of the Act relates to combat against isolation among elders with loss of autonomy. This Article is concerned with the financing expenditure to modernise services that are provided to elder people with loss of autonomy and disabilities such as development of activities and associations, training to professional carers and nursing officers, health infrastructure, multi-purpose home help and care services and better medical assistance so as they do not feel excluded and isolated.
91. Article 9 provides for community life of elderly people with loss of autonomy which allow them to remain at home, in day care centres, close with those who share same interests or live in the same neighbourhood. However, Articles 10 to 17 of the Act provide for collective residential care of the elderly people with loss of autonomy, where they are placed under institutional care such as nursing homes and old aged homes.

92. The provisions laid down in Articles 9 to 22 of the Act have as objectives to modernise housing facilities offered to the elderly people in a way to improve their adaptation in the environment they choose to grow older such as adapting housing facilities/residences to accommodate the elderly people with loss of autonomy, providing the caregivers with necessary training and setting up common procedures to better cater for these elderly people, transport facilities, monitoring of care centres and services to ensure more transparency and information on prices charged by these centres and services and providing personalised care and support. Moreover, Article 17 promotes intergenerational housing which aims at bridging the gap between the young generation and the old one.
93. Chapter 4 of the Act explicitly prescribes the rights and protection of elderly people. Articles 23 to 30 establish the rights of elderly people which comprise elderly people with loss of autonomy being entitled to assistance adapted to their needs and resources; elderly people and their families have a right to information about the forms of support to be provided to them; right of care; right to medical and social facilities such as medical assistance and ‘*Personalised Autonomy Allowance*’; right to privacy where the private life of the elders are respected including respect for his dignity and integrity; freedom of movement and right to security.
94. Moreover, Articles 32 to 40 of the Act provide for the protection of elderly people in order to guarantee the effective exercise of their rights and freedom and prevent them from any ill-treatment. In so doing, the elderly persons with loss of autonomy are entitled to a legal representative, who could be either a member of the Family Council, a guardian a relative of him/hers or someone known to him/her.
95. The Act reinforces the social rights of both the older person and the carer including a reform of the ‘*Personalised Autonomy Allowance*’ and measures to support informal carers.
96. Here, elder people, who are dependent or in a frail condition, are empowered to home or institutional support and those aged more than 60 years who have proven to be

diagnosed dependent are allocated with an increase of APA to finance expenses related to dependency including live-in care.¹⁶¹

97. Article 45 of the Act further adds that older persons with disabilities, aged between 60 and 75 years, are entitled with disabilities compensation.

98. With regard to the social rights of the carers, the Act has initiated the right to respite. This right is meant to overcome the burden of taking care of a member of family borne by the caregiver. It can be invested to provide carers of dependent relatives several options: reception of the dependent person at a reception centre, a temporary housing in a specialised centre, a possibility of home care based on relay. These services allow carers of dependent relatives to be absent one day or a few days. Moreover, the Act provides additional support to caregivers to improve the quality of care to elderly people through modernisation and professionalism.

99. Finally, the High Health Authority introduced the notion of “*fragility*”, which allows health workers to anticipate the loss of autonomy and reduce its negative effects as early as possible.

100. It also creates a new judicial measure called family authorisation, where it is possible for a family or relatives to represent the vulnerable adult without having to go through a measure of guardianship or curatorship.

101. Its main priority is to foster ageing in place through the implementation of comprehensive instruments and to cater for their needs and best interests. However, as alleged in the *International Federation of Associations of the Elderly (FIAPA) v. France* [No. 205/2022]¹⁶², the Act does not fully ensure the legal and judicial protection of elderly persons, both in civil and criminal matters due to lack of enforcement and provision for sanctions. As such, even today, France experiences a high number of elder

¹⁶¹ Adapting Society to an Ageing Population Act 2015, Art. 41.

¹⁶² *International Federation of Associations of the Elderly (FIAPA) v. France* [No. 205/2022]. Available online at <https://www.coe.int/en/web/european-social-charter/-/no-205-2022-international-federation-of-associations-of-the-elderly-fiapa-v-france>

abuse cases in the form of neglect, abandonment by family and gross negligence against elder people under institutional care, amongst others. France was also renowned to have a high rate of suicide among elderly people as their off springs have abandoned them.

102. Given this alarming situation and in order to reassure the elderly people, the French President, Emmanuel Macron, has vowed that the “*priority of the nation is to protect our elderly people. We must do it with responsibility, common sense and measures of discipline, and without any panic*” and the Government of France will leave no stone unturned to materialise this¹⁶³. In view thereof, a specific law, known as the ‘Family and Social Action Code 2022’, was promulgated in France on 1 November 2022 to better protect the elderly persons.

Family and Social Action Code 2022 (Code de l’action sociale et des familles)

103. The Family and Social Action Code 2022¹⁶⁴ governs the rights and protection against abuse of the elderly people and people with disabilities, as well as social establishments.

104. Under Title I of the Code, the following general principles are stipulated with regard to the rights of elderly persons:

(i) Chapter I: Right to social assistance (Articles L111-1 to L111-5)

Every elderly person in France is entitled to any form of social assistance, provided that they satisfy the conditions required.

(ii) Chapter III: Elderly people (Articles L113-1 to L113-4)

This chapter provides that any person aged 65 years who is deprived of sufficient resources and any people over the age of 60 years who are unfit for work can benefit either from home help or from accommodation in private homes or in an establishment.¹⁶⁵ This chapter also establishes the right to information of elderly people and their families with regard to forms of support and care adapted to the

¹⁶³ Columbia Basin Herald (2020). The Latest: French leader Macron vows to protect the elderly. Available online at <https://columbiabasinherald.com/news/2020/mar/06/the-latest-french-leader-macron-vows-to-protect/>

¹⁶⁴ Family and Social Action Code 2022. Available online at <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006074069>

¹⁶⁵ Family and Social Action Code 2022, Art. L113-1.

needs and wishes of the latter.¹⁶⁶ It also defines the criteria to be qualified as a caregiver of an elderly person.¹⁶⁷

(iii) Chapter IV: Persons with Disabilities (Articles L114 to L114-5)

This chapter defines a person with disabilities as someone (including older persons) who has any limitation of activity or restriction of participation in his/her community life as a result of physical or health impairment.¹⁶⁸ This chapter also englobes the rights and protection of the person with disabilities.

(iv) Chapter V: Fight against poverty and exclusion (Articles L115-1 to L115-5)

This chapter is concerned with the fight against poverty and exclusion of elderly people with a view to guarantee them with equal dignity, access to their fundamental rights and a decent life.¹⁶⁹ Therewith, this chapter pronounces the duties and obligations of the State, local authorities, public establishments including municipal and inter-municipal centres for social action, social security organisations as well as social and medico-social institutions to pursue a policy intended to identify, prevent and eliminate all situations that can lead to poverty and exclusion in respect of elderly persons.

(v) Chapter V: Solidarity between generations (Article L118-1)

This chapter promotes intergenerational cohabitation whereby older people lives with younger generation under the same roof in order to strengthen social ties and facilitate access to housing for people.

(vi) Chapter IX : Abuse (Article L119-1)

Under this chapter, the terms “elder abuse” is defined as any vulnerable person (including older people) who has been deprived of his fundamental rights, basic needs, development or health and that same occurred in a relationship of trust, dependence, care or support. Abuse and neglect can take multiple and interrelated

¹⁶⁶ Family and Social Action Code 2022, Art. L113-1-2.

¹⁶⁷ Family and Social Action Code 2022, Art. L113-1-3.

¹⁶⁸ Family and Social Action Code 2022, Art. L114.

¹⁶⁹ Family and Social Action Code 2022, Art. L115-1.

forms within these situations, that is, it can be temporary or long-lasting, intentional or unintentional and the origin can be individual, collective or institutional.

105. Title III of the Code integrates provision from the Adapting Society to an Ageing Population Act 2015 with regard to elderly people.

106. Title VII of the Code sets out the provisions relating to legal representatives for the protection of adults and delegates for family benefits (Articles L471-1 to L474-8) as follows:

(i) Chapter I: Provisions common to legal representatives for the protection of adults (Articles L471-1 to L471-9)

This Chapter creates the measure of guardianship or curatorship which means that a judicial representative is appointed for the protection of vulnerable adults (including older persons).¹⁷⁰ The Chapter englobes the provisions laid down in the French Civil Code 1804¹⁷¹ with regard to “*majeure en tutelle ou curatelle*” under Title XI: Majority and adults protected by law (Articles 414 to 495-9) where the legal representative will have to satisfy a number of conditions and abide by statutory duties and obligations. Moreover, the legal representative will also have to guarantee the protection of the fundamental rights and freedom of the vulnerable adult and acts in the best interest of the latter.

(ii) Chapter III: Criminal provisions common to legal representatives for the protection of adults (Articles L473-1 to L473-4).

This Chapter entails the legal representative to suspension, withdrawal, cancellation or to criminal proceeding in case his/her appointment has not been declared or approved; the protection of the vulnerable adult has been deliberately compromised; and he/she has committed a criminal offence against the vulnerable person under the Criminal Code.

¹⁷⁰ Family and Social Action Code 2022, Art. L471-1.

¹⁷¹ French Civil Code

<https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721?init=true&page=1&query=civil+code&searchField=ALL&tab_selection=all>

107. Moreover, France has come up with the “*Bien Vieillir*” initiative, which is a significant policy measure undertaken by the French government to improve the quality of life of its elderly population. It is a comprehensive approach that aims to foster a society where the elderly can live with dignity, independence, and security, while also actively participating in social, economic, cultural, and civic life. One of the main pillars of this initiative is promoting good health and preventing illness. This involves regular medical check-ups, provision of health and fitness programs, preventive care to avoid common age-related diseases, and ensuring easy access to healthcare services. It aims to support elderly people in maintaining their autonomy for as long as possible. It promotes home adaptations to prevent accidents, the use of assistive technologies, and services like home help and meal delivery. The goal is to ensure that seniors can live in their own homes and communities comfortably and safely.

“*Bien Vieillir*” also focuses on preventing isolation and loneliness among the elderly, which can lead to depression and other mental health issues. The initiative supports community programs that encourage social interaction, volunteering, lifelong learning, and cultural and recreational activities.

The initiative encourages a positive perception of aging through public awareness campaigns, education, and training. It aims to combat ageism and promote a culture of respect and appreciation for the elderly. “*Bien Vieillir*” highlights the importance of coordinated care services. It promotes better communication between healthcare providers, social workers, caregivers, and the seniors themselves to provide holistic and person-centred care.

IV. COMPARATIVE APPROACH BETWEEN THE CURRENT LEGISLATION IN MAURITIUS AND OTHER JURISDICTIONS

108. The Japanese and South Korean models accentuate the importance of comprehensive legislation that covers all aspects of elderly care, from healthcare to social participation. Mauritius could benefit from an inclusive legal framework that holistically addresses the multifaceted needs of the elderly. Japan and South Korea serve as beacons, showing us the power of a well-woven legal net that captures all facets of elderly care - from the intricacies of healthcare to the delicate threads of social participation. Mauritius could weave a similar tapestry, a comprehensive legal framework, to cocoon the diverse needs of its elder populace.

109. In India, the Maintenance and Welfare of Parents and Senior Citizens Act 2007 mandates children and relatives to support their elderly family members. Moreover, the societal framework in India, guided by traditional values of respect and care for elders, bolsters this legislation. This highlights the importance of a supportive societal fabric alongside legal provisions. India’s narrative, highlighted by the above-mentioned Act, is a testament to the strength of communal ties. The societal fabric, embroidered with traditional threads of respect and care for elders, lends a robust backing to the legislation, emphasising the necessity of a nurturing societal backdrop alongside firm legal safeguards.

110. South Africa’s Act emphasises the human rights of the elderly, aligning with the country’s Constitution and the Universal Declaration of Human Rights. This rights-based approach can empower the elderly and ensure their dignity and autonomy. South Africa’s legislation pulses with the rhythm of human rights, harmonising with the universal human rights principles and its own Constitution. This rights-based approach could inspire Mauritius to ensure that the dignity and autonomy of its elderly population are held in high esteem.

111. France, with its “*Bien Vieillir*” (Aging Well) initiative, emphasises the importance of policy measures and programs that complement legal frameworks. These initiatives focus on promoting autonomy and improving the quality of life for the elderly,

demonstrating the importance of addressing both the legal and sociological aspects of elderly care. This initiative stresses the importance of a sociological perspective, focusing on the values of autonomy and the harmony of an improved quality of life for the elderly.

112. While laws pertaining to the protection of elderly persons in other jurisdictions contain specific provisions with regards to the prevention of elder abuse by caregivers and support for caregivers; property ownership and disposal rights; a “duty to support” an elderly person who is incapable to live independently upon certain individuals or a penalty for abandoning an elderly person, by contrast, the Mauritian legislation remains silent on many of these aspects.

113. Besides, even though the Protection of Elderly Persons Act of Mauritius does provide as one of the functions of the Elderly Persons’ Protection Unit, to assist in arranging for the admission of an elderly person to a residential care home, the Act makes no provision concerning the qualifications required by caregivers to work in residential care homes, the grounds for disqualifications of caregivers or their duties.

114. Furthermore, owing to their old age, elderly persons are considered as vulnerable individuals and hence more susceptible to sexual offences, the national legislation for the protection and assistance of elderly persons, unfortunately, does not cater specifically towards the incrimination of such offences.

115. Therefore, it is required to find better ways of how to safeguard the rights of elderly persons.

V. ASSESSMENT OF RELEVANT INITIATIVES AND LEGISLATIVE STRATEGIES THAT CAN BE IMPLEMENTED IN MAURITIUS

116. After having analysed the laws from other jurisdictions, in particular those from Japan, India, South Korea, South Africa and France, the Law Reform Commission has devised potential initiatives and legislative strategies that could be implemented in our current legislation.

(a) New definition of “abuse”

117. The Commission has noticed that “abuse” has vaguely been defined under the Protection of Elderly Persons Act 2005. In this respect, the question arises whether the Act ought to be amended to include a wider definition of “abuse” that would encompass subjecting an elderly person to sexual violence; unjustly disposing of an elderly person’s property; neglecting an elderly person or wilfully depriving them of their basic necessities, such as food, as potential acts of abuse.

Abuse should also encompass digital abuse, as the latter has become more prevalent with the rise of technology use among the elderly.

118. By so doing, elderly people could better be safeguarded under the Act and would legally be empowered to file cases against perpetrators of abuse in courts. Hence, section 11 (1) of the Protection of Elderly Persons Act could be amended to include four further subsections which would read as follows: -

“Any person who -

- (a) wilfully subjects an elderly person to ill-treatment, whether physical or verbal or by digital means;*
- (b) subjects an elderly person to prolonged mental or emotional harassment;*
- (c) intentionally causes pecuniary loss or material prejudice to an elderly person;*
- (d) wilfully depriving an elderly person of food, shelter clothing, medical attention or leaving them unattended for long periods of time;*

- (e) *unjustly disposing of an elderly person's property, without his consent;*¹⁷²
- (f) *deserting or neglecting an elderly;*
- (g) *compelling an elderly person by force or threat to engage in any conduct or act, sexual or otherwise,”*

(b) Creation of a Shelter for Elder Abuse Victims

119. With the objective of preventing abuse of the elderly people, the Law Reform Commission opines whether it would be appropriate to establish a shelter accommodating elderly victims of abuse, operated by the government, as is the case in South Korea.

120. In cases of elderly abuse victims, generally the WEPPU is in charge to look into the matter. Thereby, if the victims are found homeless or under other specific circumstances and need immediate safety and protection, the Unit assists in arranging for the admission of the victim to a charitable institution or to a residential care home (Section 6(2)(d) of the Protection of Elderly Persons Act) depending on the demand and financial state of the latter. Otherwise, the victims are issued with a protection order restraining the offender from engaging in any conduct which may constitute an act of abuse and ordering him to be of good behaviour towards the elderly person (Section 6(2)(d) of the Protection of Elderly Persons Act).

121. In Mauritius, residential care homes are governed by the Residential Care Homes Act. This Act applies to general supervision and control over residential care homes, to supervise compliance by licenses, to set up codes of practices for residential care homes and to monitor conformity with the code.

122. Thus, dedicated shelters could be provided for elderly persons victims of abuse. These shelters can serve as a sanctuary for elderly victims of abuse, providing safety, medical care, and psychological support. They can act as a bridge between the law enforcement

¹⁷² This new provision would constitute an “*infraction formelle*” (which are constituted even in the absence of any damage), in contrast to (c) which is an “*infraction matérielle*”.

agencies, the legal system, and social services. Dedicated shelters can provide specialised care tailored to their physical, emotional, and social needs.

123. In this case, the Elderly Persons’ Protection Unit could refer those elderly persons who have been abused in the past, or if there is an imminent risk that they might be abused again and as such are in need of assistance or protection for admission in such a shelter for elder victims of abuse.

124. Following which, the Protection of Elderly Persons Act 2005 could be amended by catering for the establishment of a Shelter of Elder Abuse Victims by adding a new section 3A. as set out below:

“3A. Shelter for Elder Abuse Victims

(1) *“There is established for the purposes of this Act a Shelter for Elder Abuse Victims.”*

(2) *“The objects of the Shelter shall be –*

(a) to assist elder abuse victims to live in the shelter, by protecting and providing them with food and lodging;

(b) to offer healing programs, such as professional psychological counselling to help elder abuse victims regain psychological stability;

(c) to provide elder abuse victims with basic medical expenses incurred in treating physical and mental harm caused by abuse;

(d) to provide professional counselling services to perpetrators of elder abuse in order to prevent reoccurrence of abuse and restore the original family.”

125. Furthermore, as above mentioned, the Elderly Persons’ Protection Unit, as directed by the Monitoring Committee, would have an additional duty of referring elder abuse victims to the Shelter, and hence, the Act ought to be amended at section 6 (2) of the Act to include a sixth subsection, which would be read as follows:

“(2) The functions of the Unit shall be to –

(...)

(f) refer elder abuse victims, who have been abused in the past, fear that they may be abused again and who are in need of assistance or protection, to a Shelter for Elder Abuse Victims.”

(c) Penalty provisions for abandoning an elderly person

126. Moreover, owing to the fact that individuals, such as family members or acquaintances, living together and taking care of an elderly person, often neglect or abandon them, the Law Reform Commission speculates whether abandoning an elderly person should be incriminated autonomously under the Protection of Elderly Persons Act.

(d) “Duty to support” an elderly person

127. In Korea and India, there exists a “duty to support” and the “maintenance” of an elderly person upon a family member, who could be the spouse, the children living together or separately, or grandchildren, so that they may lead in a healthy and comfortable way.

128. Such a duty to support an elderly person, entails providing mental and financial assistance to an elderly person. However, some conditions should be fulfilled for such a duty to exist, for e.g.:

- Financial inability of the elderly: A fundamental condition is the financial inability of the elderly to support themselves. This is predicated on the notion that the duty of support is ancillary to the needs of the elderly and is not triggered if they possess sufficient means to sustain themselves independently.
- Ability of the family member to provide support: Correspondingly, the family member’s capacity to provide support should be assessed. This involves an examination of their financial stability and ability to extend support without unduly compromising their own financial security.
- Prior relationship and conduct: The history of the relationship between the elderly persons and their family member should be a pivotal factor. Many legal systems consider whether the elderly persons have fulfilled their parental obligations,

including the absence of severe ill-treatment or neglect of their children. This criterion often functions as a moral and ethical barometer, influencing the legal obligation.

- Reciprocity principle: In some legal theories, the principle of reciprocity plays a role. This principle suggests that the duty of support is, to an extent, conditional on the prior fulfillment of parental duties, including the provision of care and upbringing without significant misconduct or abuse.

129. The Commission ponders whether it would be appropriate to implement such a “duty to support” an elderly person in the national legislation.

(e) Introduction of Mandatory Reporting

130. Inspired by the Japanese Elderly Abuse Prevention and Caregiver Support Law, an amendment could be made to introduce mandatory reporting of any suspected abuse or neglect of the elderly. This would involve not only healthcare workers, but also social workers, financial institutions, and law enforcement officials.

(f) Financial Abuse Prevention

131. In India, The Maintenance and Welfare of Parents and Senior Citizens Act provides an avenue for elderly persons to claim maintenance from their adult children or relatives. Adapting this, the Mauritius Act could be modified to include provisions that protect the elderly from financial abuse, enabling them to claim maintenance or financial support when required.

(g) Preemptive Protection Order

132. While the Act, in its Section 9, stipulates that an order can be given when there is reasonable cause to believe an elderly person has suffered, is suffering, or is likely to

suffer abuse, it might be beneficial to extend this to cases where the officer-in-charge of the Unit suspects a high risk of potential abuse, even if no abuse has taken place yet. This would allow for preemptive protection in high-risk situations.

(h) Expedited Hearing

133. In section 9(3), the Act allows up to 14 days for a hearing to be scheduled to show cause as to why an order should not be made. Given the vulnerability of the elderly, it may be beneficial to consider a more expedited hearing process in these cases.

134. Expedited hearing can also be met by providing enhance auxiliary services for the elderly while reorganising and centralising the court system. Moreover, could be integrated specialised services or divisions within the existing court system to address the unique needs of the elderly. These may include specialised training for judges, magistrates and court staff, elder law clinics, or dedicated sessions for elder-related cases.

135. Also, a report takes 2 to 3 months when referred to the Ministère Public. Litigants shall be requested to fast-track cases requiring urgent attention.

(i) Protection From Liability

136. In Section 10, members and officers of the Unit or the Elderly Watch are protected from liability for actions performed in good faith. However, it could be useful to include a mechanism for investigating any complaints against these individuals to ensure accountability.

(j) Legal Assistance

137. It might be useful to include a provision offering legal support or representation for the elderly person during the proceedings related to the protection order.¹⁷³ The representation could be either free of cost or at a subsidised rate, depending on the circumstances and financial capacity of the individual.¹⁷⁴ And the Legal Aid and Legal Assistance Act might then be amended in its Section 4 to cater same.

(k) Strengthening the Penalty for Elder Abuse

138. The Mauritian legislation could be strengthened by amending the penalties for elder abuse to be more stringent. This could include larger fines and longer prison sentences. For example, South Africa’s Older Persons Act includes penalties of up to five years’ imprisonment, and the Act could be amended to include similar penalties. Thus, section 11 of the Act could be amended in its subsection (2) so that any person who commits an offence under the Act shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

139. Also, Police Officers dealing with the elderly should be dedicated and specially trained.

140. However, there should be a first step of verification and conciliation before the criminal procedure is considered in cases of abuse against the elderly. There may be cases where the elderly people are accountable for the abuse or estranged from the family.

¹⁷³ Legal proceedings can be complex and difficult to navigate for anyone, let alone elderly individuals who may be unfamiliar with the intricacies of the legal system. A legal representative can provide guidance and assistance, ensuring that the elderly person’s rights are adequately protected. Moreover, Legal proceedings can be stressful, particularly for an elderly person who has been a victim of abuse. Having a legal representative can provide much-needed support during this difficult time.

¹⁷⁴ Thus, in the U.S., the Older Americans Act (OAA) of 1965 established the Administration on Aging (AoA) which funds legal assistance for older adults. One important part of this is Title III-B Supportive Services, which allows funding for legal assistance. In the UK, legal aid can cover cases of elder abuse under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). In Australia, legal aid commissions in each state and territory provide free legal services to disadvantaged people. The Aged-care Rights Service (TARS) in New South Wales provides legal services for seniors including those who are victims of abuse.

(l) Amendments to the Criminal Code

141. The Law Reform Commission has suggested, in its Interim Report on the Reform of the Criminal Code (May 2016), to provide for a whole panoply of aggravating circumstances based, among other things, on the vulnerability of the victim due to his age. It was also proposed to incriminate fraudulently abusing the state of ignorance or situation of weakness of a vulnerable person.¹⁷⁵

142. Moreover, in the Discussion Paper about “Reform of Law on Endangering Persons in the Criminal Code” [LRC_R&P 123, April 2018], it has been suggested that a new Section 263 about “Abandonment of a person unable to protect himself” could be added, and which would provide that “(1)The abandonment in any place of a person incapable of protecting himself owing to his age, physical or psychological state shall be punished by imprisonment for a term not exceeding five years and a fine not exceeding 100,000 rupees. (2) Any abandonment which results in mutilation or permanent disability shall be punished by penal servitude for a term not exceeding twenty years. Any abandonment which results in death shall be punished by penal servitude for a term not exceeding thirty years.”

(m) To establish a specialised tribunal to fast-track cases against the elderly persons

143. Elderly individuals may face unique challenges due to physical, cognitive, or emotional limitations. These challenges can affect their ability to participate effectively in legal proceedings. A fast-track tribunal dedicated to elderly persons could potentially address these needs by providing specialised support, accommodations, and processes.

¹⁷⁵ The new Section 331 would read as follows: “Fraudulently abusing the state of ignorance or situation of weakness of a minor, or of a person whose particular vulnerability, due to age, sickness, infirmity, to a physical or psychological disability or to pregnancy, is apparent or known to the offender, or of a person in a state of physical or psychological dependency resulting from serious or repeated pressure or from techniques used to affect his judgement, in order to induce the minor or other person to act or abstain from acting in any way seriously harmful to him, shall be punished by imprisonment and by a fine not exceeding 150,000 rupees.”

144. The communication needs of elderly persons should be catered to by ensuring the availability of appropriate technological and physical arrangements. A new fast track tribunal may establish rules and procedures that accommodate individuals with communication impairments. Moreover, it should provide expert assistance and support, including sign language interpreters, readers for individuals with visual impairments, and experts knowledgeable about cognitive disabilities.

145. Magistrates dealing with elderly abuse cases should be trained in case management and supervision.

146. Furthermore, the judicial system often faces significant backlogs, leading to delays in delivering justice. Given that elderly individuals may have limited time due to age-related health concerns, having a fast-track court could help expedite the legal process, ensuring that justice is delivered within a reasonable timeframe. It is to be noted that the Supreme Court of Mauritius recently published a statistical highlight with worrying figures.¹⁷⁶ The number of cases outstanding at the end of the year 2022 was 7,829.¹⁷⁷

(n) The possibility of extending the Children’s Court to elderly persons

147. Both children and elderly persons may require specialised support due to their unique vulnerabilities and specific needs. By extending the children's court model, which often focuses on the best interests of the child, to include elderly persons, there could be a greater emphasis on understanding and addressing the distinct challenges faced by older individuals.

148. The primary purpose of a children’s court is to provide a specialised legal forum that focuses on protecting the rights and welfare of children, handling cases related to child abuse, neglect, custody, and other matters pertaining to the well-being of minors. The establishment of a children’s court recognises the unique vulnerabilities and specific needs of children within the legal system.

¹⁷⁶ Supreme Court, Statistical Highlight 2022 (28 April 2023). Available at: <https://supremecourt.govmu.org/system/files/inline-files/stats-issue-7-2022_0.pdf>

¹⁷⁷ *Ibid*

149. Extending this concept to elderly persons would require careful consideration and evaluation of the distinct challenges and requirements faced by older individuals. While there may be similarities in terms of vulnerability and the need for specialised support, the legal issues and considerations involved in cases related to the elderly, such as guardianship, elder abuse, and end-of-life decisions, are often different from those pertaining to children.

150. Therefore, it is more common for legal systems to adopt other approaches to address the specific needs of elderly individuals, such as the establishment of specialised divisions, enhanced training for judges and court personnel, or the enactment of specific legislation related to elder law.¹⁷⁸ These approaches aim to ensure that the legal system effectively protects the rights and interests of elderly individuals without necessarily replicating the structure and processes of a children's court.

(o) Dedicated officers and special desks should be provided in police stations to facilitate the reporting of cases of abuse against seniors

151. To ensure the effective reporting and handling of cases of abuse against seniors, the establishment of dedicated officers and special desks in police stations can play a vital role. Dedicated officers specifically trained in handling cases of elder abuse can provide a sense of trust and confidence to seniors who may be reluctant or hesitant to report incidents of abuse. These officers would be equipped with the necessary knowledge, skills, and empathy to engage with elderly individuals effectively, ensuring a safe and supportive environment for reporting.

¹⁷⁸ In the United States of America, some states have established specialized elder law courts or divisions within their probate or family court systems. These courts often handle cases related to guardianship, conservatorship, elder abuse, and other legal matters specific to the elderly population. For instance, the State of Illinois Circuit Court of Cook County, available at <<https://www.cookcountycourt.org/Portals/0/Elder%20Law%20Division/Images/Elder%20Law%20Brochure%20Calibri.pdf>>

152. Moreover, special desks dedicated to elder abuse cases can streamline the reporting process and enhance the accessibility for seniors. These desks would be designed to address the unique needs of elderly individuals, considering factors such as mobility, sensory impairments, and communication difficulties. By providing a physically accessible and welcoming space, seniors would feel more comfortable in coming forward to report cases of abuse.

153. Furthermore, dedicated officers and special desks can facilitate a multidisciplinary approach to tackling elder abuse. Collaboration between law enforcement, social services, healthcare professionals, and legal authorities can be fostered through these dedicated resources. This collaboration would ensure a comprehensive response, including medical assistance, social support, legal guidance, and protective measures, all aimed at safeguarding the well-being and rights of the elderly.

154. However, it should be noted that while the presence of dedicated officers and special desks may encourage more seniors to come forward and report abuse, there is still the risk of stigma and fear associated with reporting. Some seniors may hesitate to disclose abuse due to concerns about the potential repercussions, strained relationships with perpetrators (such as family members), or societal attitudes that discourage speaking out against family matters.

155. Also, relying solely on the criminal justice system to address elder abuse cases may have limitations. Some forms of abuse, such as emotional or financial abuse, can be complex and challenging to prove within the confines of criminal law. Alternative approaches, such as mediation and support services, may be more appropriate in certain situations.

156. It is, moreover, essential to ensure effective collaboration and coordination among various agencies involved in addressing elder abuse, such as social services, healthcare providers, and legal entities. Failure to establish strong interagency partnerships and communication channels could hinder the overall effectiveness and holistic support for seniors.

(p) Conditions can be imposed on the private sector to provide facilities to the elders

157. Since Mauritius is facing an ever-growing ageing population, it is expected that in the near future, the demand for senior living residences and elderly care services will grow rapidly. As a key approach to promote partnership between public and private in order to build integrated care for older people in Mauritius, the Government has adopted the WHO Integrated Care of Older People (ICOPE).¹⁷⁹

158. With a view of achieving the ICOPE objectives, the Government of Mauritius has established geriatrics in hospitals to provide specialised care, support and services to elderly persons and has encouraged private clinics and organisations involved in healthcare to implement a geriatric department dedicated to elderly persons.

159. With regard to the implementation of geriatric departments in hospitals and private clinics, the Government can impose on them to adopt incremental changes in infrastructure and service design in order to best suit the needs of the ageing population and ensuring aged friendly environment in the healthcare system, for example use of ripple mattresses to prevent bed sores, handrails to prevent falls and signage for older people with poor distant vision, implementation of e-health system to record the medical history, functional capacity and social support mechanisms for the elderly, among others. A clinical auditing system shall be applied to ensure quality assurance.

(q) Facilities of Children and Women Protection Unit (CWPU) could be extended to the elderly

160. In Mauritius, the designated Units for Children and Women protection are the Family Welfare and Protection Unit (FWPU) which is mandated to implement policies and

¹⁷⁹ The objectives of ICOPE are to improve synergy among service providers including public and private; improve coordination between healthcare and social care providers; and to develop and reinforce capacity building programmes at the level of families, paid carers, service providers and community-based organisations.

programmes in favour of families and to address the problem of Gender-Based Violence as well as the Child Development Unit which specifically ensures the survival, protection, development and participation rights of the Mauritian child are upheld as per the laws provide. As a matter of fact, the facilities provided by the FWPU in ensuring the welfare and protection of individuals also include elderly persons. Some of the facilities provided by the FWPU are as follows:

- Counselling Services to individuals and families facing various challenges, including issues related to domestic violence, abuse, and family conflicts through psycho – social support;
- Safe Houses and shelters – Victims of domestic violence, abuse and any other forms of ill-treatment, including elderly persons who are facing immediate risks or threats to their safety, are provided with temporary accommodation;
- Rehabilitation and Support Services to individuals affected by domestic violence or abuse including therapy, skills development programs, and referrals to other relevant support services in the community;
- Educational and Awareness Programmes – The FWPU has implemented an Empowerment Programme to build the self-esteem and self-confidence of the survivors of domestic violence; Inter – Generation Relationship Programme to strengthen the relationships among the youth, parents and grandparents; and other sensitisation campaigns are conducted to raise awareness on issues pertaining to welfare of families; and
- Intervention and Legal Assistance to victims of domestic violence with regards to their application for a Protection Order, Occupation Order and Tenancy Order under Protection from Domestic Violence Act (PDVA).

161. The facilities offered by FWPU are also provided by the WEPPU who is particularly mandated to cater for the well-being and protection of elderly persons.

(r) Miscellaneous reform proposals

162. In view of the number of reported cases of elder abuse in Mauritius, it is to be observed that our medical system is not as sophisticated to detect elder abuse at an early stage unless same is reported by the victim himself. In this context, medical officers should be given proper training to detect such cases for example if an elderly exhibit signs of depression, this can be an indicator of psychological abuse or neglect. Similarly, if they appear anxious around a caregiver or other family members, or state that they do not want someone around, this could be a sign of psychological abuse or neglect. It is imperative that initial assessment of the situation should be done such as implementing Elder Abuse Screening Test¹⁸⁰. In cases where elderly abuse is detected in the family setting as with other types of domestic abuse, it is critical that officers of the WEPPU make an initial assessment of the dangerousness in the situation.

163. In light of the above, it is also suggested that geriatrics be included as a core module in the curricula of medical and health education programmes and develop a comprehensive training programme for medical professionals including doctors in basic medical care for diseases such as dementia, osteoporosis and recurrent falling tendency.

164. Nowadays, in Mauritius, elderly people being placed under institutional care are high and some of the reported cases of elder abuse occurred in institutional settings. Therefore, it is proposed that appointed caregivers in residential care homes and shelters should be adequately qualified and trained to cater for the well-being of elderly people for example caregivers should be trained to provide rehabilitative care or palliative care to required elderly persons. In view thereof, routine checks should be performed regularly by authorities to assess the quality of services delivered by those caregivers.

165. Likewise, for elderly people who are allocated with carer's allowance, the Government should ensure that the informal carers are properly trained and equipped to better look

¹⁸⁰ Neale, A. V., Hwalek, M. A., Scott, R. O., Sengstock, M. C., & Stahl, C. (1991). Validation of the Hwalek-Sengstock Elder Abuse Screening Test. *Journal of Applied Gerontology*, 10, 406-418.

after their needs. The Government can also implement a carer’s supporting mechanism for the informal carers to provide them ongoing training with respect to geriatrics.

166. As we all know in Mauritius, there is a category of elderly persons who live alone which makes them more vulnerable. As such, they are more prone to be victims of atrocious crimes as in the case of *The State v Jean Alvino Aken Agathe* [2021] SCJ 381 where the Accused was charged of committing the crime of manslaughter preceded by the offence of larceny with aggravating circumstances by breaking through the house of an elderly couple. In this instance, the Government can come forward with various initiatives to ensure the safety and security of these elderly persons such as providing them with security cameras and alarm systems in their houses.

167. Furthermore, elderly persons should be informed of the various facilities available to them. In most cases of violence against the elderly, the victim finds himself dependent on the perpetrator.

168. Statistically, people with advancing age are associated with higher risk of road accidents due to decreased vision and hearing, slowing reflexes and decreased coordination. Consequently, the Ministry of Land Transport and Light Rail (MLTLR) could review the driving license procedure in connection with elderly persons in the form of re-assessing their ability to drive autonomously (or imposing on elderly people to drive during the day only). However, this should not hinder the mobility of the elderly people.

169. There could be a duty to impose an obligation to provide for the need of elderly care to all institutions. The proposition here could be to legally mandate all institutions, both public and private, to contribute to the care of the elderly. This could manifest in various forms, such as providing eldercare facilities, offering flexible work arrangements for caregivers, or financial contributions to eldercare programs.

170. Educating children and young adults about eldercare can have a profound long-term impact on societal attitudes towards the elderly. It prepares future generations to be more conscious and supportive of the needs of the aging population. Incorporating elderly care

into the school curriculum aims at instilling values of respect, empathy, and responsibility towards the elderly from a young age. This can include practical aspects of caregiving, understanding the challenges faced by the elderly, and fostering intergenerational relationships. Developing such a curriculum would involve collaboration between educational experts, gerontologists, and policymakers to ensure that the content is age-appropriate, informative, and culturally sensitive.

171. Addressing societal attitudes towards aging and the elderly is crucial. This involves shifting the perception of the elderly from being seen as a ‘burden’ to being valued as a vital part of the community with significant contributions to offer. Campaigns and public awareness initiatives play a key role in changing mindsets. These campaigns can focus on the capabilities and potential of the elderly, combat ageism, and highlight the importance of inclusive policies.

CONCLUSION

172. There is an improvement in the survival of people beyond 65 years, throughout the majority of countries across the world. Globally, at present, a person aged 65 years could expect to live, on average, an additional 17 years. In around three decades' time (by 2045-2050), that figure is expected to increase to 19 years.

173. The elderly people have contributed towards each society's economy throughout their whole lives. Due to their vulnerability and oftentimes, their fragile health, each country's Government must ensure that laws are kept under review in order to offer greater protection of the rights and interests of elderly persons.

174. In this Issue Paper, the Law Reform Commission has examined the legal framework of such countries that specifically designed provisions catering for the protection of elderly persons. Although the Protection of Elderly Persons Act does efficiently lay down certain provisions to protect and assist elderly persons, policy-makers as well as legislators are invited to implement enhanced laws so that the elderly population of Mauritius live comfortable and worthwhile lives.

175. The in-depth analysis of this Issue Paper has revealed multiple dimensions to the problem, requiring both legislative and sociocultural interventions.

176. Legally, our legislation has provided a solid foundation for the protection of the rights and interests of the elderly. It covers several significant aspects such as abuse, neglect, and discrimination. However, despite the strong legal framework, its implementation and enforcement have been inconsistent. This is evident from the continuing reports of elder abuse, neglect, and exploitation. It suggests the need for more stringent mechanisms to ensure law enforcement, and possibly, the revision of penalties to deter potential abusers.

177. Sociologically, Mauritius, like many societies, has been experiencing significant changes in its family structure, moving from extended to nuclear families. These changes, coupled with increasing urbanisation and modernisation, have put additional

pressures on traditional support systems for the elderly. As a result, many elderly persons are left without adequate care and support.

178. In this context, the role of community and non-governmental organisations becomes crucial. The establishment of more community day care centres, shelters for the elderly, and more residential care homes would not only provide the necessary physical care but also contribute to the psychological well-being of the elderly by preventing social isolation. Similarly, social awareness campaigns aimed at fostering intergenerational solidarity and respect for the elderly are vital.

179. Finally, while the protection of the rights and interests of elderly persons is primarily a matter of law and social policy, it is also a matter of societal attitude. The notion of ‘successful aging’,¹⁸¹ emphasises not only the absence of disease and disability but also the maintenance of high physical and cognitive function and active engagement with life. To realise this vision, a comprehensive approach that includes legal reform, socio-cultural changes, and the active participation of individuals, families, and communities is necessary.

180. Ensuring the rights and interests of the elderly in Mauritius requires a multifaceted approach. It calls for reforms in law enforcement and eldercare services, increasing community support, and promoting a culture of respect and care for the elderly. It is a long journey, but with collective will and effort, significant strides can be made in improving the lives of the elderly in Mauritius.

¹⁸¹ Rowe, J. W., & Kahn, R. L., Successful aging. *The Gerontologist*, 37(4), 433-440, 1997.

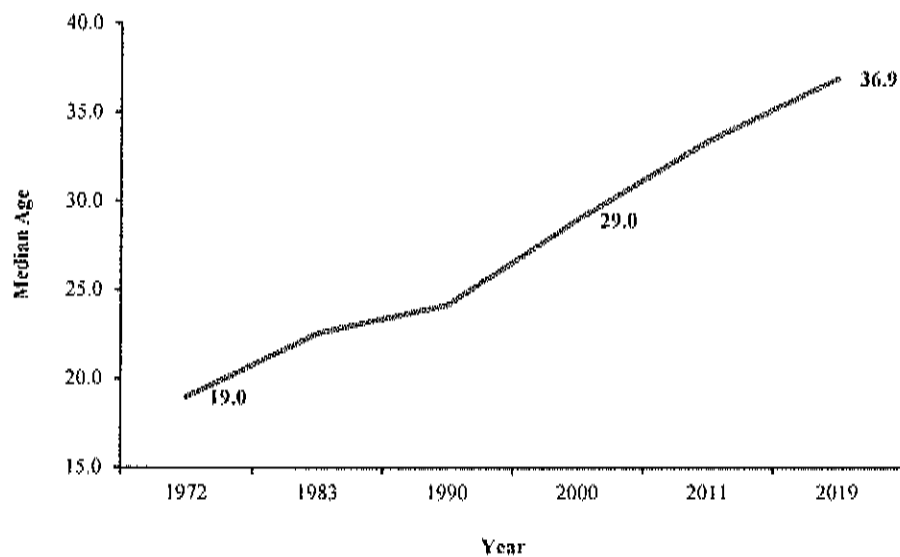
ANNEXE 1: Number of Elderly People across Regions

SN	REGIONS	NUMBER OF ELDERLY PEOPLE (in Millions)	
		2019	2050
1.	Eastern and South-Eastern Asia	261	573
2.	Europe and Northern America	200	296
3.	Central and Southern Asia	119	328
4.	Latin America and the Caribbean	56	145
5.	Sub - Saharan Africa	32	101
6.	Northern Africa and Western Asia	29	96
7.	Australia and New Zealand	5	9
8.	Oceania, excluding Australia and New Zealand	0.5	1.5

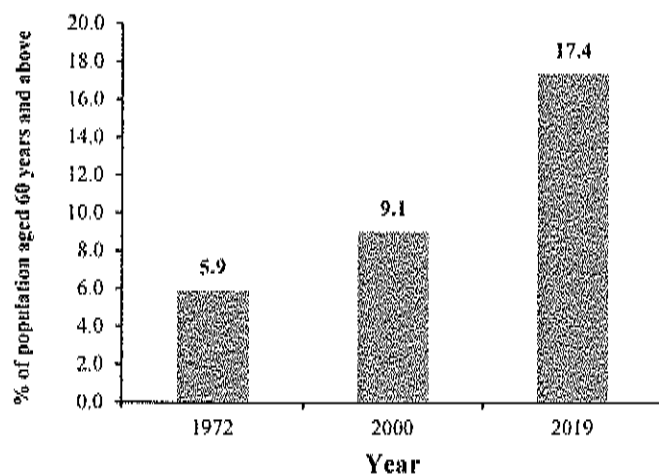
ANNEXE 2: Prevalence of Elderly abuse in different countries

COUNTRY	PREVALENCE OF ELDER ABUSE (ESTIMATES)	MOST COMMON FORM OF ABUSE
USA	1 in 10 adults over 60	Neglect
UK	1 in 6 adults over 60	Financial Abuse
CANADA	1 in 5 adults over 65	Psychological Abuse
INDIA	1 in 5 adults over 60	Neglect and Physical Abuse
CHINA	1 in 6 adults over 60	Psychological Abuse

ANNEXE 3: Median Age of the population, Republic of Mauritius, 1972 – 2019 (Source: Statistics Mauritius)



ANNEXE 4: Percentage of the population aged 60 years and above, Republic of Mauritius, 1972 – 2019 (Source: Statistics Mauritius)



ANNEXE 5: Demographic ageing indicators for selected countries (Source: World Population Prospects 2019)

Countries	% of Population aged 65+	Total Fertility Rate	Life Expectancy at birth	Life Expectancy at 65 years	Median Age
<i>Africa</i>	<i>3.5</i>	<i>4.35</i>	<i>63.2</i>	<i>13.6</i>	<i>19.7</i>
Australia	15.9	1.82	83.4	21.5	37.9
Finland	22.1	1.48	81.9	20.6	43.1
Germany	21.6	1.60	81.3	20.0	45.7
India	6.4	2.20	69.7	14.7	28.4
Italy	23.0	1.31	83.5	21.2	47.3
Japan	28.0	1.37	84.6	22.3	48.4
<i>Mauritius</i>	<i>12.0</i>	<i>1.37</i>	<i>75.0</i>	<i>17.2</i>	<i>37.5</i>
Seychelles	7.8	2.43	73.4	16.0	34.2
Singapore	12.4	1.22	83.6	21.3	42.2
South Africa	5.4	2.38	64.1	13.4	27.6
<i>World</i>	<i>9.1</i>	<i>2.45</i>	<i>72.6</i>	<i>17.1</i>	<i>30.9</i>

ANNEXE 6: Statistics from the Welfare and Elderly Persons’ Protection Unit (WEPPU) with regard to reported case of abuse against elderly persons

TYPES OF ABUSE	YEAR 2021		YEAR 2022		YEAR 2023*		TOTAL	
	Male	Female	Male	Female	Male	Female	Male	Female
FINANCIAL ABUSE	59	137	52	140	22	53	133	330
PSYCHOLOGICAL ABUSE	175	407	174	426	70	166	419	999
PHYSICAL ABUSE	34	80	28	88	18	47	80	215
NEGLECT	68	160	77	186	33	72	178	418
TOTAL	336	784	331	840	143	338	810	1962