SUMMARY

This submission has been prepared for the fourth cycle of the Universal Periodic Review (UPR) of Mauritius on 24 January 2024. In it, Amnesty International evaluates the implementation of recommendation made to Mauritius in its previous UPR, in relation to improving good governance. It also elaborates the international human rights framework with specific reference to Mauritius’ obligations to ensure:

1. Domestic taxation policies and measures are designed to deliver sufficient resources to invest in the progressive realization of human rights.
2. Taxation is collected in a way that respects and advances equality and non-discrimination.
3. The fundamental principles of participation and transparency are adhered to throughout the taxation process.
4. All decisions and measures on taxation must be subject to effective means of accountability.
5. States respect their international cooperation and assistance and extra-territorial obligations to promote tax cooperation, eliminate harmful tax competition, combat tax evasion and tax avoidance, and avoid policies that prevent other states from maximizing their own tax revenue.
6. Corporate actors ensure that they respect their human rights responsibilities with respect to all of their business practices concerning taxation.

The taxation and human rights situation in Mauritius is characterized by low corporate income tax rates, double taxation avoidance agreements which promotes tax avoidance and corporate and financial secrecy all of which result in reduced revenues for the realization of human rights both within and outside of Mauritius.

Amnesty International’s submission ends with a set of recommendations to Mauritius based on these findings.
FOLLOW UP TO THE PREVIOUS REVIEW

1. At the last review in February 2019, Mauritius supported recommendations related to improving good governance. Specifically, it supported Recommendation 115.75 to “[c]ontinue to take necessary steps to further improve transparency and accountability in its financial sector, with a view to eliminating loopholes, if any, that may contribute to illicit financial flows” (Haiti);

2. Despite these commitments, its continued use of strategies to attract capital flight including through double taxation avoidance agreements (DTAAs) and other structures and low taxes, deprive Mauritius, as well as countries it has DTAAs with, from resources necessary for the realization of human rights.

INTERNATIONAL HUMAN RIGHTS LAW FRAMEWORK

3. Mauritius has ratified the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), among others.

4. The Committee on Economic, Social and Cultural Rights in its Concluding observations on the fifth periodic report of Mauritius in 2019 stated in Para 13 that: it is concerned that the low rate of corporate income tax applied in the country may reduce the public revenues available to finance public policies for the implementation of the Covenant rights. The low rate may also encourage unhealthy regulatory competition in the subregion, which would ultimately make it more difficult for all Governments to mobilize the resources necessary for the fulfilment of the rights in the Covenant (art. 2 (1)) and in Para 14 recommends that the State party re-examine the role of corporate income tax in mobilizing domestic revenues, and that it play an active role in seeking to make progress towards the upward harmonization of corporate taxation in the region, enabling all countries in the region to maximize the contribution of foreign investors to public revenue.

5. The Committee further referred Mauritius to its General Comment No. 24 which states that...The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. …States parties should identify any potential conflict between their obligations under the Covenant and under trade or investment treaties, and refrain from entering into such treaties where such conflicts are found to exist… The conclusion of such treaties should therefore be preceded by human rights impact assessments that take into account both the positive and negative human rights impacts of trade and investment treaties, including the contribution of such treaties to the realization of the right to development. Such impacts on human rights of the implementation of the agreements should be regularly assessed, to allow for the adoption of any corrective measures that may be required. The interpretation of trade and investment treaties currently in force should take into account the human rights obligations of the State… States parties… are encouraged to insert, in future treaties, a provision explicitly referring to their human rights obligations...

6. …The obligation to protect means that States parties must prevent effectively infringements of economic, social and cultural rights in the context of business activities… that States parties adopt legislative, administrative, educational and other appropriate measures, to ensure effective protection against Covenant rights violations linked to business activities…

7. The Committee also advises, “where business activities result in abuses of Covenant rights or where a failure to act with due diligence to mitigate risks allows such infringements to occur…” the state may… “revoke business licences and subsidies, if and to the extent necessary, from offenders; and revise relevant tax codes, public...
procurement contracts, export credits and other forms of State support, privileges and advantages in case of human rights violations, thus aligning business incentives with human rights responsibilities. States parties should regularly review the adequacy of laws and identify and address compliance and information gaps, as well as emerging problems.\(^6\)

8. The obligation to fulfil requires States parties to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights, and, in certain cases, to directly provide goods and services essential to such enjoyment. Discharging such duties may require the mobilization of resources by the State, including by enforcing progressive taxation schemes…\(^7\)

9. Despite this, Mauritius fails to respect, protect and fulfil its human rights obligations by deliberately setting out to compete with other states for revenue without consideration of their extra-territorial impact.

10. Section II, 7, principle 13 of the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights\(^8\) explain that “States must desist from acts or omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.”

11. Para 27 of the Maastricht Principles states that “article 2 (1) of the Covenant refers to international assistance and cooperation as a means of fulfilling economic, social and cultural rights. It would be contradictory to such a reference to allow a State to remain passive where an actor domiciled in its territory and/or under its jurisdiction, and thus under its control or authority, harmed the rights of others in other States, or where conduct by such an actor may lead to foreseeable harm being caused… Members of the United Nations have pledged “to take joint and separate action in cooperation with the Organization” to achieve the purposes set forth in article 55 of the Charter, including “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. This duty is expressed without any territorial limitation, and should be taken into account when addressing the scope of States’ obligations under human rights treaties.”

12. Recognizing the growing presence and activities of multinational enterprises, Paragraph 29 states that “The extraterritorial obligation to respect requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories… States parties must ensure that they do not obstruct another State from complying with its obligations under the Covenant. This duty is particularly relevant to the negotiation and conclusion of trade and investment agreements or of financial and tax treaties, as well as to judicial cooperation.

13. Para 37 of the Maastricht Principles states that “States parties should also encourage business actors whose conduct they are in a position to influence to ensure that they do not undermine the efforts of the States in which they operate to fully realize the Covenant rights — for instance by resorting to tax evasion or tax avoidance strategies in the countries concerned. To combat abusive tax practices by transnational corporations, States should combat transfer pricing practices and deepen international tax cooperation, and explore the possibility to tax multinational groups of companies as single firms, with developed countries imposing a minimum corporate income tax rate during a period of transition. Lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights… this practice is inconsistent with the duties of the States parties to the Covenant. Providing excessive protection for bank secrecy and permissive rules on corporate tax may affect the ability of States where economic activities are taking place to meet their obligation to mobilize the maximum available resources for the implementation of economic, social and cultural rights.”

14. Para 15 of Convention on the Rights of the Child (CRC)\(^9\), General Comment No. 16 states that “States must ensure that the best interests of the child are central to the development of legislation and policies that shape business activities and operations, such as those relating to employment, taxaton, corruption, privatization, transport and other general economic, trade or financial issues.”\(^10\)
15. Para 55 of the CRC goes further to recognize that “Ineffective taxation systems, corruption and mismanagement of government revenues from, among others, State-owned businesses and corporate taxation, can limit the resources available for the fulfilment of children’s rights... States should develop and implement effective laws and regulations to obtain and manage revenue flows from all sources, ensuring transparency, accountability and equity.”

16. In Para 6 of the List of issues prior to submission of the combined sixth and seventh periodic reports of Mauritius, the Committee on the Rights of the Child requested Mauritius to... explain how a child-rights approach is included in the preparation of the State budget and whether regular benefit incidence analyses are undertaken to assess the impact of budgetary allocations on children... provide information on the measures taken to assess whether the budgetary allocations across the various activities supporting the realization of children’s rights make the most efficient use of available funds.11

17. And in Para 33 of the same List of Issues to “provide information on the budget lines regarding children and the social services sectors by indicating the amount and the proportion of each budget line in terms of the total national budget.”

THE HUMAN RIGHTS SITUATION ON THE GROUND

Economic and Social Rights

18. Mauritius has deliberately established itself to attract foreign direct investment (FDI) including through the use of low taxes and favourable business incentives or investment structures including:
   a. Flat corporate income tax rate of 15%;12
   b. 100% foreign ownership permitted;13
   c. No tax on dividends or capital gains;14
   d. Free repatriation of profits, dividends, and capital;15 and
   e. Access to an extensive network of double taxation avoidance treaties among others.16

19. A flat corporate income tax (CIT) rate of 15% is almost half the average of African countries at 27.6% and still lower than the global average of 23.37%.17 Low CIT rates can promote harmful tax competition, particularly within a region, resulting in a “race to the bottom” of increasingly lower tax rates. The consequence is reduced revenues available for funding the progressive realization of human rights. In East Africa the establishment of the Kigali18 and Nairobi International Financial Centres19 with similar offerings have acknowledged Mauritius’ example in their establishment. Tax competition is also contrary to the extraterritorial Obligations of states to respect the economic, social and cultural rights of persons outside of their territories under the Maastricht Principles. Mauritius ranks #15 (the first being the worst) in the Tax Justice Network’s Corporate Tax Haven Index 2021 and is estimated to inflict tax losses on other countries $715,944,092 annually.20

20. Whereas Mauritius provided several budget lines related to children in its most recent combined Sixth and Seventh reports to the CRC, it has not published how either its low corporate income tax rates or benefit incidence analyses affect its budgetary allocations and the human rights impact of this on children.

21. Mauritius has concluded 46 Double Taxation Avoidance Agreements (DTAAs)21 and is in the process of negotiating another 21.22 Whereas DTAAs are intended to prevent the double taxation of the same income in two jurisdictions, they have been used to treaty-shop or to provide persons (especially multinational corporations) with the opportunity to choose to establish subsidiaries in low tax jurisdictions where they may shift profits through practices such as transfer pricing or the maximization of claiming profits in low tax jurisdictions and the allowable deductions in high tax jurisdictions, ie. transferring prices within related intra-group transactions as if they were unrelated parties.23

22. Where the objective of the DTAA is primarily for tax avoidance reasons (to minimize tax liabilities in the jurisdiction with higher tax rates), and the country parties to the DTAA facilitate this tax avoidance by not
establishing measures to prevent this, this can also amount to a contravention of the duty for countries to ensure that they do not facilitate the impairment of the enjoyment of economic, social and cultural rights extraterritorially due to the amount of lost revenue.

23. A World Bank study estimated that revenue losses to countries in Sub-Saharan Africa from concluding a treaty with Mauritius range between 15% and 25% of CIT revenues. It also found that concluding a treaty with Mauritius did not increase FDI. The UN World Investment Report demonstrated that losses to lower-income countries from allowing investment through conduit countries with tax treaties, such as Mauritius, total up to $100 billion a year.

24. While the Mauritius Income Tax Act 1995 provides that the Mauritius Revenue Authority can reassess the tax liability of a party where a transaction has created rights or obligations that would not normally be created between persons dealing at arm's length, there are no transfer pricing rules or regulations in Mauritius. There are also no publicly available human rights impact assessments which should precede the conclusion of these treaties nor regular assessments of these to allow for the adoption of corrective measures.

25. Mauritius was ranked #51 (the first being the worst) in the Tax Justice Network’s Financial Secrecy Index 2021. Whereas Mauritius has taken measures to promote corporate and financial transparency including providing for beneficial ownership and tax information exchange, its beneficial ownership register is not public and there is no law providing for the right to information.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Mauritius to:

Good Governance

26. Conduct human rights impact assessments of its fiscal policies including its corporate income tax rates and double taxation avoidance agreements to ensure that they do not contribute to tax abuse and in turn have a negative impact on the availability of resources for the realization of human rights.

27. Amend those taxation measures which undermine the realization of human rights both within Mauritius and in other countries to ensure that they cease to have this effect.

28. Cooperate internationally to promote the establishment of a UN-led international corporate taxation system which supports the democratization of tax policy rule-making and the realization of human rights globally including through increased corporate and fiscal transparency.

29. Take steps to ensure that its financial and corporate secrecy policies and rules on corporate reporting and taxation are consistent with its extraterritorial obligations under the Maastricht Principles and do not facilitate illicit financial flows including making the beneficial ownership register public and enacting a right to information law to enhance corporate and financial transparency, which would help prevent money laundering and illicit financial flows.

30. Prioritize transparency and public participation throughout the taxation process including engaging with civil society organizations and citizens in the formulation and implementation of tax policies.

31. Take concrete measures to combat tax avoidance and abusive tax practices by transnational corporations. This may involve revising tax codes, ensuring compliance with international tax cooperation standards, and exploring the possibility of taxing multinational companies as single entities.

32. Ensure that corporate actors operating in Mauritius respect their human rights responsibilities concerning all business practices, including taxation.
**ANNEX 1**

**KEY AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE**


**ANNEX 2**

**MATRIX OF RECOMMENDATIONS FROM THE PREVIOUS CYCLE, WITH COMMENTS ON PROGRESS**

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Position</th>
<th>Full list of themes</th>
<th>Amnesty International’s assessment/comments on level of implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Theme: A47 Good Governance</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>115.75 Continue to take necessary steps to further improve transparency and accountability in its financial sector, with a view to eliminating loopholes, if any, that may contribute to illicit financial flows (Haiti)</td>
<td>Supported</td>
<td>A47 Good Governance</td>
<td>Partially implemented</td>
</tr>
</tbody>
</table>

**Affected persons:** general

**Mauritius provides for beneficial ownership but not does have a public beneficial ownership register nor does it have any transfer pricing regulations.**

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2 United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Mauritius, 5 April, 2019, E/C.12/MUS/CO/5


5 United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations in the context of business activities, 23 June 2017, Paragraph 14, E/C.12/GC/24,


7 United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations in the context of business activities, 23 June 2017, Paragraph 23, E/C.12/GC/24,

9 United Nations Committee on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, 17 April 2013, CRC/C/GC/16, Article 3, para 1
10 United Nations Committee on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, 17 April 2013, CRC/C/GC/16/CRC, General comment No. 16 (n 55) para 15
11 United Nations Committee on the Rights of the Child List of issues prior to submission of the combined sixth and seventh periodic reports of Mauritius, 22 July 2020, CRC/C/MUS/QPR/6-7, Paragraph 6
12 Income Tax Act, 1995 (consolidated up to November 2022)
13 Non Citizens (Property Restriction) Act
14 Income Tax Act, 1995
15 DLA Piper Intelligence, “Summary of how funds can be repatriated from your jurisdiction (ie dividends or redemption),” https://www.dlapiperintelligence.com/georgglobal/corporate/index.html#ft=37-summary-how-funds-repatriated. (accessed July 31, 2023)
21 The treaties currently in force are: Australia (Partial), Belgium, Botswana, Cape Verde, Congo, Croatia, Cyprus, Egypt, France, Germany, Ghana, Guernsey, India, Italy, Jersey, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Malta, Monaco, Mozambique, Namibia, Nepal, Oman, Pakistan, Bangladesh, China, Rwanda, Seychelles, Singapore, Sri Lanka, South Africa, Qatar, Eswatini, Sweden, Switzerland, Tunisia, United Arab Emirates, United Kingdom, and Zambia. The treaties awaiting ratification include: Gabon, Comoros, Kenya, Morocco, Nigeria, and Russia. Six treaties await signature: Cote d’Ivoire, Estonia, Gibraltar, Malawi, the Gambia and Angola.
22 With the following countries: Algeria, Burkina Faso, Canada, Czech Republic, Greece, Hong Kong, Lesotho, Montenegro, Sudan, Portugal, Iran, Saudi Arabia, Senegal, Spain, St. Kitts & Nevis, Tanzania, Vietnam, Yemen, Zambia, Mali, and Turkey.