

B/595 The Honourable First Member for Port Louis North and Montagne Longue (**Mrs Perraud**)

To ask the Honourable the Attorney-General, Minister of Justice, Human Rights and Institutional Reforms –

Whether, in regard to marital rape, he will state if he is aware that different views are expressed as to whether same is covered under the provisions of the Protection from Domestic Violence Act and, if so, indicate if consideration will be given for this issue to be addressed?

MATERIAL FOR REPLY

The Protection from Domestic Violence Act 1997, which has been amended several times since it came into force, does not make provision for cases of marital rape. Neither does the Criminal Code.

2. The definition of “domestic violence” under the Act does include compelling one’s spouse by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has a right to abstain. This amendment was brought in 2016. This, however, does not extend to marital rape (and to date no court of law has interpreted this provision as possibly including marital rape).

3. Mauritius, until now, is governed by the traditions of the “Code Civil” especially Articles 212 and 215, where spouses have a “devoir

assistance et de cohabitation”, including one of a “communauté de lit”. This has been recently reaffirmed by our Supreme Court on 12 June last, in a judgment by Justice P.M.T. Kam Sing (Reference: Nulliah A. v Nulliah R. [2019 SCJ 163]).

4. In its Discussion Paper on “Reform of Law on Sexual Offences involving a physical contact between the Perpetrator and the Victim” in April 2019, the Law Reform Commission has advocated that marital rape be expressly provided for in the Criminal Code, with a penalty of fifty years penal servitude. The fact that rape is committed by one’s spouse or partner is, in the LRC’s proposal, an aggravating circumstance, hence the higher penalty being proposed.

5. I reiterate that in paragraph 172 of the Government Programme 2015-2019 it is provided that “Government will amend the Criminal Code to provide for a better legal framework for dealing with sexual offences and will enhance the procedural context in which such cases are dealt with”. So that consideration is being given to all the proposals for reform on the law relating to sexual offences.