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**THE NATIONAL HUMAN  
RIGHTS COMMISSION OF  
MAURITIUS**  
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## **PART A. INTRODUCTORY COMMENTARY**

### **1 Introduction**

The Republic of Mauritius, an island state in the Indian Ocean, lies off the south-eastern African Coast and east of Madagascar. The French Island of Réunion is its nearest neighbour. The Constitution of Mauritius (the Constitution) declares that Mauritius consists of the islands of Mauritius, Agalega, Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia<sup>1</sup> and any other island within the State of Mauritius.<sup>2</sup> Mauritius has a population of about 1.3 million inhabitants. According to the First Schedule of the Constitution, the population is regarded as including a Hindu, Muslim and Sino-Mauritian community; people not belonging to these categories are classified as part of the “General Population”. Arguably, the population has been categorised in this way to serve the purposes of the electoral system and minority representation, albeit that these arrangements have been criticised as an obstacle to nation-building and unity.<sup>3</sup>

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1 Mauritius has always maintained that it has sovereignty over Diego Garcia but has not been able to exercise it so far. See R Mahadew and D Raumnauth, “Assessing the Responsibilities of the United Kingdom and Mauritius Towards the Chagossians under International Law”, 29 *Afrika Focus* (2016), p 40.

2 Constitution of the Republic of Mauritius, Port Louis, Article 111.

3 See in general R Mahadew, “The Best-Loser System in Mauritius: An Essential Electoral Tool for Representing Political Minorities”, in E Durojaye *et al* (eds) *Constitution-Building in Africa* (2015), p 160.

Since gaining independence in 1968, Mauritius has had free and fair elections under a multi-party democracy reposing on constitutional foundations such as the rule of law and separation of powers – these have been the basis of its social, economic and political success. It has been lauded as a country with a decent record of human rights and one which is doing relatively well in the fight against corruption.<sup>4</sup> The Constitution provides for a Bill of Rights which, inspired by the European Convention on Human Rights, protects civil and political rights. Though most of the important first-generation rights are recognised and protected, the Supreme Court’s interpretation of some of them, such as the right to privacy, has been regarded as narrow and conservative.<sup>5</sup> Another matter of concern is the absence of socio-economic rights and third-generation rights such as environmental rights and the right to development.

Numerous legislative acts confer protection of human rights, and such protection is, arguably, guaranteed by virtue of Mauritius’s ratification of international human rights instruments at the level of both the United Nations and African Union. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples’ Rights. Mauritius is also a state party to all the major global and regional conventions on women’s rights, the rights of minorities and children’s rights.<sup>6</sup>

Despite the limitations of its domestic system of human rights, Mauritius is still hailed as a country where basic human rights, fundamental freedoms and liberties prevail. This relative success can be attributed to the culture of democracy and respect for the rule of law that exists in the country and the strong will of various stakeholders to uphold this culture. Parliament, the executive, the judiciary and institutions such as the Office of the Ombudsman, the National Human Rights Commission (NHRC), the Equal Opportunities Commission and civil society organisations (CSOs) have made notable contributions in this respect. This chapter focuses, though, on the role, evolution and contribution of the NHRC, since it remains the institution in Mauritius with the most direct, substantial mandate in regard to the promotion and protection of human

4 Republic of Mauritius, “Mo Ibrahim Index 2018: Mauritius Consolidates Top Rank in Overall Governance in Africa”, available at <https://bit.ly/2XiVUoe> (accessed 9 January 2019).

5 R Mahadew, “The Role of the Mauritian Supreme Court in Upholding Democracy and the Constitution”, 5 *African Journal of Democracy and Governance* (2018), p 61.

6 For a full list of conventions to which Mauritius is a state party, see Republic of Mauritius, “Human Rights Conventions”, available at <https://bit.ly/2RQWgBp> (accessed 9 January 2019).

rights. Accordingly, the chapter provides a critical assessment of the NHRC by way of an examination of its establishment, mandate and functions.

## **2 Establishment and evolution of the NHRC**

The NHRC was established in 2001 in terms of the Protection of Human Rights Act of 1998.<sup>7</sup> Initially its mandate was to deal with violations of the civil and political rights entrenched in Chapter 2 of the Constitution and to review complaints filed by members of the public against police officers for actions of theirs in the course of duty. In 2002, a Sex Discrimination Division was also attached to the NHRC to deal with complaints from girls and women about gender discrimination and sexual harassment, but with the creation of the Equal Opportunities Commission in 2008, the mandate of this division was transferred to the latter.<sup>8</sup> The NHRC was also mandated at first to deal with children's rights, but this mandate was transferred to the Ombudsperson for Children upon its establishment.<sup>9</sup>

In 2005, the NHRC established another division, the National Preventive Mechanism, with the mandate of dealing with complaints from detainees and conducting inspections of places of detention such as police detention centres, cells in police stations, prisons, youth rehabilitation centres, youth correctional centres, and mental hospitals.<sup>10</sup> This development came as a result of Mauritius's ratification in 2005 of the Optional Protocol to the Convention against Torture.<sup>11</sup> It has to be noted that the Board of Visitors under the Reform Institutions Act discontinued its operations after the establishment of the National Preventive Mechanism as a division of the NHRC. In 2014, there were major amendments to the Act establishing it; in addition, the NHRC was restructured into three divisions; the Human Rights Division, the Police Complaints Division (PCD) and the National Preventive Mechanism Division. In 2016 the Independent Police Complaints Commission Act was adopted, creating the Independent Police Complaints Commission

7 Protection of Human Rights Act 1998, section 3.

8 Equal Opportunities Act 2008, section 27(3).

9 See Ombudsperson for Children's Office, "The Role, Powers and Functions of the Ombudsperson for Children", available at <https://bit.ly/325o2Pu> (accessed 10 January 2018).

10 National Human Rights Commission, Annual Report 2017 (2017), available at <https://bit.ly/2JaIRQE> (accessed 10 January 2019), p 1 (hereafter NHRC Report 2017).

11 See note 6.

(IPCC) as a successor to the PCD. This new statutory body came into operation in 2018 and took over all the cases of the former PCD.<sup>12</sup>

The mandate of the NHRC underwent further changes in 2013 with the conferring, by law, of the responsibility of referral to the Supreme Court of the review of criminal convictions in cases where fresh and compelling evidences discovered by the NHRC in the course of its investigations, could be used to challenge an earlier conviction. The NHRC was given the opportunity to exercise this mandate in the case of *Amicale* in which four persons were convicted to penal servitude for life in 2000 after being found guilty of arson leading to the death of seven persons.<sup>13</sup> The NHRC found that there was no fresh and compelling evidence to warrant referring the case to the Supreme Court.<sup>14</sup> It has to be underlined that only criminal convictions from the Supreme Court, and not intermediate courts and district courts, can be referred.

In summary, the NHRC has evolved from an institution focused primarily on civil and political rights to one which has been restructured through several important amendments. In addition, its mandate and powers have been revisited time and again to include more functions.

### **3 The nature of the NHRC**

#### **3.1 An overview of the legal framework establishing the NHRC**

As mentioned, the NHRC is set up by the Protection of Human Rights Act of 1998. Section 3 provides that it is a body corporate which shall not be subject to the direction or control of any other authority. It also provides that the Commission shall be headed by a chairperson assisted by as many deputy chairpersons as there are divisions within the NHRC. Each division in turn consists of two members with knowledge and experience in the relevant field.

The way the Chairperson and the deputy chairpersons are appointed is noteworthy. Section 3(8) provides that they are appointed by the

12 Republic of Mauritius Portal, "Independent Police Complaints Commission", available at <http://ipcc.govmu.org/English/Pages/default.aspx> (accessed 10 January 2019).

13 See note 10, p 2.

14 National Human Rights Commission, Annual Report 2015 (2015), available at <http://nhrc.govmu.org/English/Documents/annrep2015.pdf> (accessed 10 January 2019), p 25.

President, acting on the advice of the Prime Minister. The Prime Minister is also required by the law to consult the leader of the opposition before advising the President on who to appoint as chairperson and deputy chairpersons.

The Constitution does not refer either directly or indirectly to the NHRC. This stands in sharp contrast to the South African Constitution's provisions regarding the South African Human Rights Commission (SAHRC) and, it is argued, is a major lacuna in the Mauritian context. The fact that the establishment of the NHRC is provided for exclusively in an Act of Parliament does not confer the same degree of protection as does constitutional entrenchment. In other words, the powers, mandates and other critical aspects of the NHRC can be amended easily by a simple majority in Parliament to suit the agenda of the government in power. Be that as it may, it should however be noted that section 17 of the Constitution provides that the Supreme Court has original jurisdiction to hear and determine complaints made by any persons in relation to the violations of any rights in sections 3-16 of the Constitution, that is to say, the Bill of Rights.

### 3.2 The independence of the NHRC

The independence of human rights institutions is vital, albeit that this does not imply they should not have any connection at all with the government.<sup>15</sup> While there is a perception that the NHRC has been working independently so far without interference or intervention by the government, there is no provision in the Protection of Human Rights Act specifically dedicated to its independence and impartiality. The chairperson, deputy chairpersons and other members of the Commission have an obligation to perform their duties independently and impartially only from a moral point of view or as part of their scheme of duties. However, the question of independence is relevant not only to how members of the NHRC perform their duties – it is also critical that other organs of the state prohibited from interfering in the work of the NHRC. The Protection of Human Rights Act has no provisions that define the relationship between the NHRC and such other organs to ensure its impartiality and independence.

15 G Triggs, "The Independence of Human Rights Institutions", *Human Rights*, (2016), p 54.

### **3.3 Appointment procedure**

In practice, it is the Prime Minister who chooses persons for these posts, while the President, who is only a ceremonial figure despite being the head of the executive, only procedurally carries out the exercise of appointment. This method of appointment implies that the Prime Minister will tend to appoint people whom he or she knows will not cause trouble. For instance, a staunch defender of human rights probably would not be the ideal candidate as he or she might not agree with what the government of the day is doing on the national human rights front and thus demand that it be answerable and accountable.

In fact, the United Nations Human Rights Committee (UNHRC) in 2017 was critical about the process for the selection and appointment of the members of the NHRC, describing it as not “sufficiently transparent and participative”.<sup>16</sup> A Mauritian delegation responded simply by stating that the appointment is made by the President.<sup>17</sup> Indeed, it is argued that the appointment of the members of the NHRC is merely a political exercise, with a high probability that only those in the government’s good books will be appointed. This impacts negatively on the independence of the NHRC as there is then always the possibility that it will be reluctant to investigate or report on human rights situations that affect the image of the government. The selection and appointment of these high-level posts at the NHRC are not conducted by way of open and public advertisement and a democratic selection exercise.

As regards the qualifications of the chairpersons and deputy chairpersons, section 3 of the Protection of Human Rights Act provides that the chairperson should have been a judge, a magistrate or a legal practitioner for not less than ten years. The deputy chairpersons is also required to have been a law practitioner, in this case for not less than five years. However, whilst it is important that persons appointed at that level have a good legal background, human rights issues are not necessarily understood only by persons who have practised law. There is, furthermore, no logical reason why both the chairperson and deputy chairpersons should need to have a legal background. The qualification criteria, especially for deputy chairpersons, ought to have been made more flexible to accommodate persons from other backgrounds, such as social work, sociology and related fields. This would have given the NHRC a

16 UN HRC, Concluding Observations on the Fifth Periodic Report of Mauritius, UN Doc CCPR/C/MUS/CO/5 (9 November 2017), paragraph 7.

17 See UN OHCHR, Human Rights Committee Considers the Report of Mauritius (24 October 2017), available at <https://bit.ly/2LuGACU> (accessed 10 January 2019).

multidisciplinary orientation, leading ultimately to better, more effective results.

The UNHRC also raised concerns about the lack of clarity regarding the guarantee of tenure of mandate-holders and the absence of conflict-of-interest provisions in the legislation.<sup>18</sup> The absence of these provisions means that members of the NHRC can be removed without due process and for political reasons, or could be in a position of conflict of interests and thus not discharge their responsibilities effectively. These are areas where changes in law are urgently required.

### **3.4 Financial autonomy**

The salaries and wages of the chairperson, deputy chairpersons and members of the NHRC as well as its staff are catered for by the government. As far as the funding of the activities of the NHRC is concerned, reliance is made on donor funds. For instance, in 2017 the NHRC entered into an agreement in terms of which the European Union would finance a three-year campaign to educate the public on human rights.<sup>19</sup> Similarly, through the United Nations Development Program (UNDP) in Mauritius, the Office of the High Commissioner for Human Rights financed the publication in the same year of a compendium of concluding observations of treaty bodies, the African Commission on Human and Peoples' Rights, and the Universal Periodic Review of Mauritius by the UNHRC.

### **3.4 Relations with civil society**

The NHRC does work in collaboration with civil society in Mauritius. For instance, workshops are regularly conducted in citizen advice bureaus across the country for the benefit of members of CSOs and the public in general. Non-governmental organisations (NGOs) also have the opportunity to comment on the national reports on human rights that the NHRC prepares and submits to United Nations' treaty bodies, the UNHRC and the regional organisations on human rights.<sup>20</sup>

However, relations between the NHRC and NGOs have not been good. The UNHRC has noted a lack of participation or involvement of

18 UNHRC, Concluding Observations on the Fifth Periodic Report of Mauritius, UN Doc CCPR/C/MUS/CO/5 (9 November 2017), paragraph 7.

19 See note 10, p 4.

20 National Human Rights Commission, Annual Report, Edition 2008, Port Louis (2008), p 15.

NGOs in human rights matters in Mauritius.<sup>21</sup> For instance, there have not been any joint reports or publications by the NHRC and NGOs on any topic concerning human rights in Mauritius. Arguably, the political nature of the NHRC does not allow it to join forces with NGOs and deal with human rights situations in Mauritius.

### **3.5 Accessibility**

The NHRC is accessible to all Mauritians as well as to foreigners who find themselves on Mauritian territory. Physical access to the Commission is very easy due to the island's small geographical size: there is no part of Mauritius that can be qualified as a remote area with limited access to the NHRC.

Complaints forms are readily available its website, and the procedures to be followed in submitting a complaint are clearly elaborated upon therein.<sup>22</sup> For persons who are illiterate or have a disability, complaints can be submitted by proxy or on their behalf. The complaint can be drafted in any language (French, English or Creole) in which the complainant is at ease and conversant. The complaint can also be directly recorded by the officers of the NHRC if complainants are incapable of doing so themselves. As for persons from Rodrigues, complaint forms may be collected at the office of the island chief executive and forwarded to the NHRC when completed.

Although accessing the NHRC is not difficult at all, many people might not be aware of its complaints procedure or the possibility of availing themselves of it. Similarly, few would be aware that the NHRC publishes an annual report with important information on the situation of human rights in the country and Mauritius's international commitments in this regard. There is hence a need for the work of the NHRC to be popularised to enable greater engagement with all stakeholders.

## **4 Mandate of the NHRC**

The mandate of the NHRC is provided for in section 3A of the Protection of Human Rights Act. Its primary responsibility is to promote and protect human rights as per section 3A(a) of the Act. It is mandated to review the safeguard provided by any enactment for the protection of human rights.

21 See note 17.

22 See Republic of Mauritius Portal, "National Human Rights Commission – Procedures", available at <http://nhrc.govmu.org/English/Procedures/Pages/default.aspx> (accessed 10 January 2019).



As a commission, it is also entrusted with the duty to review factors that inhibit and the enjoyment of human rights. It is mandated to submit to any minister any opinion, recommendation or proposal related to the promotion and protection of human rights. Its responsibilities extend as well to the preparation of reports on the national human rights situation in general and specific matters in particular.

Another important mandate concerns the harmonisation of national legislation on human rights with the international human rights instruments to which Mauritius is a state party. It is also responsible for assessing the effective implementation of these instruments at the national level. It is the duty of the NHRC to encourage the country's ratification of or accession to relevant international human rights instruments. The NHRC is required to assist the government in the drafting and submission of state reports to the various regional and international human rights bodies to which Mauritius is state party.

There is also a duty of cooperation with the United Nations and other regional bodies to achieve the overall objective of promoting and protecting human rights. The NHRC has the duty, furthermore, to assist in the formulation of programmes for teaching and research on human rights and ensure their execution in schools, universities and professional circles.<sup>23</sup>

The Paris Principles clearly stipulate that the NHRC must be given a mandate which is as broad as possible and clearly set forth in a constitutional or legislative text.<sup>24</sup> Arguably, the functions and mandate of the NHRC as set out in the Protection of Human Rights Act are in line with what the Principles require: the Commission does indeed have a very broad mandate, one which is given legislative effect through the Act. The broadness of the mandate is evident in section 3A(m), which provides that the NHRC can exercise such other functions it considers conducive to the promotion and protection of human rights.

In addition, the Protection of Human Rights Act aligns with provisions of the Paris Principles that concern the responsibilities human rights institutions have in preparing state reports, harmonising domestic laws with international ones, advising the state on human rights matters, and commenting on draft laws, bills and policies. Section 3A of the Act, which provides for the NHRC's mandate, is similar in letter and spirit to

23 Protection of Human Rights Act 1998, section 3A(b)-(m).

24 Paragraph 2 of the Paris Principles.

the Paris Principles.<sup>25</sup> (The more trenchant question of whether the NHRC has been effective in carrying out this mandate is discussed later in this Chapter).

It should be added that the NHRC's mandate is unique in the Mauritian context and that, as such, there are no other institutions with competing mandates. For instance, the Equal Opportunities Commission and Office of the Ombudsperson for Children are required to investigate cases of discrimination and violation of children's rights, respectively, as well as conduct research and educational programmes relating to the matters in which they specialise.<sup>26</sup> However, the NHRC remains the institution with the mandate in preparing state reports, advising the state or relevant ministers, and cooperating with other international institutions on various aspects of human rights.

The NHRC also has specific mandates in the case of its two specialised divisions, the Human Rights Division and the National Preventive Mechanism Division. According to section 4 of the Protection of Human Rights Act, the Human Rights Division:

may enquire into any written complaint from any person alleging that any of his human rights has been, is being or is likely to be violated by the act or omission of any other person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public body without prejudice to the jurisdiction of the Courts or powers conferred on the Director of Public Prosecutions.

It has to be pointed out that Mauritians often prefer to approach the court in cases of violations of their human rights rather than the NHRC. This is explained by the fact that the NHRC's recommendations are not binding in nature.

#### **4.1 Commenting on existing and draft laws**

According to section 3A(b) of the Protection of Human Rights Act, the NHRC has the legal obligation to review the safeguard provided by or under any enactment for the protection of human rights. By implication, the Commission has the right to comment on existing and draft laws. This is in line with paragraph 3(a)(i) of the Paris Principles, which requires NHRIs to ensure that the laws are in conformity with human rights principles. For example, in its 2017 annual report the NHRC reports on newly adopted or amended laws, including the Land Drainage Authority

25 Paragraphs 3(a)-(g) of the Paris Principles.

26 Equal Opportunities Act 2008, section 27(3).

Act; the Constitution with respect to the right to liberty; the Finance (Miscellaneous Provisions) Act amending the National Identity Card; the Equal Opportunities (Amendment) Act; the Data Protection Act of 2017 regarding the right to privacy; and the National Employment Act regarding the right to work.<sup>27</sup>

Some critical observations should be made. First, previous annual reports, such as those for 2015 and 2016, lack similar coverage despite the enactment of many important laws during these years. This suggests that the NHRC has not been consistent in reviewing existing or new laws with a bearing on human rights in Mauritius even though it has the mandate to do so. In general, the NHRC very rarely takes a critical position, either in press releases or public appearances, on any legislation affecting human rights. Secondly, the list of laws cited above from the 2017 annual report are dealt with in a purely descriptive way: the NHRC notes those laws which have been amended or adopted, but not does not undertake a critical discussion of their impact on the promotion and protection of human rights.

For example, the 2017 annual report reports factually and without critical comment on how the amendment of the Data Protection Act relates to the right to privacy. Yet this issue turns around the inclusion of citizens' biometric data in their national identity cards – a hotly contested matter in Mauritius in 2015/2016. It was even the subject of a Supreme Court case, the decision of which was appealed against before the Judicial Committee of the Privy Council.<sup>28</sup> The NHRC, however, remained silent on the human rights implications of including biometric data in national identity cards. Indeed, it has been unwilling to declare its position on many a law. The impression given is that it often opts to refrain from commenting on laws that are politically sensitive or where its views might be seen as critical of the performance of the government.

Nonetheless, there are a few notable exceptions where the NHRC has been vocal. One such instance is the subject of provisional charges, on the basis of which police may arrest a person without any investigation but based on a *prima facie* case. The NHRC dealt extensively with this matter in its annual report of 2015, which pointed out that since there is no piece of legislation in the statute books on which a provisional charge may be

27 See note 10, pp 123-129.

28 R Mahadew, "Does the Mauritian Constitution Protect the Right to Privacy? An Insight From *Madhewoo v the State of Mauritius*", 18 *African Human Rights Law Journal* (2018), pp 189-204.

grounded, the concept is in direct violation of the right to liberty.<sup>29</sup> The NHRC's annual report states:

In the past, the National Human Rights Commission has already raised the issue of police arresting people on mere allegations or suspicion and then conducting an enquiry, but no solution has yet been prescribed to that effect. The problem comes to the fore from time to time in high profile cases but is ignored when ordinary citizens are victimised. On the mere allegation of sexual misconduct, the practice of the police is to arrest immediately without making a serious enquiry, even if the incident has occurred a number of years before.<sup>30</sup>

The NHRC made specific recommendations about the concept of provisional charges:

It is proposed to introduce legislation on the lines of the UK Police and Criminal Evidence Act 1984 (PACE) in Mauritius. Section 37(2) of PACE provides that where a person is arrested without a warrant and the custody officer does not have sufficient evidence to charge him, the person arrested must be released either with or without bail “unless the custody officer, has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him”.

The above makes no provision for a “provisional charge” but allows for continued detention which would be under judicial control. For this to work in Mauritius it is essential that the powers and responsibility of the Police Station Enquiring Officer which are defined in the Police Standing Orders be carefully reinforced and defined.

## **4.2 Monitoring domestic human rights situations**

The NHRC is mandated under the section 3A(e) of the Protection of Human Rights Act to prepare reports on the national human rights situation in Mauritius. It has reported on issues such as economic measures, drugs, food security, the right to water, lesbian, gay, bisexual and transsexual (LGBT) rights, the digital revolution, domestic violence, sexual harassment, migrants workers, persons with disabilities, and children's rights.<sup>31</sup> It is only since 2017 that the NHRC has adopted the approach of monitoring the domestic human rights situation in respect of specific issues. Previous reports show that no such exercise was done in the

29 National Human Rights Commission, Annual Report, Edition 2016, Port Louis (2016) (hereafter NHRC Report 2016), p 16.

30 *Ibid*, pp 18-19.

31 See note 10, pp 25-44.

past and that the focus instead was on the activities of the various divisions of the NHRC.<sup>32</sup>

The NHRC's over-cautious approach is again evident in its annual report of 2017, which does not raise concern over human rights issues and situations but offers a merely descriptive report on matters in which the government has taken positive steps – indeed, the reporting strikes one as almost a tribute to the government's achievements. There is also a tendency for the NHRC to avoid getting to the heart of the issues, assigning responsibilities to particular role-players and demanding answers from relevant authorities. For example, the LGBT issue was reported in vague and generalised terms.<sup>33</sup> It did not touch on the fact that the Mauritian Criminal Code still criminalises sodomy and that animosity and prejudice against the LGBT community remains so prevalent that a gay pride march in 2018 was cancelled for fear of violence following threats made against the organisers.<sup>34</sup> As for the right to water, the report simply notes the policy measures the state has adopted in regard to water supply, but fails to mention serious cases where water supply was interrupted for days in some parts of Mauritius and triggered protests by concerned inhabitants.<sup>35</sup>

The law gives the NHRC a clear mandate to monitor human rights situations with the aim of investigating and documenting issues and advocating for solutions to them. However, it has not conducted any independent study or drafted any report that deals with pressing issues, but instead has merely referred to some issues in its annual reports in a descriptive and pro-government manner.

### 4.3 Monitoring and advising on compliance with international standards

The NHRC has adopted a timid approach to monitoring and advising on state compliance with international standards – compliance in this context

32 See annual reports from 2013-2016.

33 See note 10, p 30 on the issue of LGBT rights in Mauritius. There is still a need to inform and educate the public at large about LGBT rights. Mauritian society has come to accept foreigners who are same-sex couples and even tolerate homosexual tendencies among well-known figures. Moreover, Mauritius has an annual Gay Pride Parade, which is publicised in newspapers. While same-sex marriages have not yet become an issue, there is general tolerance of LGBT persons.

34 See "Mauritius Church Condemns Blocking of Gay Rights March", *Daily Mail* (6 June 2018), available at <https://dailym.ai/2ZXi2Gu> (accessed 10 January 2019).

35 See A Macky, "Water Shortage: A Long Due Problem that Needs to Be Solved", available at <https://www.lexpress.mu/idee/274611/water-shortage-long-due-problem-needs-be-solved> (accessed 10 January 2019).

includes signing and ratifying essential international human rights instruments. It has also failed to develop a clear strategy for inducing the government to domesticate human rights instruments such as the ICCPR, the ICESCR and even the African Charter on Human and Peoples' Rights. This is of utmost importance, given that Mauritius is a dualist country – that is to say, the provisions of international instruments have legal effect at the national level and before national courts only if they are domesticated.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) can be used to illustrate the point. Mauritius signed it in 2005 but ratified it only in 2017, and then with reservations to Article 6(b) which prohibits the marriage of a girl under the age of 18.<sup>36</sup> Between 2005-2017 the NHRC did not take any steps to advise the government on the importance of ratifying the Maputo Protocol. Moreover, since the latter's ratification, the Commission has not issued any comment on the reservation concerning child marriages. It has also been silent on the next essential step after ratification, namely the domestication of the provisions of the Maputo Protocol.

#### 4.4 Educating and informing

In its 2017 annual report, the NHRC highlighted the need for human rights education at schools to include both the teaching of rights and moral education. It stated that “education in morals must give children a sense of values and inculcate the notion that rights are accompanied by duties to society and the respect of others”.<sup>37</sup> The NHRC has conducted regular talks on human rights in citizens' advice bureaus and social welfare centres. Educational campaigns have also been conducted to enable police officers to know their own rights, the rights of suspects and the rights of the members of the public.<sup>38</sup>

While such projects are no doubt laudable, it is critical to ensure that they are carried out in a sustainable way and that monitoring and evaluation is undertaken to assess their impact. In addition, other stakeholders, such as parliamentarians, NGOs and tertiary institutions, should be included in the list of audiences the NHRC targets for its campaigns on rights-education.

36 A Budoo, “Mauritius: It's Time Mauritius Took Decisive Steps to Outlaw Child Marriages”, *AllAfrica*, available at <https://allafrica.com/stories/201807040496.html> (accessed 10 January 2019).

37 See note 10, p 121.

38 *Ibid*, p 122.

#### 4.5 Receiving and dealing with complaints and petitions

The NHRC has procedures for receiving and dealing with complaints and petitions. Upon receiving a complaint, it examines all information submitted, summons the complainant, the respondent and witnesses for examination under oath or solemn affirmation. It also requests that documents or exhibits be produced, and it visits the locus if the need arises.<sup>39</sup>

The NHRC has an obligation under the Protection of Human Rights Act to attempt to resolve the complaint by a conciliatory procedure. If such an attempt fails, it has the obligation to (1) refer the matter to the Director of Public Prosecutions if the investigation reveals the commission of criminal offences; (2) refer the matter to the appropriate service commission for possible disciplinary action; and (3) refer the case to the officer in charge of a parastatal body or government for disciplinary action.

At the end of an enquiry, the NHRC can send its recommendations to the minister responsible for human rights for appropriate action and recommend appropriate relief to the complainant and any other person.<sup>40</sup> A complainant has the possibility of calling in person to the office of the NHRC and filling in a complaint form. There is also the possibility of sending a letter to the NHRC setting out the complaint.

The Human Rights Division of the NHRC has received several complaints from individuals. However, it has noted that many of the complaints are related to labour disputes, relations between employer and employee, cases of harassment at work, disputes between neighbours, and protests against action or inaction by local authorities.<sup>41</sup> Some complaints are also related to the right to a safe environment, as when someone raises a complaint against a neighbour who is blocking a canal or drain, or when a poultry farm is accused of polluting a waterway. None of these complaints fall strictly within the ambit of the NHRC. As such, often all it can do is refer complainants to the appropriate authority. It is quite evident that citizens are not fully aware of the specific mandate of the NHRC. There is hence a critical need to educate the public on the nature of the NHRC's work and services.

In addition, there are some major limitations to its complaint mechanism. For instance, it is not mandated to deal with complaints

39 See note 22.

40 *Ibid.*

41 National Human Rights Commission, Annual Report 2016 (2016), p 11.

regarding economic, social and cultural rights. This is indeed a major constraint, particularly given that the Constitution does not provide for socio-economic rights and that the Supreme Court therefore cannot entertain related cases. Albeit that it is not a judicial body, it would have been beneficial to citizens if the NHRC could investigate complaints related to socio-economic rights. In addition, the NHRC is not mandated to hear cases that date back more than one year.<sup>42</sup> Such a time restriction can inhibit the protection of human rights, particularly in sensitive cases where a complainant might take some time to decide to submit a complaint on any alleged violation.

## **5 Consultation with stakeholders**

The NHRC has been particularly weak in its consultation with stakeholders. No doubt it has collaborated with NGOs and tertiary institutions, but the extent of this collaboration has been superficial and ineffective. For example, it has collaborated with NGOs merely for training and workshop purposes. It is a similar situation with the University of Mauritius, where seldom happens that the NHRC will bring guests for talks and engagements on human rights issues.

More trenchantly, there are no consultation agreements or memoranda of understanding between the NHRC and stakeholders on long-term, ground-breaking research studies, investigations or monitoring campaigns regarding compliance with key human rights instruments. Conducting consultation of this kind in a sustained, fruitful manner is essential if the NHRC is to fulfill its mandate and be effective in promoting and protecting human rights.

## **6 Conclusion**

The NHRC of Mauritius is provided for by the law, as prescribed by the Paris Principles. It has a mandate which is progressive enough to ensure the promotion and protection of human rights. However, the political approach that it adopts all too often in discharging its duties and obligations under the law undermines its authority and efficacy in practice.

This may be explained by the fact that the chairperson, deputy chairperson and members of the Commission are appointed upon the advice of the Prime Minister. They thus lack the liberty, possibly even the

42 National Human Rights Commission, "Limitations", available at <https://bit.ly/2XEvC41> (accessed 10 January 2019).



inclination, to be critical of the government on certain pressing human rights issues. For instance, in its annual reports it is apparent that the NHRC has been timid and vague in carrying out essential components of its mandate such as commenting on laws, monitoring the human rights situation in the country, and monitoring compliance with international human rights instruments to which Mauritius is a state party. There is also a pressing need for the NHRC to revisit the way in which it collaborates and consults with other stakeholders.

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## **PART B. SELECTED HUMAN RIGHTS DOCUMENTS AND MATERIALS**

### **B.2.1 Legislative and regulatory instruments**

#### **The Protection of Human Rights Act 19 of 1998**

**Proclaimed by [Proclamation No 2 of 1999] w. e. f. 23 February 1999**

#### **ARRANGEMENT OF SECTIONS**

##### **Section**

- 1) Short title
- 2) Interpretation
- 3) Establishment of Commission and setting up of Divisions
- 4) Functions of the Human Rights Division
- 5) Staff of the Commission and Divisions
- 6) Powers and duties of the Human Rights Division
- 7) Investigation
- 8) Protection of witnesses
- 9) Persons likely to be prejudicially affected
- 10) Protection of action taken in good faith
- 11) Reports of the Commission
- 12) Finance
- 13) Offences
- 14) Jurisdiction
- 15) Regulations
- 16) Consequential amendment
- 17) Commencement

##### **An Act**

**To provide for the setting up of a National Human Rights Commission, for the better protection of human rights, for the better investigation of**

**complaints against members of the police force, and for matters  
ENACTED by the Parliament of Mauritius, as follows –**

**1. Short title**

This Act may be cited as the Protection of Human Rights Act 1998.

**2. Interpretation**

In this Act –

“Chairperson” means the Chairperson of the Commission;

“Commission” means the National Human Rights Commission established under section 3;

“Deputy Chairperson” means a Deputy Chairperson of the Commission who is assigned to the Human Rights Division, National Preventive Mechanism Division or Police Complaints Division, as the case may be;

“Division” means the Human Rights Division, the Police Complaints Division or the National Preventive Mechanism Division, as the case may be;

“human rights” means any right or freedom referred to in Chapter II of the Constitution; “Human Rights Division” means the Human Rights Division referred to in section 3B; “Minister” means the Minister to whom responsibility for the subject of human rights is assigned;

“National Preventive Mechanism Division” means the National Preventive Mechanism Division referred to in section 3 and in the National Preventive Mechanism Act 2012;

“Police Complaints Division” means the Police Complaints Division referred to in section 3 and in the Police Complaints Act 2012; “public body” means –

- (a) a Ministry or Government department;
- (b) a local authority;
- (c) a statutory corporation;
- (d) any other company, partnership or other entity of which the Government or an agency of the Government is, by the holding of shares or some other financial input or in any other manner, in a position to influence the policy or decisions;

**Amended by [Act No 19 of 2012]**

**3. Establishment of Commission and setting up of Divisions**

- 1) There is established for the purposes of this Act a National Human Rights Commission, which shall be a body corporate.

- 2) The Commission shall not, in the exercise of its functions, be subject to the direction or control of any other person or authority.
- 3) There shall be within the Commission –
  - (a) a Human Rights Division;
  - (b) a Police Complaints Division;
  - (c) a National Preventive Mechanism Division.
- 4) The Commission shall consist of –
  - (a) a Chairperson, who shall be the head of every Division; and
  - (b) 3 Deputy Chairpersons, each of whom shall be assigned to a Division.
- 5)(a) The Chairperson shall be a person who has been –
  - (i) a Judge;
  - (ii) a Magistrate for not less than 10 years;
  - (iii) a law practitioner for not less than 10 years; or
  - (iv) a Magistrate and a law practitioner for an aggregate period of not less than 10 years.
  - (c) The Deputy Chairpersons shall be persons who have been law practitioners for not less than 5 years.
  - (d) In this subsection –

“law practitioner” has the same meaning as in the Law Practitioners Act.
- 6) The Commission shall regulate its meetings and proceedings in such manner as it thinks fit and 3 persons shall constitute a quorum.
- 7) Every Division shall consist of -
  - (a) the Chairperson, as its head;
  - (b) a Deputy Chairperson who shall be assigned to it; and
  - (c) 2 members with knowledge and experience in the relevant field.
- 8)(a) The Chairperson, the Deputy Chairperson and the members of every Division shall be appointed by the President, acting on the advice of the Prime Minister, on such terms and conditions as the President thinks fit.
- (b) Before tendering advice to the President under paragraph (a), the Prime Minister shall consult the Leader of the Opposition.
- 9) Subject to subsection (10), the Chairperson, the Deputy Chairpersons and the members of every Division shall hold office for a term of 4 years and be eligible for reappointment.
- 10) The President may, on the advice of the Prime Minister, remove the Chairperson, any Deputy Chairperson or any member of a Division from office for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour.
- 11) Subject to subsection (12) -
  - (a) where any vacancy occurs in the office of the Chairperson by reason of death, resignation or any other cause, the Deputy Chairperson of the Human Rights Division shall act as Chairperson until the vacancy is filled;

- (b) where the Chairperson is absent or on leave, the Deputy Chairperson of the Human Rights Division shall act as Chairperson until the date on which the Chairperson resumes his office.
- 12) Where the Deputy Chairperson of the Human Rights Division is unable to act as Chairperson, the President may authorise the Deputy Chairperson of the Police Complaints Division or the Deputy Chairperson of the National Preventive Mechanism Division to act as Chairperson.
- 13) The Chairperson, any Deputy Chairperson or any member of a Division shall not enter upon the duties of his office unless he has taken and subscribed before the President the oath set out in the Schedule.

**Amended by [Act No 19 of 2012]**

### **3A. Functions of the Commission**

The Commission shall –

- (a) promote and protect human rights;
- (b) review the safeguard provided by or under any enactment for the protection of human rights;
- (c) review the factors or difficulties that inhibit the enjoyment of human rights;
- (d) submit to the Minister any opinion, recommendation, proposal or report on any matter concerning the promotion and protection of human rights;
- (e) prepare reports on the national situation with regard to human rights in general, and on more specific matters;
- (f) inform the Minister of situations of violation of human rights and advise on ways in which such situations can be ended;
- (g) promote and ensure the harmonisation of national legislation and practices with the international human rights instruments to which Mauritius is a party, and their effective implementation;
- (h) encourage ratification or accession to the instruments referred to in paragraph (g), and ensure their implementation;
- (i) contribute to the reports which Mauritius is required to submit to United Nations bodies and committees, and to regional institutions, pursuant to its treaty obligations and, where necessary, to express an opinion on the subject, with due respect for its independence;
- (j) cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
- (k) assist in the formulation of programmes for the teaching of, and research into, human rights and take part in their execution in schools, universities and professional circles;

- (l) publicise human rights and efforts to combat all forms of discrimination by increasing public awareness, especially through information and education and by making use of all press organs;
- (m) exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.

### **3B. Human Rights Division**

- 1) There shall be for the purposes of this Act a Human Rights Division, which shall be a Division of the Commission.
- 2) The Division shall consist of –
  - (a) the Chairperson of the Commission as its head;
  - (b) a Deputy Chairperson who shall be assigned to the Division; and
  - (c) 2 members.
- 3) The members referred to in subsection (2)(c) shall be persons having knowledge and experience in the field of human rights, law, employment, industrial relations, business administration, education, sociology, policing, social work, psychology, psychiatry, medicine or prison management.
- 4) The Division shall regulate its meetings and proceedings in such manner as it thinks fit.
- 5) Three persons, including the Chairperson or Deputy Chairperson, shall constitute a quorum:

**Amended by [Act No 43 of 2002]; [Act No 19 of 2012]**

### **4. Functions of the Human Rights Division Amended by [Act No 19 of 2012]**

- 1) Subject to subsection (2), the Human Rights Division may, without prejudice to the jurisdiction of the Courts or the powers conferred on the Director of Public Prosecutions or the appropriate Service Commission –
  - (a) enquire into any written complaint from any person alleging that any if his human rights has been, is being or is likely to be violated by the act or omission of any other person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public body;
  - (b) Repealed by [Act No 19 of 2012]
  - (c) where it has reason to believe that an act or omission such as is referred to in paragraph (a) has occurred, is occurring or is likely to occur, of its own motion enquire into the matter.
  - (d) - (g) Repealed by [Act No 19 of 2012]
- 2)(a) The Human Rights Division shall not enquire into any matter after the expiry of 2 years from the date on which the act or omission which is the subject of a complaint is alleged to have occurred.

- (b) The Human Rights Division shall not exercise its functions and powers in relation to any of the officers and authorities specified in the proviso to section 97(2) of the Constitution.
- (c) In the exercise of its functions under subsection (1) (a) or (c), the Human Rights Division may, where appropriate, refer the matter to one of the 2 other Divisions of the Commission to enquire into the case.
- 3) The Human Rights Division shall, in the first place, attempt to resolve any complaint, or any matter which is the subject of an enquiry pursuant to subsection (1)(c), by a conciliatory procedure.
- 4) Where the Human Rights Division has not been able to resolve a matter through conciliation, it shall, on the completion of its enquiry –
  - (a) where the enquiry discloses a violation of human rights or negligence in the prevention of such violation, refer the matter to –
    - (i) the Director of Public Prosecutions where it appears that an offence may have been committed;
    - (ii) the appropriate Service Commission where it appears that disciplinary procedures may be warranted;
    - (iii) to the chief executive officer of the appropriate public body where it appears that disciplinary action is warranted against an employee of a public body who is not within the jurisdiction of a Service Commission;
  - (b) recommend the grant of such relief to the complainant or to such other person as the Human Rights Division thinks fit;
  - (c) inform the complainant, if any, of any action taken under this subsection.
- 5) The Human Rights Division shall, on the completion of its enquiry, send a written communication setting out its conclusion and any recommendation to the Minister who shall, as soon as practicable, report to the Human Rights Division the action taken or proposed to be taken.
- 6) Repealed by [Act No 19 of 2012]

**Amended by [Act No 19 of 2012]**

**4A. Application by convicted person for reference to Court under Criminal Appeal Act**

- 1) Notwithstanding this Act, a convicted person, or his representative, may apply to the Human Rights Division, in such form as may be prescribed, for an enquiry to be conducted as to whether there exists sufficient fresh and compelling evidence that may satisfy the Human Rights Division that a reference should be made under section 1 9A(4) of the Criminal Appeal Act.
- 2) On receipt of an application under subsection (1), the Human Rights Division shall –
  - (a) conduct such preliminary investigation as it considers necessary;
  - (b) determine, within a period of 30 days from receipt of the application, whether it will conduct an enquiry into the matter; and



- (c) inform the convicted person, or his representative, accordingly.
- 3) The Human Rights Division shall, without prejudice to its other powers under this Act, conduct the enquiry in such manner as it considers appropriate and shall, as far as practicable, complete its enquiry within 6 months from receipt of the complaint.
- 4) On completion of the enquiry, the Human Rights Division may –
  - (a) grant the application and refer the conviction to the Court of Criminal Appeal in accordance with section 1 9A(4) of the Criminal Appeal Act; or
  - (b) reject the application, and shall forthwith inform the convicted person or his representative of its decision.

**Amended by [Act No 20 of 2013]**

**5. Staff of the Commission and Divisions Amended by [Act No 19 of 2012]**

- 1) The Secretary to the Cabinet shall make available to the Commission an officer of the rank of Principal Assistant Secretary who shall be the Secretary of the Commission and such other administrative and other staff as the Commission and any Division may require.
- 2) The Secretary of the Commission shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such administrative functions as the Commission may delegate to him.
- 3) The appropriate Service Commission may approve the transfer, promotion or secondment of any officer in the public service to any office within the Commission or any Division and any public officer so transferred, promoted or seconded shall, in relation to any gratuity, pension or other allowance, be treated as continuing in the public service.
- 4) The Commission may, on such terms and conditions as it thinks fit, engage on contract such suitably qualified person or body as may be necessary for the proper discharge of the specific functions of each Division.

**Amended by [Act No 19 of 2012]**

**6. Powers of the Human Rights Division Amended by [Act No 19 of 2012]**

- 1) The Human Rights Division may, for the purposes of this Act –
  - (a) summon witnesses and examine them on oath;
  - (b) call for the production of any Court Record or a certified copy thereof, document or other exhibit;
  - (c) obtain such information, file or other record, if necessary by an order from the Judge in Chambers, as may be necessary for the exercise of its functions.

- 2) Any officer of the Human Rights Division specially authorised in that behalf by the Chairman may, on a warrant issued by the Human Rights Division, enter any building or place where the Human Rights Division has reason to believe that any document or other exhibit relating to the subject matter of an enquiry may be found and may seize any such document or other exhibit or take extracts or copies therefrom.
- 3) Every order, authorisation, warrant or decision of the Human Rights Division shall be authenticated by the Secretary of the Commission or any other officer of the Commission duly authorised by the Chairman in that behalf.
- 4) **Repealed by [Act No 19 of 2012]**

**Amended by [Act No 19 of 2012]; [Act No 20 of 2013]**

## **7. Investigation**

- 1) The Human Rights Division may, for the purposes of conducting any investigation pertaining to an enquiry, utilise the services of any police officer or other public officer designated for the purpose by the Commissioner of Police or the Secretary to the Cabinet, as the case may be.
- 2) The officer whose services are utilised under subsection (1) shall investigate any matter pertaining to an enquiry held by the Human Rights Division and submit a report thereon to the Human Rights Division within such time as may be specified by the Human Rights Division.

**Amended by [Act No 19 of 2012]**

## **8. Protection of witnesses**

Notwithstanding any enactment but subject to section 13, no statement made by any person in the course of giving evidence before the Human Rights Division or made by or to any person whose services are utilised under section 7(1) shall, where it is –

- (a) made in reply to a question which he is required by the Human Rights Division to answer; or
  - (b) relevant to the subject-matter of the inquiry,
- subject the maker of the statement to, or be used against him in, any civil or criminal proceedings, unless he has given false evidence in the statement.

**Amended by [Act No 19 of 2012]**

**9. Persons likely to be prejudicially affected**

- 1) Subject to subsection (2), where at any stage of an enquiry, the Human Rights Division –
  - (a) considers it necessary to enquire into the conduct of any person; or
  - (b) is of the opinion that the reputation of any such person is likely to be prejudicially affected by the enquiry,

it shall give to that person a reasonable opportunity of being heard in the enquiry and of producing such relevant evidence as that person deems appropriate.

- 2) Subsection (1) shall not apply where only the credibility of a witness is being impeached.

**Amended by [Act No 19 of 2012]**

**10. Protection of action taken in good faith**

No suit or other legal proceeding shall lie against the Commission or the Human Rights Division or any member or any person acting under the direction of the Commission or the Human Rights Division in respect of anything which is done or purported to be done in good faith in pursuance of this Act or in respect of the publication by or under the authority of the Commission or the Human Rights Division or of any report, proceedings or other matter under this Act.

**Amended by [Act No 19 of 2012]**

**11. Reports of the Commission**

- 1) The Commission shall, not later than 31 March in each year, submit a report on its activities and those of its Divisions during the preceding year to the President and may, at any other time, submit a special report on any matter which, in its opinion, is of such urgency or importance that it should not be deferred until submission of the annual report.
- 2) The President shall cause every report of the Commission to be laid before the Assembly within one month of its submission.

**Amended by [Act No 19 of 2012]**

**12. Finance**

- 1) The Commission shall, not less than 3 months before the commencement of every financial year, submit to the Minister an estimate of its expenditure.
- 2) The accounts of the Commission shall be audited by the Director of Audit and any expenditure incurred in connection with such audit shall be payable by the Commission to the Director of Audit.
- 3) The accounts of the Commission, as certified by the Director of Audit, together with the audit report thereon shall be forwarded annually to the Minister by the Commission and the Minister shall cause the audit report to be laid, as soon as may be after it is received, on the table of the Assembly.

**13. Offences**

Any person who –

- (a) fails to attend the Human Rights Division after having been required to do so;
- (b) refuses to take an oath before the Human Rights Division or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Human Rights Division or to produce any document or other exhibit when required to do so by the Human Rights Division;
- (c) knowingly gives false evidence, or evidence which he knows to be misleading, before the Human Rights Division;
- (d) conceals, destroys, alters, tampers with, or otherwise disposes of, any article, or book, record, accounts, report or data, stored electronically or otherwise, or other document, which he has been summoned or required to produce;
- (e) procures the false testimony of a witness, or interferes with a witness on account of his testimony, before the Human Rights Division;
- (f) knowingly makes or causes to be made a false complaint before the Human Rights Division;
- (g) at any sitting of the Human Rights Division -
  - (i) insults a member; or
  - (ii) interrupts the proceedings;
- (h) obstructs or assaults a member or an officer of the Human Rights Division in the exercise of his functions and powers;
- (i) impersonates a member or an officer of the Human Rights Division;
- (j) commits a contempt of the Commission,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

**Amended by [Act No 19 of 2012]**

**14. Jurisdiction**

Notwithstanding –

- (a) section 114 of the Courts Act; and
  - (b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,
- a Magistrate shall have jurisdiction to try any offence against this Act and may impose any penalty provided by this Act.

**15. Regulations**

- 1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- 2) Any regulations made under subsection (1) may provide that any person who contravenes them 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 one year.

**Amended by [Act No 19 of 2012]**

**16. Consequential amendment**

The Statutory Bodies (Accounts and Audit) Act is amended in Part H of the Schedule by adding in its appropriate alphabetical order the following –  
National Human Rights Commission

**17. Commencement**

**Proclaimed by [Proclamation No 2 of 1999] w. e. f. 23 February 1999**

**SCHEDULE**

**[Section 3]**

**OATH OF OFFICE FOR CHAIRPERSON AND DEPUTY  
CHAIRPERSONS OF COMMISSION AND MEMBERS OF  
DIVISIONS**

I .....having been appointed as Chairperson\*/Deputy Chairperson\*/member of the Division\*, of the National Human Rights Commission under the Protection of Human Rights Act, do swear/solemnly affirm\* that I shall faithfully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by such appointment and that I shall not without reasonable cause disclose any information imparted to me in the performance of such duties.

(s)..... Before me, Date: .....

\* Delete as appropriate

(s)..... President of the Republic

**Amended by [Act No 19 of 2012]**

**B.2.2THE NATIONAL PREVENTIVE  
MECHANISM ACT 2012**

**Act No 21 of 2012**

**Proclaimed by [Proclamation No 32 of 2013] w.e.f. 1 July 2013**

**ARRANGEMENT OF SECTIONS**

**Section**

- 1) Short title
- 2) Interpretation
- 3) National Preventive Mechanism Division
- 4) Functions of Division
- 5) Powers of Division

- 6) Meetings of Division
- 7) Staff of Division
- 8) Confidentiality of information
- 9) Protection from liability
10. Offences
- 10) Regulations
- 11) Consequential amendments
- 12) Commencement

## **An Act**

### **To give effect in Mauritius to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to provide for the setting up of a National Preventive Mechanism Division within the National Human Rights Commission**

ENACTED by the Parliament of Mauritius, as follows –

#### **1. Short title**

This Act may be cited as the National Preventive Mechanism Act 2012.

#### **2. Interpretation**

In this Act –

“Chairperson” means the Chairperson of the Commission;

“Commission” means the National Human Rights Commission established under the Protection of Human Rights Act;

“Deputy Chairperson” means the Deputy Chairperson of the Commission who is assigned to the Division;

“Division” means the National Preventive Mechanism Division referred to in section 3;

“Minister” means the Minister to whom responsibility for the subject of human rights is assigned;

“Optional Protocol” means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002 and acceded to by the Government of Mauritius on 21 June 2005;

“place of detention” –

- (a) means any place where a person is or may be deprived of his liberty by virtue of an order given by a public authority or at its instigation or with its acquiescence;

- (b) includes a police cell, a prison, a Correctional Youth Centre, a Rehabilitation Youth Centre and a mental health care centre;

“Subcommittee” means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established under the Optional Protocol.

### **3. National Preventive Mechanism Division**

- 1) There shall be for the purposes of this Act a National Preventive Mechanism Division which shall be a Division of the Commission.
- 2) The National Preventive Mechanism Division shall for the purposes of Part IV of the Optional Protocol be the National Preventive Mechanism.
- 3) Section 3 of the Protection of Human Rights Act shall apply to the Division.
- 4) The Division shall consist of –
  - (a) the Chairperson of the Commission as its head;
  - (b) a Deputy Chairperson; and
  - (c) 2 members.
- 5) Of the 2 members referred to in subsection (4)(c) –
  - (a) one member shall be selected from a list submitted by non-governmental organisations involved in social work in prisons; and
  - (b) the other member shall be a person having knowledge and experience in the field of human rights, law, employment, industrial relations, business administration, education, sociology, policing, social work, psychology, psychiatry, medicine or prison management.
- 6) The Division may, where it considers necessary, co-opt any expert with the relevant professional expertise, experience and knowledge, to assist it in the discharge of its functions under this Act.

### **4. Functions of Division**

The functions of the Division shall be –

- (a) to visit places of detention on a regular basis so as to examine the treatment of persons deprived of their liberty with a view to ensuring their protection against torture and inhuman or degrading treatment or punishment;
- (b) to investigate any complaint which may be made by a detainee and, where the detainee so requests, investigate the complaint privately;
- (c) to make to the Minister recommendations regarding the improvement of the treatment and conditions of persons deprived of their liberty in places of detention, taking into consideration the relevant norms of the United Nations;



- (d) to submit to the Minister and other relevant authorities proposals and observations concerning legislation relating to places of detention and the treatment of persons deprived of their liberty;
- (e) to work, where appropriate, in co-operation or consultation with any person or body, whether public or private, in connection with the discharge of any of its functions under this Act and the Optional Protocol.

## **5. Powers of Division**

- 1) The Division shall have such powers as may be necessary to effectively discharge its functions under this Act and the Optional Protocol.
- 2) Without prejudice to the generality of its powers under subsection (1), the Division shall, notwithstanding any other enactment, be given –
  - (a) full access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;
  - (b) access to all information referring to the treatment of those persons as well as their conditions of detention;
  - (c) access to any place of detention and its installations and facilities;
  - (d) the opportunity to have private interviews with persons deprived of their liberty, personally or with a translator where necessary, as well as with any other person whom they have reason to believe may supply relevant information;
  - (e) the freedom to choose the places they want to visit and the persons they want to interview;
  - (f) the freedom to determine its own procedures, including its programmes of visits;
  - (g) the freedom for its members to be accompanied, if needed, by such expert with the relevant professional expertise, experience and knowledge as the Chairperson may determine, on visits to detention centres;
  - (h) the right to have contacts with the Subcommittee and to exchange information with it.

## **6. Meetings of Division**

- 1) Subject to subsection (2), the Division shall regulate its meetings in such manner as it thinks fit.
- 2) Three members of the Division, including the Chairperson or Deputy Chairperson, shall constitute a quorum.

## **7. Staff of Division**

The Commission shall provide the Division with adequate staff and facilities for the proper discharge of its functions.

## **8. Confidentiality of information**

- 1) Notwithstanding section 300 of the Criminal Code or any other enactment providing for the confidentiality of information, any person who is in possession, or is otherwise aware, of any information relating to the detention of a person in a place of detention shall disclose that information to the Division or the Subcommittee on being required to do so by the Division or the Subcommittee.
- 2) Any confidential information obtained by the Division shall be privileged.
- 3) The Division shall not publish personal data relating to any person without that person's express consent.

## **9. Protection from liability**

- 1) No criminal, disciplinary or administrative sanction shall be taken against any person for having communicated, in good faith, any information to the Division or the Subcommittee.
- 2) No action, suit or other legal proceedings shall lie against the Division or a member or officer of the Division in respect of anything done, or purported to be done, in good faith, and in pursuance of the functions and powers conferred under this Act or in respect of any publication by or under the authority of the Division of any report, proceedings or any other matter under this Act.

## **10. Offences**

Any person who –

- (a) conceals, destroys, alters, tampers with, or otherwise disposes of, any article, or book, record, accounts, report or data, stored electronically or otherwise, or other document, which he has been summoned or required to produce;
- (b) obstructs or assaults a member or an officer of the Division in the exercise of his functions and powers under this Act;
- (c) impersonates a member or an officer of the Division;
- (d) without lawful justification or reasonable excuse -
  - (i) hinders or resists the Division or any other person in the discharge of its or his functions and powers under this Act; or
  - (ii) fails to comply with any lawful requirement of the Division or any other person under this Act;
- (e) knowingly misleads the Division or a member or an officer of the Division by giving false information, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

## 11. Regulations

The Minister may, after consultation with the Commission, make such regulations as he thinks fit for the purposes of this Act.

## 12. Consequential amendments

The Reform Institutions Act is amended -

- (a) (a) in section 54(1), by repealing paragraph (c);
- (b) (b) by inserting, after section 60, the following new section –

60A. Visit by National Preventive Mechanism Division

60A. Visit by National Preventive Mechanism Division and Subcommittee on Prevention of Torture

- 1) The National Preventive Mechanism Division of the National Human Rights Commission and the Subcommittee on Prevention of Torture may visit any institution or exercise any power for the purposes of discharging their functions under the National Preventive Mechanism Act or the Optional Protocol, as the case may be.

- 2) In this section –

“Optional Protocol” means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 and acceded to by the Government of Mauritius on 21 June 2005;

“Subcommittee on Prevention of Torture” means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established under the Optional Protocol.

## 13. Commencement

Proclaimed by [Proclamation No 32 of 2013] w.e.f. 1 July 2013

- 1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.
- 2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the twenty fourth day of July two thousand and twelve.

**Ram Ranjit Dowlutta**  
Clerk of the National Assembly

### B.3 Internal rules and regulations

#### FORM

Complaints to Human Rights Commission

#### (Section 4 – The Protection of Human Rights Act 1998)

**Note:** The form may be filled in English, French or Creole and shall be forwarded to the

**Secretary, Human Rights Commission, 2<sup>nd</sup> Floor, Renganaden Seeneevassen Building, Jules Koenig Street, Port Louis, Tel No: 208-2856/57.**

FULL NAME:.....

ADDRESS:.....

.....

TELEPHONE No:.....

NATIONAL IDENTITY No:.....

Nature of Complaint (If it is a breach of a Fundamental Right, please state which right has been breached)

.....

.....

Institution complained against:.....

Details

Please give date, time, place, etc. (Additional sheets may be attached to this form)

.....

.....

Please specify if this complaint has already been submitted to the Ombudsman and/or to the Complaints Investigation Bureau of Police Department and give the date of submission.

.....

Date:.....

Signature:.....