

PROTECTION OF HUMAN RIGHTS ACT

Act 19 of 1998 – 23 February 1999

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PROTECTION OF HUMAN RIGHTS ACT

1. Short title

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

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 the rights and freedoms 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;

“Police Complaints Division” means the Police Complaints Division referred to in section 3 and in the Police Complaints Act;

“public body” means—

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

[S. 2 amended by s. 3 of Act 19 of 2012 w.e.f. 1 July 2013.]

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.

(b) The Deputy Chairpersons shall be persons who have been law practitioners for not less than 5 years.

(c) 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 may determine 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.

[S. 3 repealed and replaced by s. 4 of Act 19 of 2012 w.e.f. 1 July 2013.]

3A. Functions of 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 of 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.

[S. 3A inserted by s. 41 of Act 43 of 2002 w.e.f. 8 March 2003; repealed and replaced by s. 5 of Act 19 of 2012 w.e.f. 1 July 2013.]

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 may determine.

(5) Three persons, including the Chairperson or Deputy Chairperson, shall constitute a quorum.

[S. 3B inserted by s. 5 of Act 19 of 2012 w.e.f. 1 July 2012.]

4. Functions of Human Rights Division

(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 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;
- (b) —
- (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) —
- (e) —
- (f) —
- (g) —

(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 is not 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) 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 may determine;
- (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 Commission the action taken or proposed to be taken.

(6) —

[S. 4 amended by s. 6 of Act 19 of 2012 w.e.f. 1 July 2013.]

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 19A (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 19A (4) of the Criminal Appeal Act; or
- (b) reject the application,

and shall forthwith inform the convicted person or his representative of its decision.

[S. 4A inserted by s. 9 (a) of Act 20 of 2013 w.e.f. 3 August 2013.]

5. Staff of Commission and Divisions

(1) The Secretary to the Cabinet shall make available to the Commission an officer of the rank of Deputy Permanent 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 may determine, engage on contract such suitably qualified person or body as may be necessary for the proper discharge of the specific functions of each Division.

[S. 5 amended by s. 7 of Act 19 of 2012 w.e.f. 1 July 2013.]

6. Powers of Human Rights Division

(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; and
- (c) obtain such information, file or other record, if necessary by an order from the Judge in Chambers, as may be required for the exercise of its functions.

(2) An officer of the Human Rights Division specially authorised in that behalf by the Chairperson 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 Human Rights Division or any other officer of the Human Rights Division duly authorised by the Chairperson in that behalf.

(4) —

[S. 6 amended by s. 8 of Act 19 of 2012 w.e.f. 1 July 2013; s. 9 (b) of Act 20 of 2013 w.e.f. 3 August 2013.]

7. Investigation

(1) The Human Rights Division may, for the purpose 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.

[S. 7 amended by s. 9 of Act 19 of 2012 w.e.f. 1 July 2013.]

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.

[S. 8 amended by s. 9 of Act 19 of 2012 w.e.f. 1 July 2013.]

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.

[S. 9 amended by s. 9 of Act 19 of 2012 w.e.f. 1 July 2013.]

10. Protection from liability

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.

[S. 10 amended by s. 10 of Act 19 of 2012 w.e.f. 1 July 2013.]

11. Reports of 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.

[S. 11 amended by s. 11 of Act 19 of 2012 w.e.f. 1 July 2013.]

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 that 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;

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- (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.

[S. 13 repealed and replaced by s. 12 of Act 19 of 2012 w.e.f. 1 July 2013.]

14. —

15. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) 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.

[S. 15 amended by s. 13 of Act 19 of 2012 w.e.f. 1 July 2013.]

16. – 17. —

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,

(s)
President of the Republic

Date:

* Delete as appropriate

[Schedule repealed and replaced by s. 14 of Act 19 of 2012 w.e.f. 1 July 2013.]
