

THE PROTECTION OF HUMAN RIGHTS (AMENDMENT) BILL
(No. XIX of 2012)

Explanatory Memorandum

The object of this Bill is to amend the Protection of Human Rights Act –

- (a) to provide for the National Human Rights Commission to operate through 3 Divisions, namely the Human Rights Division, the Police Complaints Division and the National Preventive Mechanism Division;
- (b) to alter the composition of the National Human Rights Commission and to make better provision with regard to the recruitment of its staff.

DR. N. RAMGOOLAM, G.C.S.K., F.R.C.P.
*Prime Minister, Minister of Defence, Home Affairs
and External Communications,
Minister for Rodrigues*

13 July 2012

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ARRANGEMENT OF CLAUSES

Clause

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|------------------------------------------------------|-------------------------------------------------------|
| 1. Short title | 9. Sections 7, 8 and 9 of principal Act amended |
| 2. Interpretation | 10. Section 10 of principal Act amended |
| 3. Section 2 of principal Act amended | 11. Section 11 of principal Act amended |
| 4. Section 3 of principal Act repealed and replaced | 12. Section 13 of principal Act repealed and replaced |
| 5. Section 3A of principal Act repealed and replaced | 13. Section 15 of principal Act amended |
| 6. Section 4 of principal Act amended | 14. Schedule to principal Act repealed and replaced |
| 7. Section 5 of principal Act amended | 15. Commencement |
| 8. Section 6 of principal Act amended | |

A BILL

To amend the Protection of Human Rights Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Protection of Human Rights (Amendment) Act 2012.

2. Interpretation

In this Act –

“principal Act” means the Protection of Human Rights Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “member”;
- (b) by inserting, in the appropriate alphabetical order, the following new definitions –

“Chairperson” means the Chairperson of the Commission;

“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 Division” means the Human Rights Division referred to in section 3B;

“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;

4. Section 3 of principal Act repealed and replaced

Section 3 of the principal Act is repealed and replaced by the following section –

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 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.

5. Section 3A of principal Act repealed and replaced

Section 3A of the principal Act is repealed and replaced by the following sections –

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.

6. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

- (a) in the heading, by deleting the word “**Commission**” and replacing it by the words “**Human Rights Division**”;
- (b) by deleting the words “The Commission” and “the Commission” wherever they appear and replacing them by the words “The Human Rights Division” and “the Human Rights Division”, respectively;
- (c) in subsection (1) –
 - (i) by repealing paragraphs (b), (d), (e), (f) and (g);
 - (ii) in paragraph (c) –
 - (A) by deleting the words “or (b)”;
 - (B) by deleting the semicolon at the end and replacing it by a full stop;
- (d) in subsection (2), by adding the following new paragraph –
 - (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.
- (e) by repealing subsection (6).

7. Section 5 of principal Act amended

Section 5 of the principal Act is amended –

- (a) in the heading, by adding the words “**and Divisions**”;
- (b) in subsection (1), by inserting, after the words “other staff as the Commission”, the words “and any Division”;
- (c) by adding the following new subsections –
 - (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.

8. Section 6 of principal Act amended

Section 6 of the principal Act is amended –

- (a) in the heading, by deleting the word “**Commission**” and replacing it by the words “**Human Rights Division**”;
- (b) in subsections (1) and (2), by deleting the word “Commission” wherever it appears and replacing it by the words “Human Rights Division”;
- (c) in subsection (3), by deleting the words “decision of the Commission” and replacing them by the words “decision of the Human Rights Division”;
- (d) by repealing subsection (4).

9. Sections 7, 8 and 9 of principal Act amended

Sections 7, 8 and 9 of the principal Act are amended by deleting the word “Commission” wherever it appears and replacing it by the words “Human Rights Division”.

10. Section 10 of principal Act amended

Section 10 of the principal Act is amended by inserting, after the word “Commission” wherever it appears, the words “or the Human Rights Division”.

11. Section 11 of principal Act amended

Section 11 of the principal Act is amended, in subsection (1), by inserting, after the words “on its activities”, the words “and those of its Divisions”.

12. Section 13 of principal Act repealed and replaced

Section 13 of the principal Act is repealed and replaced by the following section –

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.

13. Section 15 of principal Act amended

Section 15 of the principal Act is amended, in subsection (2), by deleting the figure “10,000” and replacing it by the figure “50,000”.

14. Schedule to principal Act repealed and replaced

The Schedule to the principal Act is repealed and replaced by the Schedule set out in the Schedule to this Act.

15. Commencement

(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.

SCHEDULE
[Section 14]

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