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**The National Human Rights Commission Mauritius
Experience and challenges in fulfilling its mandate**

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Mauritius

Experience and Challenges

1. Overview of Mauritius

Population 1.3 m; 720 square miles

No indigenous people – Population from Europe, Africa, Indian Sub continent, China + Mixed

Independence 1968 from Britain

Westminsterian type of Government

Prime Minister and Cabinet

President elected by National Assembly since 1992

Same Constitution since 1968 (amendments) 1992 Republic

Separation of powers

Regular, Free and Fair elections (every 5 years)

Chapter on Fundamental rights entrenched in Constitution

Constitution is supreme law of the land

Economy – Sugar, Textiles, Tourism, Financial Centre

2. Introduction on NHRC

NHRC set up by Act of Parliament

Protection of Human Rights Act 1998

NHRC not an institution in Constitution

Operational since April 2001

The Chairman has to be a former Judge of the Supreme Court

The NHRC can entertain complaints against violations of fundamental rights in Chapter II of the Constitution by the public sector and complaints against the police. Its Sex Discrimination Division deals with complaints of sex discrimination and sexual harassment in both the public sector and the private sector.

The definition of Human Rights in the Protection of Human Rights Act does not encompass rights in international HR Conventions, although Mauritius has ratified the six major treaties (not the one on the rights of Migrant Workers and their families). Since Mauritius follows the dualist model, treaties have to be incorporated in national legislation to have the force of law e.g. the definition of torture in the Convention against Torture has been adopted in the Criminal Code.

The Geneva Conventions relating to humanitarian law have been incorporated in local legislation. Mauritius has also ratified the African Charter on Human and Peoples' Rights, several Conventions of the International Labour Organisation, some to which have been included in national labour laws and the Rome Statute creating the International Criminal Court.

Though the Constitution tends to refer more specifically to civil and political rights, second generation rights, that is, economic, social and cultural rights are protected in certain sections.

- (1) Section 1 - right to life means a right to live with dignity, extreme poverty is a sign of indignity;
- (2) Section 6 - Protection from slavery and forced labour, extremely harsh conditions of work would be tantamount to slavery;

- (3) Section 12 - right to freedom of expression is connected with the practice and promotion of one's culture – writing, the arts, music, dancing. Liberalisation of airwaves also means freedom to impart information;
- (4) Section 11 - freedom of conscience refers to freedom to practice one's religion which in various ways is intimately linked to culture. Different religions coexist in Mauritius, Hinduism, Christianity, Islam, and Buddhism; freedom of thought and freedom to propagate one's religion are guaranteed;
- (5) Section 14 - freedom to establish schools – of different religious denominations – Such schools can receive subsidies from the government;
- (6) Section 16 - Protection from discrimination on the basis of
race
caste
place of origin
political opinions
colour
creed
sex

This ensures equality of opportunities and an adequate protection of minorities.

- (7) Section 8 - Protection from deprivation of property by the State. The right to property is an economic right. Adequate and fair compensation must be granted in cases of compulsory acquisition

(8) Section 13 - Freedom of assembly and association. The freedom to form and to belong to trade unions helps to guarantee fair conditions of work. However, the right to strike is not set out in the Constitution.

Mauritius is a welfare state with free education from preprimary to the tertiary sector, free health services, subsidies for housing for the needy, a system of social security with old age pensions, allowances for the disabled, widows and orphans in need (but no employment benefits) and a Trust Fund for Poverty.

Mauritius intends to ratify the new UN Convention on the Rights of Persons with Disabilities this year.

3. Paris Principles

The NHRC has been set up according to the Paris Principles

It was granted accreditation Status A by the International Coordination Committee of NHRIs in Geneva in 2002.

Its members are appointed by the President of the Republic on the advice of the Prime Minister. The Chairperson sits with 3 members within the Commission and the same Chairperson sits with 2 other members within the Sex Discrimination Division.

3A Pluralism

The membership satisfies the requirements of pluralism set out in the Paris Principles. Though it is not openly mentioned that members have to come from the different communities in Mauritius, it so happens that -

one is of Hindu origin (a former judge of the Supreme Court)

one is of Muslim Origin (a lawyer)

one White Origin (an ex teacher from a Human Rights NGO)

And one from the General Population (African and Mixed) (a retired civil servant).

In the Sex Discrimination Division the two members are ladies, one of whom is a former judge who had actively promoted women's organizations and their demand for equality and the other, a teacher, actively engaged in the trade union movement

Three out of the six members are ladies so that there is a gender balance.

3B Independence

Members hold a stable mandate of four years which is renewable once. They were appointed by the previous Government and their mandate renewed in 2005. After the General Elections in 2005 a new Alliance of parties came to power. The new Government did not seek to change the membership of the NHRC, which is tangible proof of the respect which governments have for the NHRC. The mode of appointment by the President of the Republic on the advice of the Prime Minister does not in any way affect its independence. In Mauritius, the President of the Republic appoints the Chief Justice after consultation with the Prime Minister. The President of the Republic is himself elected by the majority of the National Assembly - that is by the votes commanded by the Prime Minister. The Chief Justice is the Chairman of the Judicial and Legal Service Commission which is responsible for the appointment of judges and magistrates

Independence also means that there is no interference by the Executive or other persons in the work of the Commission. In fact the NHRC also entertains complaints against Ministries, Government Departments and parastatal bodies and is empowered to enquire on the same. Some complaints of sex discrimination against these bodies have been substantiated. Complaints as regards recruitment or promotion are not within the province of the NHRC except if they are found to be discriminatory on the basis of race, colour, creed, sex, caste, place of origin or political opinion.

The Commission is independent of the Attorney General and Minister of Justice who is also the Minister for Human Rights. In fact it is an added advantage to have a member of the Executive dealing with Human Rights matters and who is responsible for proposing legislation to promote human rights. For example, the NHRC has been able to convince the Minister to have legislation enacted so as to strictly limit the instances where imprisonment for civil debt would be possible.

The reports on individual complaints and recommendations of the Commission are forwarded to the Minister who is required by law to report back on action taken.

3C. The issue of funding

In some countries national human rights institutions are able to rely on outside funding for their activities. But ultimately most nhris have to rely on funds provided by their own government to function. Mauritius, being a relatively better off developing economy, does not qualify for aid from

developed economies or agencies. Its national human rights commission does not receive substantial financial help from external sources for its activities, though from time to time the UNDP, the Office of the High Commissioner of Human Rights in Geneva and the US Embassy have provided funding for the organisation of workshops. The Organisation Internationale de la Francophonie and the British Council fund attendance at workshops just like the Commonwealth Secretariat does.

According to the Paris Principles national human rights institutions, have to be independent of the government. As such it may be perceived that if funding emanates from the government, the latter controls the nhri. This perception is wrong. First funds have to come from somewhere. Secondly where the political will to set up a nhri has been translated into reality, the Government has a duty to provided funds to the nhri. In Mauritius, it is through the annual budget voted by the National Assembly that the NHRC obtains its funds. The submission of estimates in the annual exercise for the preparation of the budget has to be done through a Ministry. It is through the Prime Minister's office that the estimates are channeled to the Ministry of Finance. Further, at the time the estimates are discussed and voted in the National Assembly, a member of Parliament must be prepared to answer questions and queries from other members. In Mauritius the Prime Minister does so, in the same manner as he answers questions relating to the Judicial Department and the Ombudsman's office.

Nhris all over the world could do with more funding. They are often considered to be poor relatives; problems of staffing are not uncommon. Nhris have to compete with other important institutions. The Judicial

Department and the Police have big budgets to maintain and enforce law and order. In a welfare state like Mauritius the Ministries of Health and Education tend to take up gargantuan shares of the budget to provide free services to the people.

The protection and promotion of rights cost a lot of money which has to be raised by taxes. The holding of elections, the preservation of law and order through the Police, the Judiciary and the Prisons, the smooth functioning of the machinery of government, the maintenance of the welfare state to safeguard economic and social rights in terms of subsidies to housing, expenditure on education, health services, social welfare benefits become expensive undertakings. Human rights institutions are consequently allocated a tiny share of the national cake.

The Annual Report of the NHRC is submitted to the President of the Republic to be laid on the table of the National Assembly. Do Parliamentarians read the Report? Very few do so. They tend to be those with a legal background. The NHRC has recommended the institution of an all party Parliamentary Select Committee to study and implement its recommendations.

The annual accounts of the NHRC are audited by Director of Audit whose independent status is secured by the Constitution.

3D. Competence

The NHRC is entrusted with the responsibilities listed out in the Paris Principles except that it does not contribute to Reports which the State submits to treaty bodies. It should not do so as to guarantee its independence. However nothing prevents the NHRC from expressing its views independently on issues submitted to treaty bodies.

The NHRC has a quasi-judicial competence unlike most European NHRIs. It can receive complaints, summon witnesses, call for production of documents and compel witnesses to answer questions.

A statement made by a witness when giving evidence before the Commission cannot be used against him in civil and criminal proceedings.

In line with the spirit of alternative dispute resolution, the NHRC promotes the use of conciliatory proceedings to reconcile parties to a dispute. It may also recommend the granting of relief or monetary compensation to complainants.

It is actively engaged in the promotion of human rights through workshops, training seminars directed at the police, teachers, students, members of the public etc.

When assessing the effectiveness of nhris, different performance indicators should be applied to nhris with a consultative competence and to nhris which have a quasi-judicial competence.

4. Jurisdiction

4.1 Institutions outside the Jurisdiction of the NHRC

The Chief Justice

The Director of the Public Prosecutions

The Public Service Commission

The Disciplinary Forces Service Commission

The Judicial and Legal Service Commission

The Electoral Supervisory Commission

The Commission on the Prerogative of Mercy

These bodies are set up by the Constitution.

4.2 There exists a prescription period of 2 years as regards the filing of complaints.

4.3 The NHRC is empowered to visit prisons and places of detention to study the living conditions of inmates and the treatment afforded to them.

4.4 The NHRC may comment on human rights aspects in proposed legislation.

4.5 Few violations of human rights inscribed in the Constitution have been witnessed in the past few years. The majority of complaints that NHRC receives tend to be directed against the police for physical brutality and verbal abuse. The NHRC does not entertain complaints regarding contraventions in respect of

road traffic offences. There are also complaints against overzealous searches of premises by the Anti Drug Smuggling Unit.

One problem area consists of allegations of brutality on the part of the police to obtain confessions. These are admissible in the Courts in Mauritius if they have not been obtained by violence or duress). The normal procedure is for the admissibility of the confession to be challenged at the trial stage on the voir dire. In such cases the NHRC gathers the real evidence at the time the statement is given such as medical evidence, surrounding circumstances, carry out an enquiry about access to counsel. A statement is also recorded from the suspect describing the conditions under which he alleged he was forced to confess. It is proposed in future to have confessions video taped or recorded before a *juge d'instruction* as in France.

4.6 Another problem regarding court cases is delays in Court. The NHRC has made recommendations to the following effect -

- (1) that the police should exercise diligence in completing police enquiries. In some cases the reasons for the delay are that
 - (a) the plan relating to the locus of a crime is not ready;
 - (b) the medico legal report is not ready; or
 - (c) the report from the Forensic Scientific Laboratory is being awaited.

The Commissioner of Police has been requested to remedy these deficiencies.

- (2) There may be delays after the police enquiry to lodge a case either because the Office of the Director of Public Prosecutions has asked for more information or a further enquiry.

Systemic delays occur because the DPP's office is understaffed. There are serious delays in drugs trafficking cases because cases are lodged against accomplices after the principals have been convicted.

- (3) Delays arise at the level of the trial Court for the following reasons -

- (a) too many cases on the Cause list;
- (b) Counsel is taken up;

The Constitution guarantees an accused party the right to Counsel of his choice in criminal cases. A generous interpretation of this clause has given rise to difficulty.

- (c) the accused, witnesses or other parties are absent.

The NHRC has no power to compel the Court to hear cases. That would constitute interference in the administration of the Courts for which the Chief Justice has responsibility. No Chief Justice would not like any interference with his prerogative. But the Master and Registrar or a Magistrate may be contacted for information regarding delays. An amicable approach is recommended there. To solve the problem of delays, the NHRC normally requests the DPP's Office to consider lodging a case as soon as

possible, but it cannot pressurize the DPP into doing so. It may call for explanations from the Police as to why a case is not being lodged.

- 4.7 Obviously the NHRC cannot interfere in matters of sentencing or claims about wrong convictions. But it has expressed its views on the issue as to whether imprisonment for life means that the convicted person has to spend the rest of his life in prison. In the opinion of the NHRC the person had to be released after a period fixed by law.

The NHRC has also recommended the reintroduction of remission of sentence for serious cases of drugs trafficking and murder to encourage prisoners to behave properly in prison. More resources need to be devoted to programmes of rehabilitation to help former convicts in their reinsertion in society.

Conditions of detention in police cells need to be improved for they are often harsher than the treatment prisoners are subjected to jail.

5. Conclusion

These are some of the experiences of the NHRC Mauritius. The NHRC would like to have more funding and staff to fulfill its mandate effectively. This wish may become reality if the proposed Human Rights and Equal Opportunities Commission materializes. Consultations are now taking place with civil society on this project.

Annex – Some publications on NHRIs

Protectors or Pretenders	Human Rights Watch 2002
National Institutions for the promotion and protection of Human Rights	UN Fact Sheet No. 19 July 2005
National Human Rights Institutions Articles and working papers	The Danish Centre for Human Rights 2000
Assessing the Effectiveness of National Human Rights Institutions	International Council on Human Rights 2005
Performance & Legitimacy National Human Rights Institutions	International Council on Human Rights 2004
Performance and legitimacy National Human Rights Institutions (Summary and Findings)	International Council on Human Rights 2004
Protecting Human Rights The role of National Institutions	The Legal and Constitutional Affairs Division August 2000
National Human Rights Institutions Best Practice	Commonwealth Secretariat 2001
Examination of State Reporting by Human Rights Treaty Bodies	German Institute for Human Rights 2005
Human Rights Commission A Citizen's Handbook	Commonwealth Human Rights Initiative 2004
National Institutions for the promotion and protection of human rights Report of the Secretary-General	UN General Assembly 24 August 2005
National Human Rights Institutions Professional Training Series No. 4	UN Centre for Human Rights 1995