THE PROTECTION OF HUMAN RIGHTS ACT 1998

Act No. 19 of 1998

I assent

18th December 1998

C. UTEEM
President of the Republic

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Establishment and appointment of the Commission
4. Functions of the Commission
5. Staff of the Commission
6. Powers and duties of the Commission
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 connected therewith or incidental thereto

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

   “human rights” means any right or freedom referred to in Chapter II of the Constitution;

   “member” –
   (a) means a member of the Commission;
   (b) includes the Chairman;

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

   “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;
3. Establishment and appointment of the Commission

(1) There is established, for the purposes of this Act, a National Human Rights Commission, which shall be a body corporate and which shall consist of a Chairman and 3 other members.

(2) The Chairman shall be a person who has been a Judge.

(3) The other members of the Commission shall be –
   
   (a) a person who has been a Judge or is a barrister of more than 10 years standing; and
   
   (b) 2 other persons having knowledge of, or practical experience in, matters relating to human rights.

(4) The Chairman and other members shall be appointed by the President, acting on the advice of the Prime Minister, on such terms and conditions as he thinks fit.

(5) Every member shall hold office for a term of 4 years or until he attains the age of 70, whichever occurs earlier.

(6) Subject to subsection (5), every member shall be eligible for reappointment for a second term of 4 years.

(7) The President may, on the advice of the Prime Minister, remove any member from office for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour.

(8) Where any vacancy occurs in the office of the Chairman by reason of death, resignation or any other cause, the President may authorise another member to act as Chairman until the vacancy is filled.

(9) Where the Chairman is absent or on leave, the President may authorise another member to discharge the functions of the Chairman until the date on which the Chairman resumes his office.

(10) A member shall not enter upon the duties of this office unless he has taken and subscribed before the President the oath set out in the Schedule.
4. Functions of the Commission

(1) Subject to subsection (2), the Commission 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) enquire into any other written complaint from any person against an act or omission of a member of the police force in relation to him, other than an act or omission which is the subject of an investigation by the Ombudsman;

(c) where it has reason to believe that an act or omission such as is referred to in paragraph (a) or (b) has occurred, is occurring or is likely to occur, of its own motion enquire into the matter;

(d) visit any police station, prison or other place of detention under the control of the State to study the living conditions of the inmates and the treatment afforded to them;

(e) review the safeguards provided by or under any enactment for the protection of human rights;

(f) review the factors or difficulties that inhibit the enjoyment of human rights;

(g) exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.

(2) (a) The Commission 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 Commission 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.

(3) The Commission shall, in the first place, attempt to resolve any complaint, or any matter which is subject of an enquiry pursuant to subsection (1) (c), by a conciliatory procedure.

(4) Where the Commission 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 Commission thinks fit;

(c) inform the complainant, if any, of any action taken under this subsection.

(5) The Commission 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) (a) Where any person makes a written complaint to a police officer against an act or omission of another police officer in relation to him, the Commissioner of Police shall, as soon as is reasonably practicable –

(i) forward to the Secretary of the Commission a copy of the complaint; and

(ii) inform the Commission of any criminal or disciplinary proceedings taken or to be taken as a result of the complaint.

(b) The Commission may require the Commissioner of police to provide it with such further information as it thinks fit in relation to any matter referred to in paragraph (a).

(c) Where, in relation to any matter referred to in paragraph (a), the Commission is informed that no criminal or disciplinary proceedings are to be taken, it may enquire into the matter and exercise in relation thereto any of the powers conferred upon it under this Act.
5. **Staff of the Commission**

(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 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.

6. **Powers and duties of the Commission**

(1) The Commission may, for the purposes of this Act –
   (a) summon witnesses and examine them on oath;
   (b) call for the production of any 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 Commission specially authorised in that behalf by the Chairman may, on a warrant issued by the Commission, enter any building or place where the Commission 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 Commission 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) The Commission shall regulate its meetings and proceedings in such manner as it thinks fit, and three members shall constitute a quorum.

7. **Investigation**

(1) The Commission 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 Commission and submit a report thereon to the Commission within such time as may be specified by the Commission.
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 Commission 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 Commission 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.

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

(1) Subject to subsection (2), where at any stage of an enquiry, the Commission-

(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.

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

No suit or other legal proceeding shall lie against the Commission or any member or any person acting under the direction of the Commission 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 of any report, proceedings or other matter under this Act.
11. Reports of the Commission

(1) The Commission shall, not later than 31 March in each year, submit a report on its activities 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.

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 Commission after having been required to do so;

(b) refuses to take an oath before the Commission 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 Commission or to produce any document or other exhibit when required so to do by the Commission;

(c) knowingly gives false evidence, or evidence which he knows to be misleading, before the Commission;

(d) at any sitting of the Commission-
   (i)  insults a member;
   (ii)  interrupts the proceedings; or

(e) commits a contempt of the Commission,
shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding one year.

14. Jurisdiction

Notwithstanding –
(a) section 114 of the Courts Act; and
(b) section 72 of the District and Intermediate Court (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 10,000 rupees and to imprisonment for a term not exceeding one year.

16. Consequential amendment

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

17. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

Passed by the National Assembly on the eighth day of December one thousand nine hundred and ninety-eight

ANDRE POMPON
Clerk of the National Assembly
Proviso to Section 97 (2) of the Constitution

INSTITUTIONS OUTSIDE JURISDICTION OF NHRC

(i) the President or his personal staff;
(ii) the Chief Justice;
(iii) any Commission established by this Constitution or its staff;  
     (NOTE)
(iv) the Director of Public Prosecutions or any person acting in accordance with his  
     instructions;
(v) any person exercising powers delegated to him by the Public Service Commission or  
     the Disciplined Forces Service Commission, being powers the exercise of which is  
     subject to review or confirmation by the Commission by which they were delegated.

NOTE – The Commissions established under the Constitution are the following:

(1) Commission on the Prerogative of Mercy  (Section 75)
(2) Disciplined Forces Service Commission  (Section 90)
(3) Electoral Boundaries Commission  (Section 38)
(4) Electoral Supervisory Commission  (Section 38)
(5) Judicial and Legal Service Commission  (Section 85)
(6) Public Service Commission  (Section 88)