

2016-01-25 14:01 Mission Iles Maurice 00 41 22 734 86 30 >> R PSMS GVA 41229 P 1/7



**PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED
NATIONS AND OTHER INTERNATIONAL ORGANISATIONS**

**MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS INTERNATIONALES**

No. 16/2016 (MMG/HR/28/1)

The Permanent Mission of the Republic of Mauritius to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and with reference to its Note Ref: RTDS/GG dated 24 August 2015 pertaining to the Human Rights Council resolution 29/11 on "*The negative impact of corruption on the enjoyment of human rights*" has the honour to attach herewith the duly filled-in questionnaire from the Government of the Republic of Mauritius.

The Permanent Mission of the Republic of Mauritius to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Wds
Geneva, 25 January 2015

**The Office of the High Commissioner for Human Rights
Palais des Nations
CH-1211
Geneva**

QUESTIONNAIRE

THE NEGATIVE IMPACT OF CORRUPTION AND THE ENJOYMENT OF HUMAN RIGHTS

With regard to **concrete measures to link anti-corruption efforts with the realisation and protection of human rights**, please provide, where applicable:

1) **Examples which show how anti-corruption efforts can be effectively complemented through the use of human rights standards, methods and mechanism;**

- Corruption is a violation of human rights and its negative effects on the protection of human rights is generally acknowledged. The effects of corruption are detrimental to the society, it increases inequality and is one of the causes of poverty. It is a major hindrance towards poverty reduction. The fight against corruption and the fight against poverty can only be successful if and when the two phenomena are addressed on a coordinated basis.
- Corruption diverts public resources and has a negative impact on public service delivery, including health, educational and welfare services. It is a known fact that many states around the world have been unable to comply with their obligations and to attain the Millennium Development Goals as a result of corruption.
- The prevalence of corruption creates discrimination in access to public services in favour of those able to influence the authorities to act in their personal interest, including by offering bribes. It creates inequality of opportunity, especially with respect to employment, promotion, access to services and opportunities. Those who are disadvantaged economically and politically suffer disproportionately from the consequences of corruption, because they are particularly dependent on public goods and as such become more and more vulnerable.

➤ **Examples of complementarity**

- For the above-mentioned reasons, the fight against corruption can be complemented through the use of human rights standards, methods and mechanisms. Both fights have the same common goal – a society where justice, fairness, honesty, equality and integrity prevails for the benefits of citizens.
- In the anti-corruption field, investigations and prosecutions of corruption cases are conducted to make justice to those people who have been denied of their rights, prevention ensures that the rights of citizens are respected through enhanced transparency, accountability and integrity and education ultimately promotes human rights.
- When citizens are denied of certain public services because of corruption or other malpractices, asset recovery allows for redress.

- In combating corruption the Independent Commission Against Corruption (ICAC), shows that corruption affects the rights of others, e.g. equal rights to have access to jobs, or to a service of government or to the obtention of a contract or tender. Thus corruption distorts the enjoyment of equal economic and social rights. Corruption also destroys fair chances of candidates being elected when it comes to any form of electoral bribery.
 - Measures which link anti-corruption methods and protection of human rights could also be included in the curriculum for the education of all students attending primary schools in Mauritius and Rodrigues. This could be handled in the form of a booklet and with educators to dispense a few courses during the year.
- 2) **Examples where national human rights institutions (NHRIs) identified corruption as a cause of human rights violation and effective remedial measures taken;**
- Any allegation of corruption is transferred from the National Human Rights Commission (NHRC), to ICAC, e.g. if a member of the public alleges that a police officer asked for a bribe to ignore a road traffic offence.
- 3) **Examples which show how the work of national anti-corruption agencies (ACAs) and NHRIs can be interlinked, substantively, structurally and organisationally (such as existing memoranda of understanding; other formal working relations; designed human rights/anti-corruption focal points);**
- The principles of transparency and accountability are not only key principles of a human rights-based approach to development but also along with integrity the basic anti-corruption principles. Corruption deprives the population and more often the poor of their basic human rights. This commonality if supported by a common understanding of the problem and its impact can result into a more effective fight through closer collaboration towards a common objective. This can be translated into actions as follows:
 - a) joint actions in terms of mass media campaigns which bear high financial costs
 - b) joint sensitisation campaigns targeting specific and wider audiences
 - c) common platforms to address the issue more effectively and efficiently
 - d) add voice for a common cause
 - e) joint research works and opinion/attitude surveys
- 4) **Examples of engagement with regional and international human rights mechanisms that brought about change in anti-corruption efforts;**

Nil

5) Examples of the **incorporation of human rights considerations in self-assessment** of implementation of the United Nations Convention against Corruption;

- The United Nations Convention Against Corruption is based on the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption. The objective is the benefit of the population. Thus, Anti-Corruption Agencies are increasingly mindful of the negative impact of corruption on the enjoyment of human rights and consequently of the importance of effective anti-corruption measures for the benefits of the population.
- By fighting the scourge of corruption, human rights are also being made to be respected and those who are denying the rights of others through corruption are being prosecuted. Therefore, by assessing the implementation of the provisions of the UNCAC, the human rights aspects are also being considered.

6) Examples of **successful human rights litigation**, or of investment disputes or civil law cases where human rights arguments played a decisive role, in corruption cases.

Nil

7) Good practices for **safeguarding human rights while combatting corruption**, in particular with regard to:

a) the criminalisation of corruption (e.g. illicit enrichment),

- The criminalisation of corruption in Mauritius through the enactment of the Prevention of Corruption Act 2002 as amended and other relevant legislations are also consolidating the human rights structure in the country.
- Investigations to be conducted in private. This would limit the damage that may be caused to a person's reputation and career by unfounded allegations. However, there is need to investigate all allegations.

b) the detection and investigation of corruption,

- Preliminary investigations on allegations of corruption are conducted in private through intelligence gathering and within a limited period of time as stipulated under the Prevention of Corruption Act 2002 as amended and the Financial Intelligence and Anti-Money Laundering Act 2002 as amended. This limits the damage that can be caused to people's reputations and careers by untested and unsubstantiated allegations.
- Investigatory powers are used judiciously and whenever the need arises, ensuring that the rights of the accused are respected.
- Administrative law standards in conducting investigations are observed.

- Findings are based on evidences that are admissible in court and not on rumour or mere suspicions.
- Ensuring integrity of investigations

c) the prosecution and judicial proceedings (including suo motu powers), and

- Adverse findings to be published only after adequate investigations.

d) in the recovery of illicit assets.

- When citizens are denied certain public services because of corruption or other malpractices, asset recovery allows for redress.
 - There is evidence to suggest that, in certain corruption and money laundering cases, corruption is not only a crime but may take the form of a crime against humanity. This possibility extends significantly the jurisdictional ambit of national courts and empowers the International Criminal Court to consider a case. Moreover, the restorative component of such criminal prosecutions should aim at restoring, through civil mechanisms, the funds illegally appropriated to their rightful recipients, the defrauded local populations, under the principle of self-determination.
 - Forced entry to premises, or compulsorily obtaining evidence on oath to be forbidden, except on exceptional cases from a judge's order.
 - Legislation for recovery of criminal and illegal assets should provide for sufficient guarantees both for the rights of the persons directly affected by the law, and the bona fide third persons.
 - All information received by the Financial Intelligence Unit (FIU) is classified as confidential and is protected by the provision under Section 30 of the Financial Intelligence Anti-Money Laundering Act. The Director, every officer of the FIU, and the Chairperson and members of the Board must take the oath of confidentiality before they begin to perform any duty under the Act. They are also required to maintain the confidentiality of any matter relating to the relevant enactments during and after their relationship with the FIU. Noncompliance with the oath would subject the offender to criminal offense charges. Moreover, the Asset Recovery Act necessitates reasonable suspicion for an investigation to be carried out before asset recovery. (This is in line with Section 8 of the Constitution – Protection from deprivation of property).
- 8) Good practices for the **protection of victims, witnesses, reporting persons, anti-corruption activists, whistle-blowers and other persons involved in the fight against corruption** which explicitly build on human rights standards;
- Provisions have been made in the Prevention of Corruption Act 2002 as amended to protect citizens and persons involved in the fight against corruption as follows:

- **Section 48 - Protection of informers**

- (1) *Where the Commission receives information in confidence to the effect that an act of corruption has occurred, that information and the identity of the informer shall be secret between the Commission and the informer, and all matters relating to such information shall be privileged and shall not be disclosed in any proceedings before any court, tribunal or other authority.*
- (2) *Where any record, which is given in evidence or liable to inspection in any civil, criminal or other proceedings, contains an entry relating to the informer or the information given by the informer, the Director-General shall cause all parts relating to the informer or the information given to be concealed from view so as to protect the identity of the informer.*

- **Section 49 - Protection of witnesses**

- (1) *Subject to subsection (6), where a person-*
 - (a) discloses to a member of the Board or an officer that a person, public official, body corporate or public body is or has been involved in an act of corruption; and*
 - (b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act, he shall incur no civil or criminal liability as a result of such disclosure.*
- (2) *Subject to subsection (6), where a public official-*
 - (a) discloses to his responsible officer or to the Director-General that an act of corruption may have occurred within the public body in which he is employed; and*
 - (b) believes on reasonable grounds that the information is true, he shall incur no civil or criminal liability as a result of such disclosure and no disciplinary action shall be started against him by reason only of such disclosure.*
- (3) *A person who makes a disclosure under subsection (1) or (2) shall assist the Commission in any investigation which the Commission may make in relation to the matters disclosed by him.*
- (4) *A person to whom a disclosure is made under subsection (1) or (2) shall not, without the consent of the person making the disclosure, divulge the identity of that person except where it is necessary to ensure that the matters to which the information relates are properly investigated.*
- (5) *A person who commits an act of victimisation against a person who has made a disclosure under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.*
- (6) *A person who makes a false disclosure under subsection (1) or (2) knowing it to be false shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.*

(7) *In this section, "victimisation" means an act -*

(a) which causes injury, damage or loss;

(b) of intimidation or harassment;

(c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or

(d) amounting to threats of reprisals.

- As per Section 15(3) of the Financial Intelligence Anti-Money Laundering Act, no report of a suspicious transaction shall be required to be disclosed, or be admissible as evidence, in any court proceedings.

9) Good practices for **securing the independence and enhancing the effectiveness of ACAs** which draw upon the United Nations Paris Principles and the practice and modalities followed for strengthening the independence and effectiveness of NHRIs (e.g. the International Coordinating Committee of NHRIs; its peer review process; sharing of substantive and administrative approaches to work);

- The independence of the Anti-Corruption Agency in Mauritius is guaranteed under Sections 20(2) & 20(3) of the Prevention of Corruption Act 2002 as follows:

(2) The Commission shall act independently, impartially, fairly and in the public interest.

(3) Subject to this Act, the Director-General shall not be under the control, direction of any other person or authority.

10) **Any other issues** relevant to the scope of this study, including for instance information on the use of **indicators** for measuring the negative impact of corruption on human rights or the correlation between corruption and human rights violations and vice versa.

- The clear definition in law about corruption and risk factors and its assessment.
- Legal provision for the avoidance of interference in the operation of the agencies.
- Top management officers to be appointed in a transparent manner.
- Background of applicants for position in the agencies to be properly assessed in deciding for their appointments.
- Possibility for officers to denounce interference for corruption, if any.
- Adequate training on the use of indicators may help to measure the negative impact of corruption on human rights.