

**PRIME MINISTER'S OFFICE (Home Affairs)**

**Inputs**

**Human Rights Council Resolution 31/30**

**“Effects of Terrorism on the enjoyment of all human rights”**

**A. GOOD PRACTICES AND CHALLENGES**

1. Mauritius as a member of the Human Rights Council has consistently made its voice heard in defence of those who are deprived of their fundamental freedoms. Mauritius is committed to ensuring that attempts to make the world safer are not to the detriment of human rights and personal freedom. In addition to upholding human rights at national level, Mauritius is committed to their promotion and protection at the international level. Mauritius fully cooperates with the human rights mechanisms and is actively engaged on the full range of human rights issues with other international and regional organisations such as the African Union. Mauritius also participates in regional efforts to promote and protect human rights. It is party to African Charter on Human and Peoples' Rights. It is apposite to note that human rights are taken into consideration whilst drafting laws. Hence, legislation dealing with countering terrorism has been drafted bearing in mind the human rights factor.

2. The domestic legislations which have been passed by the National Assembly and which are directly and indirectly linked to counter terrorism are outlined below:

- Extradition Act 1970
- Immigration Act 1970
- Continental Shelf Act 1982
- Explosives Act 1982
- Civil Aviation (Hijacking and Other Offences) Act 33 of 1985.

- Banking Act 1988
- Stock Exchange Act No 38 of 1988
- Unit Trusts Act No 26 of 1989
- Customs Acts 1989
- Insurance (Amendment) Act No 22 of 1990
- Foreign Exchange Dealers Act 1995
- Securities (Central Depository, Clearing and Settlement) Act 1996
- The Dangerous Drugs Act 2000
- Financial Services Development Act 2001
- Trusts Act No 14 of 2001
- Prevention of Terrorism Act 2002
- Prevention of Corruption Act 2002
- The Financial Intelligence and Anti-Money Laundering Act 2002
- Prevention of Terrorism (Denial of Bail) Act 2002;
- The Convention for the Suppression of Financing of Terrorism 2003;
- The Financial Intelligence and Anti-Money Laundering Regulations 2003
- The Anti-Money Laundering (Miscellaneous Provisions) Act 2003
- Prevention of Terrorism Act (Special Measures) GN 14 of 2003
- The Dangerous Drugs (Amendment) Act 2003
- The Geneva Conventions Amendment Act 2003
- The Chemical Weapons Convention Act 2003
- The Radiation Protection Act 2003
- The Computer Misuse and Cybercrime Act 2003
- The Convention for the Suppression of Financing of Terrorism Act 2003
- Mutual Legal Assistance in Criminal and Related Matters Act 2003
- Financial Reporting Act No 45 of 2004
- Data Protection Act No 13 of 2004
- Biological and Toxin Weapons Convention Act 2004
- Dangerous Chemical Control Act 2004
- Banking Act 2004

- Bank of Mauritius Act 2004
- Firearms Act 2006
- Prevention of Terrorism (International Obligations) Act 41 of 2008
- Prevention of Terrorism Act (Amendment) Bill 2016;

3. Mauritius has also adopted a number of conventions and resolutions and has contracted partnership agreements to show its strong commitment to addressing all forms and manifestations of terrorist threats. Consequently, as a member of the United Nations, the Republic of Mauritius is a signatory to the following legal documents:-

- a) United Nation Security Council Resolution 1373;
- b) United Nation Conventions on the Suppression of Terrorists Bombing 2003;
- c) United Nation Convention against Transnational Organised Crime 2003;
- d) United Nation Conventions on the Prevention and Punishment of Crimes against Internationally Protected Persons 2003;
- e) International Conventions for the Suppression of Acts of Nuclear Terrorism 2005;
- f) United Nation Global Counter Terrorism Strategy 2006

4. The Prevention of Terrorism Act was enacted on 19 February 2002 and came into operation on 16 March 2002. The Act contains provisions for the freezing of funds relating to terrorism and also for the prevention, suppression and combating of terrorism, the suppression of financing of terrorism, reinforcing intelligence gathering, investigatory and enforcement measures, cooperation with foreign jurisdictions as well as the implementation of international commitments of Mauritius in respect of terrorism.

5. The Financial Intelligence and Anti-Money Laundering Act which was enacted on 27 February 2002, came into operation on 10 June 2002. Section 2 of this

Act defines a suspicious transaction as a transaction which gives rise to reasonable suspicion that it may involve the laundering of money or proceeds of any crime including any offence concerning the financing of any activity or transaction related to terrorism. The Financial intelligence Unit set up under this Act is the central agency for receiving, requesting, analyzing and disseminating disclosure of financial information concerning inter alia the financing of any activity or transaction related to terrorism.

6. There are a number of regulations that have equally been made. The Prevention of Terrorism (Special Measures) Regulations 2003 provides for the freezing of assets and funds of suspected international terrorists and terrorist groups whilst the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides for the verification of the true identity of all customers and other persons with whom banks, financial institutions and cash dealers conduct transactions.
7. Mauritius has also adhered to the major UN Conventions and Protocols relating to terrorism. Mauritius is also a party to the OAU Convention on the Prevention and Combating of Terrorism.
8. At the time that the Prevention of Terrorism Act was passed, Chapter II of the Constitution which provides for the protection of fundamental rights and freedoms of the individual was amended to provide for the denial of bail and incommunicado detention in very limited cases.
9. In fact, Section 27(1) of the Prevention of Terrorism Act deals with incommunicado detention. Inbuilt safeguards are contained in the Prevention of Terrorism Act to ensure that the human rights of suspects are not baffled. Section 27(3) makes provision for a person detained under Section 27(1) of the Prevention of Terrorism Act to be informed of the right to be examined by a Government Medical Officer as soon as a direction is issued under

subsection (1). Section 28 of the Prevention of Terrorism Act provides for a custody record and a video recording to be kept in relation to any person detained, pursuant to the powers conferred by Section 27 of the Act. The video recording shall, notwithstanding the common rule against hearsay, be admissible in evidence in the course of any judicial proceedings to the same extent and in the same manner as documentary evidence would be admissible.

10. Moreover, Section 5 of the Constitution states that no person shall be deprived of his personal liberty save as may be authorized by law in a number of circumstances, including where there is the need to ensure his appearance in Court in answer to a Court order, a reasonable suspicion that a person has committed or is about to commit an offence or that he is likely to commit breaches of the peace. A person who is arrested or detained be brought before a Court of law without undue delay and if such a person is not tried within a reasonable time, he should be released, with or without conditions, without prejudice to the appropriate authority's power to bring fresh proceedings subsequently, including his right to be released on bail. The Bail Act sets out the grounds on which bail may be refused by the Court as well as the conditions that may be imposed by the Court for the release of the defendant or detainee.

11. Section 10 of the Constitution lays down provisions to secure the protection of the law, amongst which are the presumption of innocence, the right to be informed as soon as reasonably practicable of the nature of the offence and in a language that the accused understands, the right to be given adequate time and facilities for the preparation of one's defence, the right to defend oneself in person or by a legal representative of one's own choice or, where so prescribed, by a legal representative provided at the public expense, the right to the assistance of an interpreter if one cannot understand the language used at the trial.

12. In the case of *Gordon-Gentil and ors v. State of Mauritius and ors* 1995 SCJ 118, the Supreme Court held that it is the constitutional right of every person to be told immediately of the reason for his arrest and to be detained and brought before a Magistrate only on the basis of an offence known to the law, notwithstanding the fact that the information exhibited to the Court is provisional.

13. A suspect can also avail himself of the procedure of Habeas Corpus if he contends that he has been illegally detained. A writ of habeas corpus is in effect a procedure to secure, as a matter of urgency, the release of a person who is illegally detained. Section 188 of the Criminal Procedure Act provides as follows:-

14. Where a Judge receives a complaint by or on behalf of a person to the effect that he is illegally committed or restrained of his liberty, he may order all persons whom it may concern to:-

- a) return to him any depositions or commitments;
- b) take and return any other matter any other evidence or matter necessary for the purpose of ascertaining the cause of such detention and imprisonment;
- c) issue a writ of habeas corpus directed generally to every gaoler, officer or any other person in whose custody the person committed or restrained may be.

15. Furthermore, it is a well-established practice that a person should be questioned in line with the Judges' Rules which are administrative rules but which have gained the force of law over the years. In the case of *R. v. Boyjoo* 1991 SCJ 401, the Court held that the Judges' Rules 1964 of England which were made applicable to Mauritius by a despatch of the Secretary of State for the Colonies in 1965 have become part of the rights of an accused person which are protected by Sections 3 and 5 of our Constitution. The Court went on

to say that it is the duty of the police to inform an accused person of the right to retain counsel and not only to assume that the person is or should be aware of that right and it is up to the police to ensure that the accused has understood that right.

16. It was also held in the case of *The State v. Pandiyan* 1993 SCJ 317 that Paragraph 3(c) of the Introductory Notes (Appendix A) and paragraph 7 of the Administrative Directions (Appendix B) in the Judges' Rules relating to the right of a person in custody to consult a legal representative form part of the protection of the law of the individual in Mauritius and that there is a duty on the police to inform people of this right.

17. There are equally Standing Orders of the Mauritius Police Force that set out the parameters within which the Police should operate whilst handling a detainee. There are, to this effect, specific standing orders on the "safe custody of prisoners", "care and treatment of prisoners", "consultation or interview with legal advisers", "interviews of and warrants against prisoners", "juvenile offenders" and "female prisoners".

## **I. The Constitution of Mauritius**

18. The Constitution of Mauritius, a written document bequeathed to Mauritius by an Order-in-Council of the British Government at the time of independence in 1968, is based on the Westminster model and rests on two fundamental tenets: the rule of law and the doctrine of the separation of powers. It is provided under Section 1 of the Constitution that the Republic of Mauritius shall be a "sovereign democratic State", this being clearly in consonance with the fundamental rights and freedoms guaranteed under Chapter II of the Constitution which is largely inspired from the European Convention on Human Rights. Those fundamental rights and freedoms include the right to life, the right to personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and protection from discrimination.
19. Furthermore, the Extradition Act provides with regard to extradition crimes, namely in its Section 7, that an offender shall not be surrendered to a foreign State where the offence in respect of which the request for his surrender is one of a political character or where the Minister has reasonable grounds for believing that the request for surrender is being made for the purpose of prosecuting or punishing the offender on account of his race, caste, place of origin, nationality, political opinions, colour or creed or where the Minister is satisfied that it would be unjust, oppressive or too severe a punishment to surrender the offender, amongst others.
20. Section 7(1) of the Constitution guarantees the right to freedom from torture, inhuman or degrading punishment or other such treatment thus, placing the enforcement of the provisions of the Convention on Torture, Inhuman or Degrading Treatment or Punishment into the ambit of the jurisdiction of the Supreme Court. The Constitution itself makes provision under Section 17 for

redress to be afforded by the Supreme Court to any individual whose rights under Chapter II have been, are being or are likely to be contravened.

21. In addition, any law which violates the Constitution will be struck down by the Supreme Court. The Supreme Court has on 9<sup>th</sup> June 2004 held in the case of *Police v Abdool Raschid Khoyratty* that Section 5(3A) of the Constitution, in so far as it provides for automatic denial of bail to a person arrested for a drug offence when he has already been convicted of a drug offence, or arrested or detained for a drug offence whilst on bail for a drug offence, is void. It must be noted that the Constitution (Amendment) Act 2002 extended Section 5(3A) of the Constitution to offences related to terrorism.

## **II. The National Human Rights Commission**

22. We also have national human rights institutions that have been put into place and which promote the protection of human rights. The National Human Rights Commission was established under the Protection of Human Rights Act 1998 and is operational since April 2001. It was granted accreditation by the International Coordination Committee of National Human Rights Institutions in 2002 and is governed by the Principles Relating to the Status of National Institutions, Competence and Responsibilities ("Paris Principles").

23. The Protection of Human Rights Act has been amended in 2012 to, inter alia, cater for our obligations under the Optional Protocol to the Convention against Torture in as much as the amendment aims at providing for a National Preventive Mechanism to be set up within the National Human Rights Commission and at enabling the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to discharge its functions under the Optional Protocol in Mauritius. The amendment to the Protection of Human Rights Act equally provides for the setting up within the

National Human Rights Commission, of a Police Complaints Division to investigate complaints made against members of the Police Force, other than allegations of corruption and money laundering. The said Police Complaints Division is also empowered to investigate the death of any person which has occurred whilst in police custody or as a result of police action and to advise on ways in which any police misconduct may be addressed and eliminated.

24. The amendment to the Protection of Human Rights Act has also reviewed the functions of the National Human Rights Commission and its mandate has been broadened so as to ensure better promotion and protection of human rights. The Commission now is empowered to review safeguards provided by or under any enactment for the protection of human rights as well as factors or difficulties that inhibit the enjoyment of human rights. The Commission may submit to the Minister any opinion, recommendation, proposal or report on any matter concerning the promotion and protection of human rights. The functions of the Commission equally include the promotion of the harmonization of national legislation and practices with the international human rights instruments to which Mauritius is a party, and ensuring their effective implementation. The National Human Rights Commission has also been given the autonomy to engage suitable persons or bodies to enable it to discharge the specific functions of each Division in an independent manner.

### **III. Independent Police Complaints Commission (IPCC)**

25. The Independent Police Complaints Commission Bill was passed in the National Assembly on 19 July 2016 and assented by the President of the Republic on 22 July 2016.

26. The purpose of the Bill is to set up an Independent Police Complaints Commission separate from the National Human Rights Commission.

27. The Commission compose of a Chairperson and two other members.

28. The Chairperson shall be a person who has:

- i. served as a Judge of the Supreme Court;
- ii. served as a Magistrate for not less than 10 years;
- iii. been a law practitioner for not less than 10 years; or
- iv. served as a Magistrate and has been a law practitioner for an aggregate period of not less than 10 years.

29. The Commission shall also be served by a Secretary, who shall be a public officer of the rank of Deputy Permanent Secretary and other administrative staff as may be required and who shall be on secondment from the public service.

## **B. IMPACT OF COUNTER TERRORISM MEASURES**

30. From case law of international and domestic courts and other UN mechanisms, some counter-terrorism measures have resulted in:

- a) prolonged detention without charge;
- b) denial of the right to challenge the lawfulness of detention;
- c) denial of access to legal representation;
- d) monitoring of conversations with lawyers;
- e) incommunicado detention; and
- f) ill-treatment, even torture, of detainees as well as inhuman and degrading conditions of detention.

31. As part of the South African Regional Police Chiefs Cooperation Organization, Mauritius actively shares information with member states to prevent cross border crime. As a member of the African Union, Mauritius has signed and ratified the 1999 African Union Convention on the Prevention and Combating of Terrorism and contributes to the African Centre for the Study and Research on Terrorism, established in Algiers in 2004 as to raise the African Union's capacity to prevent and combat terrorism in Africa. Lastly, the Government of Mauritius has signed a Memorandum of Understanding with the Government of India in 2008 to facilitate the exchange of information relating to money laundering and terrorist financing.

32. Mauritius started developing its operational component to respond to terrorism threats in the early 1980's. At first, with the assistance of the French government, it set up a tactical unit as the strike force for counter terrorism operations, the '*Groupe d'Intervention de la Police Mauricienne*' (GIPM), which replicates the French '*Groupe d'Intervention de la Gendarmerie Nationale*' (GIGN). Later, the government created the Radiation Protection Authority (RPA) in 2006, upon proclamation of the 2003 Radiation Protection Act. The

RPA, under the aegis of the Ministry of Energy and Public Utilities, deals with the regulation, control and supervision of radiological activities related to the acquisition, importation, use, transportation and disposal of radioactive material, radioactive substances, x-ray equipment and other sources of ionizing radiation. In the aftermath of the September 11, 2001, terrorist attacks in the United States, a National Counter Terrorism Committee was set up under the chairmanship of the Secretary for Home Affairs to review the country's counterterrorism measures on a regular basis. Last but not least, a Counter Terrorism Unit (CTU) has also been set up for the collection and analysis all terrorism-related intelligence which is disseminated to relevant authorities for appropriate actions.

33. As far as the concept of "*targeted killing*" or "*shoot-to-kill*" policies is concerned, this is not applicable in Mauritius. Like other law enforcement agencies, the Mauritius Police Force has its own procedures that guide the use of force and firearms. The procedure comprises an escalating series of actions that Police may initiate to resolve a situation of public disorder. The continuum generally has various levels and Police officers are bound to respond with a level of force proportional to the situation at hand but in a state of readiness to move from one level to another as and when necessary in order to contain the situation.

34. It is to be noted that the procedures to be followed by Police when they are compelled to use firearms are clearly spelt out in the Police Standing Orders. After assessing the situation, the Commanding Officer usually issue orders to the firing party to fire below the knees of the mob. The principle of minimum force is always observed. Police are regularly provided with training on the use of firearms and whenever firearms are used by Police to contain or disperse a disorderly crowd which has began to commit a breach of public peace, they are internally and legally accountable for the amount of force used.

35. As regards, the right of suspects or accused parties, it is worthy to note that according to the Sect 10 of the Constitution, every person is presumed to be innocent until he pleads guilty to the charge or the contrary is proved. Immediately after arrest, they are informed in a simple language that they understand of the reason of their arrest, rights to be represented by a counsel of their own choice or an interpreter in case of foreigners and rights to legal assistance during Police enquiry and for bail application. Instructions pertaining to the rights and welfare of detainees under Police custody are clearly laid down in the Police Standing Orders and are affixed in conspicuous places of interrogation and detention. Private interviews are allowed to suspects with their lawyers and such interviews are considered as privilege communication. No deceitful means is used by Police to overhear such conversations irrespective of the seriousness of the offence. Police adhere to the administrative guidelines laid down in the Judges Rule and Police Standing Orders. Any derogation from these instructions may render them liable to disciplinary sanctions. It is to be noted that complaints against Police for malpractice or other breaches of the legal rules are investigated by an independent body namely the Police Complaint Division which falls under the aegis of the National Human Rights Commission. The Criminal Code has been amended to criminalise the offence of torture which includes any degrading treatment or use of coercive means to abstract confession from suspects. In as much as detention is concerned, if a person is arrested upon reasonable suspicious of having committed a criminal offence and subsequently detained, the person may challenged the pretrial detention by way a writ of *habeas corpus*. Notwithstanding Sect 5 of the Constitution which makes provisions for incommunicado detention for certain specific offences under the Dangerous Drugs Act 2000 and the Prevention of Terrorism Act 2002, as at now, nobody has been detained incommunicado.

36. Terrorists are improving their sophistication and abilities in virtually all aspects of their operations. The aggressive use of modern technology for information

management, communication and intelligence has increased the efficiency of these activities. Weapons technology has become more increasingly available and the purchasing power of terrorist organizations is on the rise. The ready availability of both technology and trained personnel to operate it for any client with sufficient cash allows the well-funded terrorist to equal or exceed the sophistication of governmental counter-measures.

37. All countries face human rights challenges but to meet these challenges successfully, governments and peoples must work together to change attitudes, to intensify human rights education programmes and to strengthen human rights institutions. The most prominent activities that governments and communities should consider in this area probably include the establishment of national human rights institutions, the development of national programmes of human rights education and the development of national plans of action for the promotion and protection of human rights. In addition, to fight this scourge effectively, there is a need for holding seminars for foreign legislators to brainstorm with counter parts from other countries which will enable them draft the necessary legislations required to combat money-laundering and terrorist financing. Equipping law enforcement agencies with better communications equipment and improving the international standards for travel documents to frustrate terrorists' transit around the world are equally counter terrorism measures which do not impact on basic fundamental human rights.

**14 December 2016**