

THE POLICE COMPLAINTS BILL
(No. XX of 2012)

Explanatory Memorandum

The main object of this Bill is to provide 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.

2. Evidence obtained in the course of an investigation may, subject to the provisions of the Constitution and the law of evidence, be used in subsequent civil or criminal proceedings. The Division may, on the completion of an investigation, make recommendations to the relevant authority for future action to be taken, including the institution of criminal or disciplinary proceedings or the award of compensation.

3. The Division shall also investigate the death of any person which occurred when the person was in police custody or as a result of police action and advise on ways in which any police misconduct may be addressed and eliminated.

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A BILL

To provide for the setting up, within the National Human Rights Commission, of a Police Complaints Division for the investigation of complaints made against members of the Police Force, and for other related matters

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Police Complaints Act 2012.

2. Interpretation

In this Act –

“act of corruption” has the same meaning as in the Prevention of Corruption Act;

“Chairperson” means the Chairperson of the Commission;

“Commission” means the National Human Rights Commission established under the Protection of Human Rights Act;

“Deputy Chairperson” means the Deputy Chairperson of the Commission who is assigned to the Division;

“Division” means the Police Complaints Division referred to in section 3;

“investigator” means a person designated by the Division to act as investigator under section 10;

“member” –

(a) means a member of the Division;

- (b) unless the context otherwise requires, includes the Chairperson and Deputy Chairperson;

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

“money laundering offence” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“police officer” –

- (a) has the same meaning as in the Police Act;
- (b) does not include the Commissioner of Police;

“public body” has the same meaning as in the Protection of Human Rights Act.

PART II – POLICE COMPLAINTS DIVISION

3. Police Complaints Division

(1) There shall be for the purposes of this Act a Police Complaints Division, which shall be a division of the Commission.

(2) Section 3 of the Protection of Human Rights Act shall apply to the Division.

(3) The Division shall consist of –

- (a) the Chairperson of the Commission as its head;
- (b) a Deputy Chairperson assigned to the Division; and
- (c) 2 members.

(4) The members referred to in subsection (3)(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. Functions of Division

Without prejudice to the jurisdiction of the Courts or the powers conferred on the Director of Public Prosecutions, the Ombudsman or the Disciplined Forces

Service Commission, the functions of the Division shall be –

- (a) to investigate any complaint made by any person, or on his behalf, against any act, conduct or omission of a police officer in the performance of his duty, other than a complaint made in relation to an act of corruption or a money laundering offence;
- (b) to investigate the death of any person which occurred when the person was in police custody or as a result of police action;
- (c) to advise on ways in which any police misconduct may be addressed and eliminated;
- (d) to perform such other function as may promote better relations between the public and the police and as may be conferred upon it by any other enactment.

5. Powers of Division

(1) Subject to subsection (2), in the performance of its functions under this Act, the Division may –

- (a) summon any person to appear before it on such date and at such time as may be specified in the summons, or require any person in writing –
 - (i) to answer any question or provide any information which the Division considers necessary in connection with any investigation;
 - (ii) to produce any article, or any book, record, accounts, report, data, stored electronically or otherwise, or any other document;
 - (iii) to verify, or otherwise ascertain by oral examination of the person making the complaint, any fact, matter or document relating to a complaint;
- (b) visit any police station, prison or other place of detention for the purpose of an investigation under this Act;
- (c) where it thinks appropriate, work in co-operation or consultation with any person or body, whether public or private.

(2) A person may refuse to answer any question, to provide any information, or to produce any article or document, which would incriminate him.

6. Meetings of Division

(1) Subject to subsection (2), the Division shall regulate its meetings and proceedings in such manner as it thinks fit.

(2) Three members of the Division, including the Chairperson or Deputy Chairperson, shall constitute a quorum.

7. Staff of Division

(1) Subject to subsection (2), the Commission shall provide the Division with adequate staff and facilities for the proper discharge of its functions.

(2) No serving police officer shall form part of the staff of the Division.

PART III – INVESTIGATIONS

8. Investigations by Division

(1) The Division may conduct an investigation on the basis of a complaint.

(2) (a) A complaint shall not be investigated by the Division unless it is made within one year of the day on which the complainant first had notice of the matter alleged in the complaint.

(b) The Division may conduct an investigation into a complaint made after the period specified in paragraph (a) if it considers that there are special circumstances which make it proper to do so.

(c) Where any person makes a written complaint to a police officer against any act, conduct or omission of another police officer in the performance of his duty, the police officer shall forthwith forward the complaint to the Commissioner of Police who –

(i) shall, within 2 days of receipt of the complaint, forward to the Secretary of the Division a copy of the complaint; and

(ii) shall not investigate further into the complaint.

(d) The Division 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 (c).

(3) Where a complaint consists of an allegation of an act of corruption or a money laundering offence against a police officer, it shall be referred by the Division to the Independent Commission Against Corruption established under the Prevention of Corruption Act and shall be dealt with under that Act.

(4) The Division may, in considering whether or not to conduct, continue or discontinue an investigation, have regard to such matters as it thinks fit, including whether or not in its view –

- (a) the complaint may not, in the first place, be resolved through conciliation;
- (b) the subject matter of the investigation is trivial; or
- (c) the complaint is frivolous, vexatious or not made in good faith.

9. Making or continuing a complaint on behalf of another person

Where a person –

- (a) makes a complaint and for any reason is unable to act for himself after making the complaint;
- (b) dies before the complaint which he has made is investigated under this Act; or
- (c) who could have made a complaint dies before doing so or is for any reason unable to act for himself,

the complaint may be made or continued by his personal representative, a member of his family or, where applicable, any other person designated by the complainant.

10. Powers of investigation

(1) (a) The Division may designate any of its officers to act as investigator for the purposes of an investigation.

(b) Notwithstanding any other enactment, any investigator may, for the purposes of an investigation under this Act –

(i) take all lawful measures which a police officer may take under the Police Act or any other enactment for the detection of an offence, except arrest a person;

(ii) record a statement under warning from any person.

(2) (a) Without prejudice to the generality of subsection (1), an investigator may, for the purposes of an investigation –

(i) enter and search any premises occupied or used by the Police Force or any other public body in that capacity;

(ii) inspect any document or other thing on the premises;

(iii) take copies of any document on the premises.

(b) The Police Force and every other public body shall make available to an investigator such facilities as are necessary to enable the Division to exercise its powers under this Act.

(3) Where an investigator wishes to enter and search private premises in furtherance of an investigation, he shall apply to a District Magistrate for a search warrant, setting out the nature of the investigation and the purpose of entering the premises.

(4) Notwithstanding any other enactment, the Supreme Court may, on an application made by the Division in connection with an investigation, make such order, issue such writs and give such directions as it considers appropriate for the purpose of enforcing this Act.

11. Hearings

(1) For the purpose of an investigation, the Division may hold hearings.

(2) A hearing may be held in public or in private, or partly in public and partly in private as the Division considers appropriate.

(3) When conducting a hearing, the Division shall endeavour to exercise its functions with as little formality and technicality as is possible.

(4) Where a person satisfies the Division that he has a substantial or direct interest in the subject matter of a hearing, the Division may authorise him to appear at the hearing or a specified part of the hearing.

(5) (a) Subject to subsection (6), the Division may summon a person to appear at a hearing at such time and place as may be specified in the summons –

- (i) to give evidence;
- (ii) to produce such article, or such book, record, accounts, report or data, stored electronically or otherwise, or other document, or provide such information, as may be specified in the summons.

(b) The Division may require a person appearing at a hearing to give evidence under oath or solemn affirmation.

(c) A person who has been summoned to attend before the Division shall appear and report from day to day unless he is excused from attendance or until he is released from further attendance.

(6) At a hearing, a person may refuse to give any evidence, to produce any document, or provide any information, which would incriminate him.

(7) A person giving evidence at a hearing may be represented by a legal adviser.

12. Record of complaint and investigation

(1) The Division shall ensure that a faithful record of every complaint and investigation is kept and maintained.

(2) The testimony of a witness at a hearing shall be taken down in writing by such person as may be designated by the Division, read over to the witness and signed by the witness and the person who recorded the testimony.

13. Use of evidence

Subject to the provisions of the Constitution and to the law of evidence, any evidence obtained in the course of an investigation may give rise to, or be used in, civil or criminal proceedings.

14. Completion of investigation

- (1) Upon the completion of an investigation, the Division –
 - (a) shall make an assessment and form an opinion as to whether or not the subject matter of a complaint has or may have occurred; and

- (b) may, where appropriate, refer the matter to –
 - (i) the Director of Public Prosecutions, with a recommendation that the police officer be prosecuted for a criminal offence;
 - (ii) the Disciplined Forces Service Commission, with a recommendation that disciplinary proceedings, or such other action as the Division considers desirable, be taken against the police officer;
 - (iii) the Attorney-General, with a recommendation that the complainant or his representative be paid such compensation or granted such relief as may be deemed appropriate;
- (c) shall transmit a certified copy of the record of the investigation, together with its observations and recommendations, to the relevant authority;
- (d) shall inform the complainant of the outcome of the investigation, including such recommendation as may have been made under paragraph (b).

(2) Where the relevant authority agrees with the recommendation of the Division, it shall –

- (a) initiate appropriate action for the implementation of the recommendation within 3 months of the date of the recommendation;
- (b) within 6 months, inform the Division of the action taken.

(3) Where the relevant authority does not agree with the recommendation of the Division, it shall inform the Division of its decision at the earliest opportunity.

(4) In this section –

“relevant authority” means the Director of Public Prosecutions, the Disciplined Forces Service Commission or the Attorney-General, as the case may be.

PART IV – MISCELLANEOUS

15. Protection from liability

No action, suit or other legal proceedings shall lie against the Division or a member or officer of the Division in respect of anything done, or purported to be done, in good faith, and in pursuance of the functions and powers conferred under this Act or in respect of any publication by or under the authority of the Division of any report, proceedings or any other matter under this Act.

16. Offences

Any person who –

- (a) fails to attend the Division after having been required to do so;
- (b) knowingly gives false evidence, or evidence which he knows to be misleading, before the Division;
- (c) 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;
- (d) procures the false testimony of a witness, or interferes with a witness on account of his testimony, before the Division;
- (e) knowingly makes or causes to be made a false complaint before the Division;
- (f) at any sitting of the Division –
 - (i) insults a member; or
 - (ii) interrupts the proceedings;
- (g) obstructs or assaults a member or an officer of the Division in the exercise of his functions and powers; or
- (h) impersonates a member or an officer of the Division,

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.

17. Regulations

(1) The Minister may, after consultation with the Commission, make such regulations as he thinks fit for the purposes of this Act.

(2) 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 50,000 rupees and to imprisonment for a term not exceeding one year.

18. Transitional provisions

Any complaint against a police officer in the performance of his duty, which is pending immediately before the commencement of this Act and being enquired into or investigated by –

- (a) the Commission, may, at the commencement of this Act, be investigated by the Division as if it were received under this Act;
- (b) the Complaints Investigation Bureau of the Police Force, shall, at the commencement of this Act, be investigated by the Division as if it were received under this Act.

19. 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.
