

THE TRUTH AND JUSTICE COMMISSION BILL
(No. X of 2008)

Explanatory Memorandum

The object of this Bill is to establish a Truth and Justice Commission whose objects shall be to make an assessment of the consequences of slavery and indentured labour during the colonial period up to the present and for that purpose conduct as complete as possible an analysis on slavery and indentured labour.

The Commission shall make recommendations to the President on measures to be taken following its assessments and its findings with a view to achieving social justice and national unity.

DR. N. RAMGOOLAM
Prime Minister
Minister of Defence and Home Affairs
Minister of Civil Service and
Administrative Reforms and Minister
of Rodrigues and Outer Islands

25 April.2008

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A BILL

To enable His Excellency the President of the Republic of Mauritius to establish a Commission to promote social justice and national unity

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

The Act may be cited as the Truth and Justice Commission Act 2008.

2. Interpretation

In this Act –

“Commission” means the Truth and Justice Commission established by the President under section 3;

“member” –

- (a) means a member of the Commission; and
- (b) includes the Chairperson and Vice-Chairperson.

3. Truth and Justice Commission

(1) The President shall establish a Truth and Justice Commission whose objects shall be to make an assessment of the consequences of slavery and indentured labour during the colonial period up to the present.

(2) The Commission shall make recommendations to the President on measures to be taken following its assessment and its findings with a view to achieving social justice and national unity.

(3) The Commission shall consist of a Chairperson, a Vice-Chairperson and 3 other members who shall be appointed by the President on such terms and conditions as the President may determine.

(4) The members shall be persons having wide experience in the field of history, anthropology, culture, economics or law and shall perform their functions independently of the control or authority of any person or body and in an impartial manner.

(5) Every member shall, prior to assuming office, take and subscribe before the President, the oath set out in the Schedule.

4. Functions of Commission

The Commission shall perform such functions as are necessary to enable it to achieve its objects and, in particular, shall –

- (a) conduct inquiries into slavery and indentured labour in Mauritius during the colonial period and, may, for that purpose, gather information and receive evidence from any person;
- (b) determine appropriate measures to be extended to descendants of slaves and indentured labourers;
- (c) enquire into a complaint other than a frivolous and vexatious complaint, made by any person aggrieved by a dispossession or prescription of any land in which he claims he had an interest; and
- (d) prepare a comprehensive report of its activities and findings, based on factual and objective information and evidence received by it and submit the report to the President.

5. Powers of Commission

(1) The Commission may make such rules as it thinks fit for the purposes of this Act and, in particular, for the conduct and management of its inquiry and of any proceedings before it.

- (2) Subject to subsection (3), the Commission may –
 - (a) on giving reasonable notice, visit any establishment or place, enter on land or premises to gather information or inspect property;
 - (b) take copies of, or extracts from, any document;
 - (c) hold any hearing it may deem necessary;
 - (d) summon any witness and examine him on oath and call for the production of any document or article; and
 - (e) with the approval of the Prime Minister, seek assistance from the relevant authority of a foreign country through diplomatic channels to receive evidence or gather information in that country.

(3) (a) Where the Commission has made a request for the disclosure of a document which is subject-matter of a confidentiality provision under an enactment and the person having the custody of the document does not consent to the disclosure thereof, the Commission may, notwithstanding the provisions of that enactment, make an application to the Judge in Chambers asking for an order of disclosure of the document.

(b) Where the Judge in Chambers is satisfied that a document is material to the functions of the Commission and any prejudice likely to arise from its disclosure will be outweighed by the Commission being authorised to use the document to pursue its functions under this Act, he may order the disclosure of the document.

(4) The Commission may, subject to the approval of the Secretary to the Cabinet and Head of the Civil Service, engage the services of one or more researchers to assist it to carry out its functions.

(5) The Commission may request and receive police assistance as may be needed in the enforcement of its powers under this section.

(6) (a) The Commission may appoint a sub-committee on slavery and one on indentured labour and may appoint such other sub-committees as it considers necessary to assist it in the discharge of its duties.

(b) A sub-committee appointed under paragraph (a) may include persons who are not members.

(c) Where the Commission decides to appoint a person who is not a member on a sub-committee, it shall seek the approval of the President.

6. Resignation, removal and replacement of members

(1) A member may, at any time, resign as member by tendering his resignation, in writing, to the President.

(2) The President may remove any member from office for inability to perform the functions of his office, whether arising from infirmity of body or mind, for incompetence or for misbehaviour.

(3) Where a member has died, resigned or been removed from office, the President shall fill the vacancy by appointing another person in his place for the unexpired portion of the term of office.

7. Commission not affected

The Commission shall not lapse by reason of, or be otherwise affected by, the death, resignation or removal of a member.

8. Secretary

The President may appoint a Secretary to attend the sittings of the Commission, to record proceedings, to keep the papers and documents, to

summon and minute the testimony of witnesses, to administer the oath, affirmation or declaration and generally to perform such other duties as may be assigned by the Commission.

9. Staff of the Commission

The Secretary to the Cabinet and Head of Civil Service may designate such public officer as the Commission may require to enable it to discharge its functions under this Act.

10. Operations and hearing of Commission

(1) The Commission shall, subject to this section, begin its operations at the end of the preparatory period referred to in subsection (3) and complete its work within 24 months.

(2) The President may, by written instrument and for good cause shown, extend the operations of the Commission for a further period of 6 months.

(3) Before the commencement of the period of 24 months specified in subsection (1), the Commission shall have a preparatory period of 3 months during which it may undertake all tasks necessary to ensure that it is able to work effectively from the commencement of its operations.

(4) Subject to subsection (5), the hearing of the Commission shall be open to the public.

(5) Where the Commission is of the opinion that it is in the public interest to do so or that there is any likelihood of harm ensuing to any person as a result of the proceedings being open to the public, it may refuse to allow the public to be present at any hearing before it.

11. Duty of witnesses

Any witness summoned to attend and give evidence, or to produce a document or article at any sitting of the Commission, shall obey the summons served upon him in all respects as a witness obeys a summons issued from the Supreme Court, and shall be entitled to such expenses as are allowed to a witness who is summoned to attend that court on a criminal trial, but where it thinks fit, the Commission may disallow the whole or any part of such expenses.

12. Confidentiality of matter and information

(1) Every member and officer of the Commission shall, with regard to any matter dealt with by him, or information which comes to his or her knowledge in the exercise, performance or carrying out of his or her powers, functions or duties, preserve the confidentiality of such matter and information.

(2) No person shall have access to any confidential information unless authorised by the Commission.

13. Report

(1) The Commission shall submit its report to the President at the end of its operations.

(2) The Commission may be required by the President to submit an interim report within 12 months from the commencement of its operations.

(3) The President shall cause the final report of the Commission to be laid before the Assembly within one month of its submission.

(4) The report under subsection (1) shall summarise the findings of the Commission and make recommendations with a view to achieving social justice and national unity.

14. Protection of members and witnesses

(1) A member shall not be liable to any prosecution, action, or suit, in respect of any matter or thing done by him as member.

(2) No evidence given before a Commission shall –

(a) give rise to any civil or criminal proceedings, other than a prosecution for perjury, against any person giving such evidence;

(b) be admissible against any person in any civil or criminal proceedings, except in the case of a witness charged with having given false evidence before the Commission.

(3) No person giving evidence before a Commission shall refuse to answer any question on the ground that an answer would incriminate him and no incriminating answer shall be admissible against him in any prosecution, action or suit.

15. Remuneration and expenses

(1) The President may direct what remuneration, if any, shall be paid to a member, to the Secretary, and to any other person engaged in the work of the

Commission, and what expenses, if any, incurred in the holding of an inquiry shall be paid.

(2) Any remuneration or expenses directed to be paid under subsection (1) shall be a charge on the Consolidated Fund.

16. Offences

A 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 when required so to do by the Commission;
- (c) knowingly gives false evidence, or evidence which he knows to be misleading before the Commission; or
- (d) at any hearing of the Commission –
 - (i) insults a member;
 - (ii) interrupts the proceedings,

shall commits 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.

17. Dissolution of Commission

The Commission shall be dissolved on a date determined by the President by Proclamation which shall not be later than 3 months after the date on which the report under section 13(1) is submitted.

18. Commencement

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

SCHEDULE
(section 3)

I,.....
.....having been appointed by the President to be a member of the Commission to inquire into the matters specified by the Commission, do swear/solemnly affirm that I shall faithfully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by such appointment and that I shall not without reasonable cause disclose any information imparted to me in the performance of such duties.

So Help Me God

Before me,

(s)
Member

(s)
President of the Republic

Date: