SECOND READING SPEECH OF HON. ATTORNEY-GENERAL
ON
THE PROTECTION OF HUMAN RIGHTS (AMENDMENT) BILL (NO. XIX OF 2012),
THE POLICE COMPLAINTS BILL (NO. XX OF 2012),
THE NATIONAL PREVENTIVE MECHANISM BILL (NO. XXI OF 2012)

Mr. Speaker, Sir,

First of all, I wish to congratulate the Honourable Prime Minister for introducing the Protection of Human Rights (Amendment) Bill, the Police Complaints Bill and the National Preventive Mechanism Bill in the House.

We actually can feel the invisible hands of history on our shoulders. In 1998, in your then capacity as Attorney General, Minister of Human Rights and Corporate Affairs, Mr Speaker, Sir, you piloted the Protection of Human Rights Act and today on your election as Speaker of the National Assembly, major amendments are being brought to the Act.

As the Honourable Prime Minister has explained, initially it had been envisaged that the National Human Rights Commission would consist of 4 divisions, including an Equal Opportunities Division. However, with the passing of the Equal Opportunities (Amendment) Act in 2011, a separate Equal Opportunities Commission was created. The structure of the National Human Rights Commission thus had to be revisited.

For a while now, work has been ongoing on the new legal, institutional and administrative structure of the National Human Rights Commission.

In the process of finalisation of the 3 Bills, a number of working sessions were held in presence of stakeholders concerned to ensure that the National Human Rights Commission, once revamped, is capable of fulfilling its mandate. We have also had to give due consideration to all operational aspects and to ensure that there is a smooth transition when the new system is in place. I am glad that, after all the efforts we have put in, the 3 Bills are finally before this House today.

Mr. Speaker, Sir,

The doctrine of human rights, be it at national or international level, has been a cornerstone of public policy around the world. As far as Mauritius is concerned, in its first Annual Report, the National Human Rights Commission expressed the view that we had a good track record in terms of respect for human rights.
Moreover, the generally sound reputation Mauritius has in the field of human rights is borne out by the annual reports of the United States State Department which reviews the human rights situation in the world. We should also not forget the crucial role played by our judiciary. Under the Constitution, the Supreme Court acts as a watchdog for the respect of human rights when seized of a case by a litigant.

The National Human Rights Commission, has, since its establishment in 1998, been doing a commendable job. It has been listening to complaints and carrying out enquiries without any Government or party interference. It has also made a number of recommendations to Government in the field of human rights.

However, Mr. Speaker, Sir, this Government’s vision is to empower the National Human Rights Commission to make it a key institution when it comes to the protection of human rights in Mauritius. The object of the Protection of Human Rights (Amendment) Bill, therefore, is to set up 3 Divisions within the Commission, namely the Human Rights Division, the Police Complaints Division and the National Preventive Mechanism Division.

The objective of such restructuring is to have a Commission which has a broader mandate and which acts as an umbrella organisation to Divisions which will focus on different aspects of human rights. This will result in greater cost effectiveness and efficiency.

Mr. Speaker, Sir,

The broader mandate which is being conferred on the National Human Rights Commission is reflected in Clause 5 of the Protection of Human Rights (Amendment) Bill. Under the proposed new section 3A, the functions of the Commission have been broadened in line with the Paris Principles.


Mr. Speaker, Sir,

The Paris Principles list a number of responsibilities for national institutions, which fall under five headings. Firstly, the institution shall monitor any situation of violation of human rights which it decides to take up. Secondly, the institution shall be able to advise the Government, the Parliament and any other competent body on specific violations, on issues related to legislation and general compliance and implementation with international human rights instruments. Thirdly, the institution shall
relate to regional and international organisations. Fourthly, the institution shall have a mandate to educate and inform in the field of human rights. Finally, some institutions are given a quasi-judicial competence.

I should point out that compliance with the Paris Principles is the central requirement of the accreditation process that regulates access of national human rights institutions to the United Nations Human Rights Council and other bodies.

Mr. Speaker, Sir,

Under Clause 6 of the Bill, section 4 of the principal Act is amended such that the existing function of the Commission which consists of enquiring into complaints of human rights violations will be taken over by the Human Rights Division of the newly structured Commission.

Much consideration has been given to the operational aspect. For the newly structured Commission to fulfil its broader mandate and its 3 Divisions to operate efficiently, it has to be adequately staffed. This is why clause 7 of the Bill makes better provision for the recruitment of staff of the Commission. Over and above public officers seconded for duty at the Commission, it may recruit suitably qualified people or bodies on a contract basis.

Mr. Speaker, Sir,

Allow me to now turn to the Police Complaints Bill. The essence of this Bill is to provide a framework for the Police Complaints Division of the National Human Rights Commission to operate. This Division will be responsible for the investigation of complaints made against members of the Police Force, other than allegations of corruption and money laundering which are dealt with by the ICAC under the Prevention of Corruption Act.

Currently, it is the Complaints Investigation Bureau, under the administrative control of the Commissioner of Police, which enquires into complaints made against police officers. In other words, the police enquires on the police. Severe criticisms have been levelled against such a system.

In fact, as Government back bencher in 2005, I highlighted the problem of the Complaints Investigation Bureau as being judge and party at the same time by way of a Parliamentary Question B/1 and the Hon. Prime Minister stated and I quote

“I am of the view that this perception of being judge and party at the same time will persist; it has persisted in other countries with the same results. It is important that there should be confidence in the procedures” unquote. Therefore the setting up of a Police Complaints Division separate from the police force is more than welcome.
In its Concluding Observations dated 15 June 2011, the United Nations’ Committee Against Torture had this to say, at paragraph 11, under the heading “Complaint mechanisms” –

“While noting that different mechanisms are charged to receive and inquire on complaints against police officers for excessive use of force, such as the National Human Rights Commission and the Complaints Investigations Bureau, the Committee is concerned about the independence of the Complaints Investigation Bureau, as it remains under the administrative control of the Commissioner of Police. … … …

The State party should take concrete measures to ensure that complaints lodged against the police are addressed promptly, thoroughly and impartially by independent complaint mechanisms and that those responsible can be prosecuted, convicted and punished. In this regard, the State party should rapidly adopt and implement the draft Police Complaints Bill under preparation and establish the Independent Police Complaints Bureau; adopt a new Police Act and a Police Procedures and Criminal Evidence Act, as well as Codes of Practice to regulate the conduct of persons entrusted to investigate offences. … …”

Mr. Speaker, Sir,

This Bill reflects the Government’s commitment to fulfilling its international obligations. It brings a long awaited change and will, no doubt, remove the perception of bias and partiality which exists with the present system of police officers enquiring on police officers. As a responsible Government, we are coming forward with these reforms with a view to instilling trust and faith in the people of our country that they will benefit from a just system.

With the present system, it has often been argued that such allegations cannot be proved since enquiries are not conducted in an independent and fair manner. The new system will undoubtedly eradicate such qualms. Hopefully, it will also shed light on the veracity of such kinds of allegations.

As regards its functions, the Division will not only investigate complaints against police officers, but also investigate deaths in police custody or as a result of police action, advise on how to address and eliminate police misconduct and perform such other function as may promote better relations between the public and the police. The powers vested on the Division are also quite broad.

Mr. Speaker, Sir,
When complaints are made, the Division may proceed with investigations and may conduct hearings. It should be pointed out that, under Clause 11(6), a person may, at a hearing, refuse to give any evidence, to produce any document or to provide any information which would incriminate him. Clause 13 should also be highlighted. It provides that evidence which is obtained in the course of an investigation may give rise to or may be used in civil or criminal proceedings. This will prevent duplicitous enquiries. On the completion of an investigation, under Clause 14, the Division may 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. The Bill, therefore, provides a sound and structured framework for the Police Complaints Division to operate.

In the Government Programme 2012-2015, we have announced a series of measures, including legislative measures, to enhance the capability and capacity of the Mauritius Police Force. This Bill only spells the beginning of these reforms. Very soon, we shall also be coming forward with the Police and Criminal Evidence Bill which will also provide for codes of conduct that will regulate the conduct of Police and other investigators and address a number of issues relating to criminal enquiries, including victims’ rights.

Mr. Speaker, Sir,

I now come to the third Bill, the National Preventive Mechanism Bill.

As the Honourable Prime Minister has already explained, the main object of the Bill is to give effect in Mauritius to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). A National Preventive Mechanism (NPM) Division is set up within the National Human Rights Commission which shall act as National Preventive Mechanism under OPCAT.

Detainees are human beings and should not be tortured. The role of the NPM Division will, therefore, essentially be to ensure that detainees are protected against torture and inhuman or degrading treatment or punishment and to investigate complaint made by detainees.

In its Concluding Observations dated 15 June 2011, at paragraph 19, the United Nations’ Committee Against Torture stated the following –

“ The Committee recommends that the State party … finalize the draft National Preventive Mechanism Bill, adopt and establish the mechanism, as soon as possible. The National Preventive Mechanism should be provided with necessary human and financial resources, in compliance with the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as with the
principles relating to status of national human rights institutions for promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex).

The National Preventive Mechanism Bill, Mr. Speaker, Sir, gives effect to the above. The NPM Division is given such broad powers as may be necessary to effectively discharge its functions. Currently, under section 54(1)(c) of the Reform Institutions Act, the Board of Visitors is mandated to hear any complaint which may be made by a detainee and, where the detainee so requests, hear the complaint privately. In order to avoid any overlap, a consequential amendment has been brought.

Finally, Mr. Speaker, Sir, I am confident that the restructuring of the National Human Rights Commission will give the institution the necessary dynamism and impetus to perform efficiently and to live up to the expectations of one and all. The 3 Bills before this House portray our commitment to upholding and protecting human rights in Mauritius. I, once again, congratulate the Honourable Prime Minister for coming forward with these significant reforms.

I thank you all for your attention.