PART I

THE CONSTITUTION*

GN 54 of 1968 – 12 March 1968

ARRANGEMENT OF SECTIONS

* This Constitution was originally published as the Schedule to the Mauritius Independence Order 1968 in GN 54 of 1968. The Order was complemented in the UK by the Mauritius Independence Act 1968. The Mauritius Independence Order 1968 and the Mauritius Independence Act (UK) were officially published in Mauritius in the Revised Laws of Mauritius 1981 Vol. 1 and the Revised Laws of Mauritius 2000 Vol. 1.

SECTION

PART I

THE CONSTITUTION

CHAPTER I – THE STATE AND THE CONSTITUTION

1. The State

Mauritius shall be a sovereign democratic State which shall be known as the Republic of Mauritius.

[S. 1 amended by Act 48 of 1991.]

2. Constitution is supreme law

This Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

CHAPTER II – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUAL

3. Fundamental rights and freedoms of individual

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms—

(a) the right of the individual to life, liberty, security of the person and the protection of the law;

(b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and

(c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

4. Protection of right to life

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a Court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

5. Protection of right to personal liberty

(1) No person shall be deprived of his personal liberty save as may be authorised by law—

(a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a Court, whether in Mauritius or elsewhere, in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of a Court punishing him for contempt of that Court or of another Court;

(c) in execution of the order of a Court made to secure the fulfilment of any obligation imposed on him by law;

(d) for the purpose of bringing him before a Court in execution of the order of a Court;

(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(f) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Mauritius, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Mauritius or the taking of proceedings relating thereto;

(j) upon reasonable suspicion of his being likely to commit breaches of the peace; or

(k) in execution of the order of the Commissioner of Police, upon reasonable suspicion of his having engaged in, or being about to engage in, activities likely to cause a serious threat to public safety or public order.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(a) for the purpose of bringing him before a Court in execution of the order of a Court;

(b) upon reasonable suspicion of his having committed, or being about to commit a criminal offence; or

(c) upon reasonable suspicion of his being likely to commit breaches of the peace,

and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a Court; and if any person arrested or detained as mentioned in paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including, in particular, such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial; and if any person arrested or detained as mentioned in paragraph (c) is not brought before a Court within a reasonable time in order that the Court may decide whether to order him to give security for his good behaviour, then, without prejudice to any further proceedings that may be brought against him, he shall be released unconditionally.

(3A) (a) Notwithstanding subsection (3), where a person is arrested or detained for an offence related to terrorism or a drug offence, he shall not, in relation to such offences related to terrorism or drug offences as may be prescribed by an Act of Parliament, be admitted to bail until the final determination of the proceedings brought against him, where—

(i) he has already been convicted of an offence related to terrorism or a drug offence; or

(ii) he is arrested or detained for an offence related to terrorism or a drug offence during the period that he has been released on bail after he has been charged with having committed an offence related to terrorism or a drug offence.

(b) A Bill for an Act of Parliament to prescribe the offences related to terrorism or drug offences under paragraph (a) or to amend or repeal such an Act shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

[EDITORIAL NOTE: The Judicial Committee of the Privy Council has, in *State v Khoyratty* (2006) MR 210, declared section 5 (3A) of the Constitution void.]

(4) Where a person is detained in pursuance of any such provision of law as is referred to in subsection (1) (k)—

(a) he shall, as soon as is reasonably practicable and, in any case not more than 7 days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) not more than 7 days after the commencement of his detention, a notification shall be published in the *Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than 14 days after the commencement of his detention and thereafter during his detention at intervals of not more than 30 days, his case shall be reviewed by an independent and impartial tribunal consisting of a Chairperson and 2 other members appointed by the Judicial and Legal Service Commission, the Chairperson being appointed from among persons who are entitled to practise as a barrister or as an attorney in Mauritius;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of his case;

(e) at the hearing of his case by the tribunal, he shall be permitted to appear in person or by a legal representative of his own choice and, unless the tribunal otherwise directs, the hearing shall be held in public;

(f) at the conclusion of any review by a tribunal in pursuance of this subsection in any case, the tribunal shall announce its decision in public, stating whether or not there is, in its opinion, sufficient cause for the detention, and if, in its opinion, there is not sufficient cause, the detained person shall forthwith be released and if during the period of 6 months from his release he is again detained the tribunal established for the review of his case shall not decide that, in its opinion, there is sufficient cause for the further detention unless it is satisfied that new and reasonable grounds for the detention exist.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person.

(6) In the exercise of any functions conferred upon him for the purposes of subsection (1) (k), the Commissioner of Police shall not be subject to the direction or control of any other person or authority.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (3) to the extent that the law in question authorises a police officer not below the rank of Superintendent of Police to direct that any person arrested upon reasonable suspicion of having committed any offence related to terrorism or any drug dealing offence be detained in police custody for a period not exceeding 36 hours from his arrest without having access to any person other than a police officer not below the rank of Inspector or a Government Medical Officer.

(8) A Bill for an Act of Parliament to amend or to repeal the provisions of any law with regard to the keeping of a custody record and video recording in respect of the detention of any person for a drug offence shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

[S. 5 amended by Act 26 of 1994; Act 40 of 2000; s. 2 of Act 4 of 2002.]

6. Protection from slavery and forced labour

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(a) any labour required in consequence of the sentence or order of a Court;

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a Court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service; or

(d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

7. Protection from inhuman treatment

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11 March 1964.

8. Protection from deprivation of property

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where—

(a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of any property in such a manner as to promote the public benefit or the social and economic well-being of the people of Mauritius; and

(b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the payment of adequate compensation; and

(ii) securing for any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the

taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation.

(2) No person who is entitled to compensation under this section, other than a resident of Mauritius, shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) to the extent that the law in question authorises—

(a) the attachment, by order of a Court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a Court or pending the determination of civil proceedings to which he is a party;

(b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted; or

(c) the imposition of any deduction, charge or tax that is made or levied generally in respect of the remission of money from Mauritius and that is not discriminatory within the meaning of section 16 (3).

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1)—

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of property—

(i) in satisfaction of any tax, rate or due;

(ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law or in consequence of the inability of a drug-trafficker or a person who has enriched himself by fraudulent and/or corrupt means to show that he has acquired the property by lawful means;

(iii) as an incident of a lease, tenancy, mortgage, charge, sale, pledge or contract;

(iv) in the execution of judgments or orders of Courts;

(v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;

(vi) in consequence of any law with respect to the limitations of actions or acquisitive prescription;

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out on it—

(A) of work of soil conservation or the conservation of other natural resources; or

(B) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or

(aa) any other provision of Chapter II of the Constitution, to the extent that the law in question makes provision for the taking of possession of property—

(i) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;

(ii) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or

(iii) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person,

by way of confiscation, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest in it;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a Court or, by order of a Court, for the purpose of giving effect to the trust; or

(c) to the extent that the law in question—

(i) makes provision for the payment of the amount for which the property is to be compulsorily taken possession of, together with interest at the legal rate in equal yearly instalments, within a period not exceeding 10 years;

(ii) fixes the amount for which the property is to be compulsorily taken possession of or acquired or makes provision for the determination of that amount in accordance with such principles as may be prescribed.

(4A) (a) Notwithstanding subsection (1) (c), section 17 or any other provision of the Constitution, no law relating to the compulsory acquisition or taking of possession of any property shall be called in question in any Court if it has been supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

(b) No law under paragraph (a) shall be amended or repealed otherwise than by a Bill which has been supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

(5) Nothing in this section shall affect the making or operation of any law so far as it provides for the vesting in the State of the ownership of underground water or unextracted minerals.

(6) Nothing in this section shall affect the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes, in which no money has been invested other than money provided from public funds.

[S. 8 amended by Act 14 of 1983; Act 33 of 1986; Act 48 of 1991; s. 2 of Act 30 of 2015 w.e.f. 10 December 2015.]

9. Protection for privacy of home and other property

(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of mineral resources or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) for the purpose of protecting the rights or freedoms of other persons;

(c) to enable an officer or agent of the Government or a local authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, the local authority or that body corporate, as the case may be; or

(d) to authorise, for the purpose of enforcing the judgment or order of a Court in any civil proceedings, the search of any person or property by order of a Court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

10. Provisions to secure protection of law

(1) Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.

(2) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;

(e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any Court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that Court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the Court has ordered him to be removed and the trial to proceed in his absence.

(3) Where a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the Court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent Court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, except upon the order of a superior Court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

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(8) Any Court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a Court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties, all proceedings of every Court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the Court or other authority, shall be held in public.

(10) Nothing in subsection (9) shall prevent the Court or other authority from excluding from the proceedings (except the announcement of the decision of the Court or other authority) persons other than the parties and their legal representatives, to such extent as the Court or other authority—

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of 18 years or the protection of the privacy of persons concerned in the proceedings; or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(a) subsection (2) (a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(aa) subsection (2) (d), to the extent that the law in question authorises a police officer to direct that any person arrested upon reasonable suspicion of having committed any offence related to terrorism or any drug dealing offence be detained in police custody for a period not exceeding 36 hours from his arrest without having access to any person other than a police officer not below the rank of Inspector or a Government Medical Officer;

(b) subsection (2) (e), to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(c) subsection (5), to the extent that the law in question authorises a Court to try a member of a disciplined force for a criminal offence, notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any Court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) In this section, "criminal offence" means a crime, misdemeanour or contravention punishable under the law of Mauritius.

[S. 10 amended by Act 40 of 2000; s. 3 of Act 4 of 2002.]

11. Protection of freedom of conscience

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

12. Protection of freedom of expression

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

13. Protection of freedom of assembly and association

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and, in particular, to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights or freedoms of other persons; or

(c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

14. Protection of freedom to establish schools

(1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for regulating such schools in the interests of persons receiving instruction in them,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(3) No person shall be prevented from sending to any such school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the Government.

(4) In subsection (3), "child" includes a stepchild and a child adopted in a manner recognised by law, and "parent" shall be construed accordingly.

15. Protection of freedom of movement

(1) No person shall be deprived of his freedom of movement, and for the purpose of this section, that freedom means the right to move freely throughout Mauritius, the right to reside in any part of Mauritius, the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) for the imposition of restrictions on the movement or residence within Mauritius of any person in the interests of defence, public safety, public order, public morality or public health, otherwise than pursuant to paragraph (ca);

(b) for the imposition of restrictions on the right of any person to leave Mauritius in the interests of defence, public safety, public order, public morality or public health, otherwise than pursuant to paragraph (ca) or of securing compliance with any international obligation of the Government, particulars of which have been laid before the Assembly;

(ca) for the imposition of restrictions on the movement within Mauritius or on the right of any person to leave Mauritius pursuant to an order of a Court or a Judge of the Supreme Court under such law, being a law relating to offences or acts of terrorism;

(c) for the imposition of restrictions, by order of a Court, on the movement or residence within Mauritius of any person either in consequence of his having been found guilty of a criminal offence under the law of Mauritius or for the purpose of ensuring that he appears before a Court at a later date for trial in respect of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Mauritius;

(d) for the imposition of restrictions on the movement or residence within Mauritius of any person who is not a citizen of Mauritius or the exclusion or expulsion from Mauritius of any such person;

(e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Mauritius;

(f) for the removal of a person from Mauritius to be tried outside Mauritius for a criminal offence or to undergo imprisonment outside Mauritius in execution of the sentence of a Court in respect of a criminal offence of which he has been convicted; or

(g) for the imposition of restrictions on the right of any person to leave Mauritius in order to secure the fulfilment of any obligations imposed upon that person by law,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(4) Where any person whose freedom of movement has been restricted in pursuance of subsection (3) (a) or (b) so requests—

(a) he shall, as soon as is reasonably practicable and in any case not more than 7 days after the making of the request, be furnished with a statement in writing in a language that he understands, specifying the grounds for the imposition of the restriction;

(b) not more than 14 days after the making of the request, and thereafter during the continuance of the restriction at intervals of not more than 6 months, his case shall be reviewed by an independent and impartial tribunal consisting of a Chairperson and 2 other members appointed by the Judicial and Legal Service Commission, the Chairperson being appointed from among persons who are entitled to practise as a barrister or as an attorney in Mauritius;

(c) he or a legal representative of his own choice shall be permitted to make representations to the tribunal appointed for the review of his case;

(d) on any review by a tribunal in pursuance of this subsection in any case, the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction in question to the authority by which it was ordered and that authority shall act in accordance with any recommendation for the removal or relaxation of the restriction:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction that is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Supreme Court.

[S. 15 amended by s. 2 of Act 28 of 2016 w.e.f. 17 December 2016.]

16. Protection from discrimination

(1) Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section—

"discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

(a) for the appropriation of revenues or other funds of Mauritius;

(aa) for a minimum number of candidates for election to local authorities to be of a particular sex, with a view to ensuring adequate representation of each sex on a local authority;

(ab) for a minimum number of candidates for election to the Rodrigues Regional Assembly to be of a particular sex, with a view to ensuring adequate representation of each sex in the Rodrigues Regional Assembly;

(b) with respect to persons who are not citizens of Mauritius; or

(c) for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, caste, place of origin, political opinions, colour, creed or sex) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local authority or any office in a body corporate established directly by any law for public purposes.

(6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13, 14 and 15, being such a restriction as is authorised by section 9 (2), 11 (5), 12 (2), 13 (2), 14 (2) or 15 (3), as the case may be.

(8) Subsection (2) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any Court that is vested in any person by or under this Constitution or any other law.

[S. 16 amended by Act 23 of 1995; s. 2 of Act 35 of 2011 w.e.f. 12 December 2011; s. 2 of Act 30 of 2016 w.e.f. 17 December 2016.]

17. Enforcement of protective provisions

(1) Where any person alleges that any of sections 3 to 16 has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

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(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of sections 3 to 16 to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that Court to exercise the jurisdiction conferred upon it by this section more effectively.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which applications to that Court may be made).

17A. Payment of retiring allowances to members

(1) Nothing contained in and nothing done under the authority of a law shall be held to be inconsistent with or in contravention of any provision of this Constitution to—

(a) the extent that the law in question makes provision for reducing, limiting, modifying, or withholding the payment of any retiring allowances to any serving or former member of the National Assembly; and

(b) the extent that the law in question makes provision for its coming into operation with retrospective effect.

(2) References in this section to the law relating to the payment of retiring allowances include (without prejudice to their generality) references to the law regulating the circumstances in which such retiring allowances may be paid or in which the grant of such retiring allowances may be refused, the law regulating the circumstances in which any such retiring allowances that have been granted may be reduced in amount, limited, modified or withheld and the law regulating the amount of any such retiring allowances.

[S. 17A inserted by Act 4 of 1996.]

18. Derogations from fundamental rights and freedoms under emergency powers

(1) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of section 5 or section 16 to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Mauritius during that period:

Provided that no law, to the extent that it authorises the taking during a period of public emergency, other than a period during which Mauritius is at war, of measures that would be inconsistent with or in contravention of section 5 or section 16 if taken otherwise than during a period of public emergency, shall have effect unless there is in force a Proclamation of the President declaring that, because of the situation existing at the time, the measures authorised by the law are required in the interests of peace, order and good government.

(2) A Proclamation made by the President for the purposes of this section—

(a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within 7 days of the date of the Proclamation, lapse unless within 7 days the Assembly by resolution approves the Proclamation;

(b) shall, when the Assembly is not sitting and no arrangements have been made for it to meet within 7 days, lapse unless within 21 days it meets and approves the Proclamation by resolution;

(c) shall, if approved by resolution, remain in force for such period, not exceeding 6 months, as the Assembly may specify in the resolution;

(d) may be extended in operation for further periods not exceeding 6 months at a time by resolution of the Assembly;

(e) may be revoked at any time by the President, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraph (a), (b), (c) or (d) shall be passed unless it is supported by the votes of at least two thirds of all the members of the Assembly.

(3) Where a person is detained by virtue of any such law as is referred to in subsection (1) (not being a person who is detained because he is a person who, not being a citizen of Mauritius, is a citizen of a country with which Mauritius is at war, or has been engaged in hostilities against Mauritius in association with or on behalf of such a country or otherwise assisting or adhering to such a country)—

(a) he shall, as soon as is reasonably practicable and in any case not more than 7 days after the commencement of his detention, be furnished with a statement in writing in a language that he understands, specifying in detail the grounds upon which he is detained;

(b) not more than 14 days after the commencement of his detention, a notification shall be published in the *Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than 6 months, his case shall be reviewed by an independent and impartial tribunal consisting of a Chairperson and 2 other members appointed by the Judicial and Legal Service Commission, the Chairperson being appointed from among persons who are entitled to practise as a barrister or as an attorney in Mauritius;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(e) at the hearing of his case by the tribunal appointed for the review of his case, he shall be permitted to appear in person or by a legal representative of his own choice.

(4) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

[S. 18 amended by Act 48 of 1991.]

19. Interpretation and savings

(1) In this Chapter—

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"Court" means any Court of law having jurisdiction in Mauritius, including the Judicial Committee, but excepting, save in sections 4 and 6 and this section, a Court established by a disciplinary law;

"legal representative" means a person lawfully in or entitled to be in Mauritius and entitled to practise in Mauritius as a barrister or, except in relation to proceedings before a Court in which an attorney has no right of audience, as an attorney;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Nothing contained in section 5 (4), 15 (4) or 18 (3) shall be construed as entitling a person to legal representation at public expense.

(3) Nothing contained in section 12, 13 or 15 shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(4) In relation to any person who is a member of a disciplined force of Mauritius, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter, other than sections 4, 6 and 7.

(5) In relation to any person who is a member of a disciplined force that is not a disciplined force of Mauritius and who is present in Mauritius in pursuance of arrangements made between the Government of Mauritius and another Government or an international organisation, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of this Chapter.

(6) No measures taken in relation to a person who is a member of a disciplined force of a country with which Mauritius is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of this Chapter.

(7) In this Chapter, "period of public emergency" means any period during which—

(a) Mauritius is engaged in any war;

(b) there is in force a Proclamation by the President declaring that a state of public emergency exists; or

(c) there is in force a resolution of the Assembly supported by the votes of a majority of all the members of the Assembly declaring that democratic institutions in Mauritius are threatened by subversion.

(8) A Proclamation made by the President for the purposes of subsection (7)—

(a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within 7 days of the date of the Proclamation, lapse unless within 7 days the Assembly by resolution approves the Proclamation;

(b) shall, when the Assembly is not sitting and no arrangements have been made for it to meet within 7 days, lapse unless within 21 days it meets and approves the Proclamation by resolution;

(c) may be revoked at any time by the President, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraph (a) or (b) shall be passed unless it is supported by the votes of a majority of all members of the Assembly.

(9) A resolution passed by the Assembly for the purposes of subsection (7) (c)—

(a) shall remain in force for such period, not exceeding 12 months, as the Assembly may specify in the resolution;

(b) may be extended in operation for further periods, not exceeding 12 months at a time by a further resolution supported by the votes of a majority of all the members of the Assembly;

(c) may be revoked at any time by resolution of the Assembly.

[S. 18 amended by Act 48 of 1991.]

CHAPTER III – CITIZENSHIP

20. Persons who became citizens on 12 March 1968

(1) Every person who, having been born in Mauritius, was on 11 March 1968 a citizen of the United Kingdom and Colonies became a citizen of Mauritius on 12 March 1968.

(2) Every person who, on 11 March 1968, was a citizen of the United Kingdom and Colonies—

(a) having become such a citizen under the British Nationality Act 1948,[1] by virtue of his having been naturalised by the Governor of the former Colony of Mauritius as a British subject before that Act came into force; or

(b) having become such a citizen by virtue of his having been naturalised or registered by the Governor of the former Colony of Mauritius under that Act,

became a citizen of Mauritius on 12 March 1968.

(3) Every person who, having been born outside Mauritius, was on 11 March 1968 a citizen of the United Kingdom and Colonies, if either of his parents became, or would but for his death have become, a citizen of Mauritius by virtue of subsection (1) or subsection (2), became a citizen of Mauritius on 12 March 1968.

(4) For the purposes of this section, a person shall be regarded as having been born in Mauritius if he was born in the territories which were comprised in the former Colony of Mauritius immediately before 8 November 1965 but were not so comprised immediately before 12 March 1968 unless either of his parents was born in the territories which were comprised in the Colony of Seychelles immediately before 8 November 1965.

[S. 20 amended by Act 23 of 1995.]

21. Persons entitled to be registered as citizens

(1) Any person who, on 12 March 1968, was or had been married to another person—

(a) who became a citizen of Mauritius by virtue of section 20; or

(b) who, having died before 12 March 1968 would, but for his death, have become a citizen of Mauritius by virtue of section 20,

1. 1948 c 56 (UK).

shall be entitled, upon making application and, if he is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that, in the case of any person who, on 12 March 1968, was not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security or public policy.

(2) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application.

[S. 20 amended by Act 23 of 1995.]

22. Persons born in Mauritius after 11 March 1968

Every person born in Mauritius after 11 March 1968 shall become a citizen of Mauritius at the date of his birth:

Provided that a person shall not become a citizen of Mauritius by virtue of this section if at the time of his birth—

(a) neither of his parents is a citizen of Mauritius; or

(b) either of his parents is an enemy alien and the birth occurs in a place then under occupation by the enemy.

[S. 20 amended by Act 23 of 1995.]

23. Persons born outside Mauritius after 11 March 1968

A person born outside Mauritius after 11 March 1968 shall become a citizen of Mauritius at the date of his birth if at that date either of his parents is a citizen of Mauritius otherwise than by virtue of this section or section 20 (3).

[S. 20 amended by Act 23 of 1995.]

24. Marriage to a citizen of Mauritius

Any person who, after 11 March 1968, marries another person who is or becomes a citizen of Mauritius shall be entitled, upon making application in such manner as may be prescribed and, if he is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

[S. 20 amended by Act 23 of 1995.]

25. Commonwealth citizens

(1) Every person who under this Constitution or any other law is a citizen of Mauritius or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948[2], or continues to be a British subject under section 2 of that Act or is a British subject under the British Nationality Act 1965[3] shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Except as may be otherwise provided by regulations made by the Prime Minister, the countries to which this section applies are Antigua and Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Cyprus, Dominica, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, St. Christopher-Nevis, St Lucia, St Vincent, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom and Colonies, Vanuatu, Western Samoa and Zambia.

[S. 25 amended by Act 48 of 1991.]

26. Powers of Parliament

Parliament may make provision—

(a) for the acquisition of citizenship of Mauritius by persons who are not eligible or who are no longer eligible to become citizens of Mauritius by virtue of this Chapter;

(b) for depriving of his citizenship of Mauritius any person who is a citizen of Mauritius otherwise than by virtue of section 20, 22 or 23;

(c) for the renunciation by any person of his citizenship of Mauritius; or

(d) for the maintenance of a register of citizens of Mauritius who are also citizens of other countries.

[S. 26 amended by Act 23 of 1995.]

27. Interpretation

(1) In this Chapter, "British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948[4].

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

2. 1948 c 56 (UK).

3. 1965 c 34 (UK).

4. 1948 c 56 (UK).

(3) Any reference in this Chapter to the national status of the parent of a person at the time of that person's birth shall, in relation to a person born after the death of his parent, be construed as a reference to the national status of the parent at the time of the parent's death, and where that death occurred before 12 March 1968 and the birth occurred after 11 March 1968, the national status that the parent would have had if he had died on 12 March 1968 shall be deemed to be his national status at the time of his death.

[S. 20 amended by Act 23 of 1995.]

CHAPTER IV – THE PRESIDENT AND THE VICE-PRESIDENT OF THE REPUBLIC OF MAURITIUS

28. The President

(1) There shall be a President who shall—

(a) be the Head of State and Commander-in-Chief of the Republic of Mauritius;

(b) uphold and defend the Constitution and ensure that—

(i) the institutions of democracy and the rule of law are protected;

(ii) the fundamental rights of all are respected; and

(iii) the unity of the diverse Mauritian nation is maintained and strengthened.

(1A) Subject to section 64, the President shall, in the exercise of his functions under this Constitution or any other law, act in accordance with the principles set out in subsection (1) (b).

(2) (a) The President shall—

(i) be elected by the Assembly on a motion made by the Prime Minister and supported by the votes of a majority of all the members of the Assembly; and

(ii) subject to this section and section 30, hold office for a term of 5 years and shall be eligible for re-election.

(b) A motion under paragraph (a) shall not be the subject matter of a debate in the Assembly.

(3) No person shall be eligible for election to the office of President unless he is a citizen of Mauritius who is not less than 40 years of age and has resided in Mauritius for a period of not less than 5 years immediately preceding the election.

(4) Where a person is elected to the office of President, he shall not, whilst in office—

(a) hold any other office of emolument, whether under the Constitution or otherwise;

(b) exercise any profession or calling or engage in any trade or business.

(5) The President shall, at the expiry of his term, continue to hold office until another person assumes office as President.

(6) The office of the President shall become vacant—

(a) subject to subsection (5), at the expiry of his term of office;

(b) where he dies or resigns his office by writing addressed to the Assembly and delivered to the Speaker; or

(c) where he is removed or suspended from office under section 30.

(7) Where the office of President is vacant or the President is absent from Mauritius or is for any other reason unable to perform the functions of his office, those functions shall be performed—

(a) by the Vice-President; or

(b) where there is no Vice-President—

(i) elected under section 29 (2) or (7); and

(ii) able to perform the functions of the office of President,

by the Chief Justice.

(8) The person performing the functions of President under subsection (7) shall cease to perform those functions as soon as—

(a) another person is elected as President or the President resumes his office, as the case may be; or

(b) in the case of the Chief Justice, a Vice-President is elected under section 29 (2) or (7) and assumes office or the Vice-President resumes his office, as the case may be.

[S. 28 amended by Act 48 of 1991; s. 2 of Act 28 of 2003 w.e.f. 15 September 2003.]

29. The Vice-President

(1) Subject to subsection (7), there shall be a Vice-President of the Republic of Mauritius.

(2) The Vice-President shall—

(a) be elected in the manner specified in section 28 (2) (a) (i) and, subject to this section and section 30, hold office for a term of 5 years and be eligible for re-election;

(b) perform such functions as may be assigned to him by the President.

(3) No person shall be eligible for election to the office of Vice-President unless he satisfies the conditions specified in section 28 (3).

(4) Where a person is elected to the office of Vice-President, he shall not, whilst in office—

(a) hold any other office of emolument, whether under the Constitution or otherwise;

(b) exercise any profession or calling or engage in any trade or business.

(5) The Vice-President shall, at the expiry of his term, continue to hold office until another person assumes office as Vice-President.

(6) The office of the Vice-President shall become vacant—

(a) subject to subsection (5), at the expiry of his term of office;

(b) where he dies or resigns his office by writing addressed to the Assembly and delivered to the Speaker; or

(c) where he is removed or suspended from office under section 30.

(7) (a) Where the office of Vice-President is vacant, or the Vice-President is absent from Mauritius or is for any other reason unable to perform the functions of his office, those functions may be performed by such person as may be elected by the Assembly in the manner specified in section 28 (2) (a) (i).

(b) No person may be elected under paragraph (a) unless he satisfies the conditions specified in section 28 (3).

(8) The person performing the functions of Vice-President under subsection (7) shall cease to perform those functions as soon as another person is elected and assumes office as Vice-President or the Vice-President resumes his office, as the case may be.

[S. 29 amended by Act 48 of 1991.]

30. Removal of President and Vice-President

(1) The President or the Vice-President may be removed from office in accordance with this section for—

(a) violation of the Constitution or any other serious act of misconduct;

(b) inability to perform his functions whether arising from infirmity of mind or body or from any other cause.

(2) Where the President fails to comply with section 46 (2), he may be removed from office on a motion made by the Prime Minister in the Assembly and supported by the votes of a majority of all the members of the Assembly.

(3) The President or the Vice-President shall not be removed from office for any other cause unless—

(a) a motion that the circumstances requiring the removal of the President or the Vice-President be investigated by a tribunal is made in the Assembly by the Prime Minister;

(b) the motion states with full particulars the ground on which the removal of the President or the Vice-President is sought;

(c) the motion is supported by the votes of not less than two thirds of all the members of the Assembly;

(d) the tribunal, after its investigation, forwards a written report on the investigation addressed to the Assembly and delivered to the Speaker and recommends the removal of the President or the Vice-President; and

(e) subject to paragraph (f), a motion made by the Prime Minister and supported by the votes of a majority of all the members of the Assembly requires the removal of the President or the Vice-President on a recommendation to that effect by the tribunal;

(f) a motion under paragraph (e) is made—

(i) where the Assembly is sitting, within 20 days of the receipt of the report of the tribunal by the Speaker;

(ii) where the Assembly is not sitting, within 20 days of the day on which the Assembly resumes its sitting.

(4) The President or the Vice-President shall have the right to appear and to be represented before the tribunal during its investigation.

(5) Where the Assembly supports a motion under subsection (3) (c), it may suspend the President or the Vice-President from performing the functions of his office.

(6) A suspension under subsection (5) shall cease to have effect where—

(a) a report under subsection (3) (d) does not recommend that the President or the Vice-President ought to be removed from office; or

(b) the Assembly does not support a motion under subsection (3) (e) requiring the removal of the President or the Vice-President.

(7) Where the Assembly supports a motion under subsection (3) (e) requiring the removal of the President or the Vice-President, the office of the President or the Vice- President, as the case may be, shall become vacant.

(8) In this section, "tribunal" means a tribunal consisting of a Chairperson and 2 or 4 other members appointed by the Chief Justice from amongst persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from such a Court.

[S. 29 amended by Act 48 of 1991.]

30A. Privileges and immunities

(1) Subject to section 64 (5), no civil or criminal proceedings shall lie against the President or the Vice-President in respect of the performance by him of the functions of his office or in respect of any act done or purported to be done by him in the performance of those functions.

(2) Subject to section 64 (5), no process, warrant or summons shall be issued or executed against the President or the Vice-President during his term of office.

(3) The President or the Vice-President shall be entitled—

(a) without payment of any rent or tax, to the use of his official residence; and

(b) to such emoluments, allowances and privileges, exempt from any tax thereon, as may be prescribed.

(4) No alteration to any of the entitlements specified in subsection (3) which is to the disadvantage of the President or the Vice-President shall have effect without his consent.

[S. 30A inserted by Act 48 1991.]

30B. Oaths to be taken by President and Vice-President

(1) A person elected to the office of President or Vice-President or who assumes the functions of any of those offices shall, before assuming his functions, take and subscribe the appropriate oath set out in the Third Schedule.

(2) An oath under this section shall be administered by the Chief Justice.

[S. 30B inserted by Act 48 1991.]

CHAPTER V – PARLIAMENT

PART I – THE NATIONAL ASSEMBLY

31. Parliament of Mauritius

(1) There shall be a Parliament for Mauritius, which shall consist of the President and a National Assembly.

(2) The Assembly shall consist of persons elected in accordance with the First Schedule, which makes provision for the election of 70 members.

[S. 31 amended by Act 48 of 1991.]

32. Speaker and Deputy Speaker

(1) (a) The Assembly shall, at its first sitting after any general election, on motion supported by the votes of a majority of all the members of the Assembly elect—

(i) from among its members or otherwise, a Speaker;

(ii) from among its members, a Deputy Speaker.

(b) A motion under paragraph (a) shall not be the subject matter of a debate in the Assembly.

(2) A person who is a Minister shall not be qualified for election as Speaker or Deputy Speaker.

(3) The office of the Speaker or the Deputy Speaker shall become vacant—

(a) where—

(i) the Speaker, in the case of a Speaker who is a member of the Assembly; or

(ii) the Deputy Speaker,

ceases to be a member of the Assembly otherwise than by reason of the dissolution of the Assembly;

(b) where he—

(i) is convicted of a criminal offence punishable by imprisonment by a Court in any part of the Commonwealth;

(ii) is adjudged or otherwise declared bankrupt in any part of the Commonwealth; or

(iii) is adjudged to be of unsound mind or is detained as a criminal lunatic under any law in force in Mauritius; and

the Assembly passes a resolution supported by the votes of a majority of all the members requiring his removal from office;

(c) where he becomes a Minister;

(d) where the Assembly passes a resolution supported by the votes of two thirds of all the members requiring his removal from office;

(e) where the Assembly first sits after any general election;

(f) in the case of the Deputy Speaker, when the Assembly first sits after being prorogued;

(g) in the case of a Speaker who is not a member of the Assembly, where, without leave of the President previously being obtained, he is absent from the sittings of the Assembly for a continuous period of 3 months during any session for any reason other than his being in lawful custody in Mauritius;

(h) where he becomes a party to any contract with the Government for or on account of the public service, or where any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or where he becomes a partner in a firm or a director or manager of a company which is a party to any such contract, or where he becomes a trustee, manager or, with his consent, a beneficiary of a trust which is a party to any such contract.

(4) Where the office of the Speaker or the Deputy Speaker becomes vacant at any time, the Assembly, in the manner specified in subsection (1), shall, unless it is sooner dissolved, elect—

(a) from among its members or otherwise, a Speaker;

(b) from among its members, a Deputy Speaker.

(4A) No person shall be eligible for election as Speaker unless he is a citizen of Mauritius.

(4B) A person elected as Speaker shall not, whilst in office—

(a) hold any other office of emolument, whether under the Constitution or otherwise;

(b) exercise any profession or calling.

(5) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the Assembly and the office shall become vacant when the writing is received by the Clerk to the Assembly.

(6) No business shall be transacted in the Assembly (other than the election of a Speaker) at any time when the office of Speaker is vacant.

(7) Where a motion is presented for the purposes of subsection (3) (b) or (d), the Speaker or the Deputy Speaker, as the case may be, shall not preside over the proceedings of the Assembly at that sitting.

(8) (a) Notwithstanding any pending judicial proceedings by or against the Speaker or the Deputy Speaker or any thing contained in the Standing Orders of the Assembly, where a motion is presented to the Speaker by the Prime Minister for the purposes of subsection (3) (b) or (d), the motion shall—

(i) be required to specify the ground for such removal;

(ii) form part of the business of the Assembly when it first sits after presentation of the motion;

(iii) have priority over all other business of the Assembly;

(iv) be the subject matter of a debate in the Assembly;

(v) be put to the vote of members at that sitting.

(b) Where a motion presented by the Prime Minister for the purposes of subsection (3) (b) or (d) does not form part of the business of the Assembly as provided under paragraph (a) (ii), the Prime Minister may, before the commencement of the business at the sitting, table the text of the motion in the Assembly, and the motion shall thereupon be dealt with in accordance with this subsection.

[S. 32 amended by Act 2 of 1982; Act 36 of 1990; Act 1 of 1996.]

33. Qualifications for membership

Subject to section 34, a person shall be qualified to be elected as a member of the Assembly if, and shall not be so qualified unless, he—

(a) is a Commonwealth citizen of not less than the age of 18 years;

(b) has resided in Mauritius for a period of, or periods amounting in the aggregate to, not less than 2 years before the date of his nomination for election;

(c) has resided in Mauritius for a period of not less than 6 months immediately before that date; and

(d) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly.

34. Disqualifications for membership

(1) No person shall be qualified to be elected as a member of the Assembly who—

(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a power or State outside the Commonwealth;

(b) is a public officer or a local government officer;

(c) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government for or on account of the public service, and has not, within 14 days after his nomination as a candidate for election, published in the English language in the *Gazette* and in a newspaper circulating in the constituency for which he is a candidate, a notice setting out the nature of such contract and his interest, or the interest of any such firm or company, therein;

(d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged or has obtained the benefit of a *cessio bonorum* in Mauritius;

(e) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius;

(f) is under sentence of death imposed on him by a Court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) exceeding 12 months imposed on him by such a Court or substituted by competent authority for some other sentence imposed on him by such a Court, or is under such a sentence of imprisonment the execution of which has been suspended;

(g) is disqualified for election by any law in force in Mauritius by reason of his holding, or acting in, an office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election; or

(ii) any responsibility for the compilation or revision of any electoral register; or

(h) is disqualified for membership of the Assembly by any law in force in Mauritius relating to offences connected with elections.

(2) Where it is prescribed by Parliament that any office in the public service or the service of a local authority is not to be regarded as such an office for the purposes of this section, a person shall not be regarded for the purposes of this section as a public officer or a local government officer, as the case may be, by reason only that he holds, or is acting in, that office.

(3) For the purpose of this section—

(a) 2 or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) imprisonment in default of payment of a fine shall be disregarded.

35. Tenure of office of members

(1) The seat in the Assembly of a member shall become vacant—

(a) upon a dissolution of Parliament;

(b) where he ceases to be a Commonwealth citizen;

(c) where he becomes a party to any contract with Government for or on account of the public service, or where any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or where he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, where in the circumstances it appears to him to be just to do so, the Speaker (or, where the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may exempt any member from vacating his seat under this paragraph where such member, before becoming a party to such contract, or before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Speaker or, as the case may be, the Deputy Speaker the nature of such contract and his interest or the interest of any such firm or company therein;

(d) where he ceases to be resident in Mauritius;

(e) where, without leave of the Speaker (or, where the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) previously obtained, he is absent from the sittings of the Assembly for a continuous period of 3 months during any session for any reason other than his being in lawful custody in Mauritius;

(f) where any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of section 34 (1) (a), (b), (d), (e), (g) or (h);

(g) in the circumstances mentioned in section 36.

(2) A member of the Assembly may resign his seat by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by the Deputy Speaker or such other person as may be specified in the rules and orders of the Assembly.

(3) Where the seat in the Assembly of a member who represents a constituency becomes vacant otherwise than by reason of a dissolution of Parliament, the writ for an election to fill the vacancy shall, unless Parliament is sooner dissolved, be issued within 90 days of the occurrence of the vacancy.

[S. 35 amended by Act 2 of 1982.]

36. Vacation of seat on sentence

(1) Subject to this section, where a member of the Assembly is sentenced by a Court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding 12 months, he shall forthwith cease to perform his functions as a member of the Assembly and his seat in the Assembly shall become vacant at the expiration of a period of 30 days thereafter:

Provided that the Speaker (or, where the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may, at the request of the member, from time to time extend that period of 30 days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate 330 days shall not be given without the approval of the Assembly signified by resolution.

(2) Where at any time before the member vacates his seat, he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than 12 months or a punishment other than imprisonment is substituted, his seat in the Assembly shall not become vacant under subsection (1) and he may again perform his functions as a member of the Assembly.

(3) For the purpose of this section—

(a) 2 or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) imprisonment in default of payment of a fine shall be disregarded.

36A. Validity of previous elections

Notwithstanding any provision of this Constitution relating to the election of members of the Assembly or to their tenure of office as members of the Assembly, where, in relation to any general election held between 1 January 1967 and 30 September 1991, any person has committed an offence against an electoral law by reason of any act or omission in relation to the printing, publishing or posting of any bill, placard or poster, that act or omission shall not be held to—

(a) have affected or to affect the validity of the election of that person to the Assembly or of anything done by the Assembly or that member;

(b) have disqualified or to disqualify that person from membership of the Assembly.

[S. 36A inserted by Act 16 of 1992.]

37. Determination of questions as to membership

(1) The Supreme Court shall have jurisdiction to hear and determine any question whether—

(a) any person has been validly elected as a member of the Assembly;

(b) any person who has been elected as Speaker or Deputy Speaker was qualified to be so elected or has vacated the office of Speaker or Deputy Speaker, as the case may be; or

(c) any member of the Assembly has vacated his seat or is required, under section 36, to cease to perform his functions as a member of the Assembly.

(2) An application to the Supreme Court for the determination of any question under subsection (1) (a) may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General and, where it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the Supreme Court for the determination of any question under subsection (1) (b) may be made by any member of the Assembly or by the Attorney-General, and, where it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the Supreme Court for the determination of any question under subsection (1) (c) may be made—

(a) by any member of the Assembly or by the Attorney-General; or

(b) by any person registered in some constituency as an elector,

and, where it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) Parliament may make provision with respect to—

(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and

(b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(6) A determination by the Supreme Court in proceedings under this section shall not be subject to an appeal:

Provided that an appeal shall lie to the Judicial Committee in such cases as may be prescribed by Parliament.

(7) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

[S. 37 amended by Act 48 of 1991.]

38. Electoral Commissions

(1) There shall be an Electoral Boundaries Commission which shall consist of a Chairperson and not less than 2 nor more than 7 other members appointed by the President, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons as appear to the President, acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(2) There shall be an Electoral Supervisory Commission which shall consist of a Chairperson and not less than 2 nor more than 7 other members appointed by the President, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons as appear to the President, acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as a member of the Electoral Boundaries Commission or the Electoral Supervisory Commission if he is a member of, or a candidate for election to, the Assembly or any local authority or a public officer or a local government officer.

(4) Subject to this section, a member of the Electoral Boundaries Commission or the Electoral Supervisory Commission shall vacate his office—

(a) at the expiration of 5 years from the date of his appointment; or

(b) where any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) The provisions of section 92 (2) to (5) shall apply to a member of the Electoral Boundaries Commission or the Electoral Supervisory Commission as they apply to a Commissioner within the meaning of section 92.

[S. 38 amended by Act 48 of 1991; s. 3 of Act 28 of 2003 w.e.f. 15 September 2003.]

39. Constituencies

(1) There shall be 21 constituencies and accordingly—

(a) the Island of Mauritius shall be divided into 20 constituencies;

(b) Rodrigues shall form one constituency:

Provided that the Assembly may by resolution provide that any island forming part of Mauritius that is not comprised in the Island of Mauritius or Rodrigues shall be included in such one of the constituencies as the Electoral

Boundaries Commission may determine and with effect from the next dissolution of Parliament after the passing of any such resolution, this section shall have effect accordingly.

(2) The Electoral Boundaries Commission shall review the boundaries of the constituencies at such times as will enable them to present a report to the Assembly 10 years, as near as may be, after 12 August 1966 and, thereafter, 10 years after presentation of their last report:

Provided that the Commission may at any time carry out a review and present a report if it considers it desirable to do so by reason of the holding of an official census of the population of Mauritius and shall do so if a resolution is passed by the Assembly in pursuance of subsection (1).

(3) The report of the Electoral Boundaries Commission shall make recommendations for any alterations to the boundaries of the constituencies as appear to the Commission to be required so that the number of inhabitants of each constituency is as nearly equal as is reasonably practicable to the population quota:

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and the boundaries of administrative areas.

(4) The Assembly may, by resolution, approve or reject the recommendations of the Electoral Boundaries Commission but may not vary them; and, if so approved, the recommendations shall have effect as from the next dissolution of Parliament.

(5) In this section, "population quota" means the number obtained by dividing the number of inhabitants of the Island of Mauritius (including any island included in any constituency in the Island of Mauritius by virtue of any resolution under subsection (1)) according to the latest official census of the population of Mauritius by 20.

40. Electoral Commissioner

(1) There shall be an Electoral Commissioner, whose office shall be a public office and who shall be appointed by the Judicial and Legal Service Commission.

(2) No person shall be qualified to hold or act in the office of Electoral Commissioner unless he is qualified to practise as a barrister in Mauritius.

(3) Without prejudice to section 41, in the exercise of his functions under this Constitution, the Electoral Commissioner shall not be subject to the direction or control of any other person or authority.

41. Functions of Electoral Supervisory Commission and Electoral Commissioner

(1) The Electoral Supervisory Commission shall have general responsibility for, and shall supervise, the registration of electors for the election of

members of the Assembly and the conduct of elections of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

(2) The Electoral Commissioner shall have such powers and other functions relating to such registration and elections as may be prescribed, and he shall keep the Electoral Supervisory Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission and to refer to the Commission for their advice or decision any question relating to his functions.

(3) Every proposed Bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of the Assembly or to the election of such members shall be referred to the Electoral Supervisory Commission and to the Electoral Commissioner at such time as shall give them sufficient opportunity to make comments thereon before the Bill is introduced in the Assembly or, as the case may be, the regulation or other instrument is made.

(4) The Electoral Supervisory Commission may make such reports to the President concerning the matters under their supervision, or any draft Bill or instrument that is referred to them, as they may think fit and if the Commission so requests in any such report, other than a report on a draft Bill or instrument, that report shall be laid before the Assembly.

(5) The question whether the Electoral Commissioner has acted in accordance with the advice of or a decision of the Electoral Supervisory Commission shall not be enquired into in any Court of law.

[S. 41 amended by Act 48 of 1991.]

42. Qualifications of electors

(1) Subject to section 43, a person shall be entitled to be registered as an elector if, and shall not be so entitled unless—

(a) he is a Commonwealth citizen of not less than the age of 18 years; and

(b) either he has resided in Mauritius for a period of not less than 2 years immediately before such date as may be prescribed by Parliament or he is domiciled in Mauritius and is resident there on the prescribed date.

(2) No person shall be entitled to be registered as an elector—

(a) in more than one constituency; or

(b) in any constituency in which he is not resident on the prescribed date.

43. Disqualifications of electors

No person shall be entitled to be registered as an elector who—

(a) is under sentence of death imposed on him by a Court in any part of the Commonwealth, or is serving a sentence of imprisonment

(by whatever name called) exceeding 12 months imposed on him by such a Court or substituted by competent authority for some other sentence imposed on him by such a Court, or is under such a sentence of imprisonment the execution of which has been suspended;

(b) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius; or

(c) is disqualified for registration as an elector by any law in force in Mauritius relating to offences connected with elections.

44. Right to vote at elections

(1) Any person who is registered as an elector in a constituency shall be entitled to vote in such manner as may be prescribed at any election for that constituency unless he is prohibited from so voting by any law in force in Mauritius because—

(a) he is a returning officer; or

(b) he has been concerned in any offence connected with elections:

Provided that no such person shall be entitled so to vote if on the date prescribed for polling he is in lawful custody or (except in so far as may otherwise be prescribed) he is for any other reason unable to attend in person at the place and time prescribed for polling.

(2) No person shall vote at any election for any constituency who is not registered as an elector in that constituency.

PART II – LEGISLATION AND PROCEDURE IN NATIONAL ASSEMBLY

45. Power to make laws

(1) Subject to this Constitution, Parliament may make laws for the peace, order and good government of Mauritius.

(2) Without prejudice to subsection (1), Parliament may by law determine the privileges, immunities and powers of the Assembly and its members.

46. Mode of exercise of legislative power

(1) The power of Parliament to make laws shall be exercisable by Bills passed by the Assembly and assented to by the President.

(2) (a) Subject to paragraphs (b) and (c), where a Bill is submitted to the President for assent in accordance with this Constitution, he shall signify that he assents or that he withholds assent.

(b) The President shall not withhold assent under paragraph (a)—

(i) in the case of a Bill which makes provision for any of the purposes specified in section 54;

(ii) in the case of a Bill which amends any provision of the Constitution and which is certified by the Speaker as having complied with the requirements of section 47;

(iii) in the case of any other Bill, unless he is of opinion, acting in his own deliberate judgment, that the Bill, including any proposed amendment thereto, should be reconsidered by the Assembly.

(c) Where the President withholds assent under paragraph (b) (iii), he shall, within 21 days of the submission of the Bill for assent, return the Bill to the Assembly with a request that it should reconsider the Bill, including any proposed amendment thereto.

(d) Where a Bill is returned to the Assembly under paragraph (c), the Assembly shall reconsider the Bill accordingly, and where it is passed again by the Assembly with or without amendment and submitted anew to the President for assent, the President shall signify his assent.

(3) Where the President assents to a Bill that has been submitted to him in accordance with this Constitution, the Bill shall become law and the President shall thereupon cause it to be published in the *Gazette* as a law.

(4) No law made by Parliament shall come into operation until it has been published in the *Gazette* but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(5) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Mauritius".

[S. 46 amended by Act 48 of 1991.]

47. Alteration of Constitution

(1) Subject to this section, Parliament may alter this Constitution.

(2) A Bill for an Act of Parliament to alter any of the following provisions of this Constitution—

(a) this section;

(b) sections 28 to 31, 37 to 46, 56 to 58 other than 57 (2), 64, 65, 71, 72 and 108;

(c) Chapters II, VII, VIII and IX;

(d) the First Schedule; and

(e) Chapter XI, to the extent that it relates to any of the provisions specified in paragraphs (a) to (d),

shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

(3) A Bill for an Act of Parliament to alter the provisions of section 1 or 57 (2) shall not be passed by the Assembly unless—

(a) the proposed Bill has before its introduction in the Assembly been submitted, by referendum, to the electorate of Mauritius and has been approved by the votes of not less than three quarters of the electorate;

(b) it is supported at the final voting in the Assembly by the votes of all the members of the Assembly.

(4) A Bill for an Act of Parliament to alter any provision of this Constitution (but which does not alter any of the provisions of this Constitution as specified in subsection (2)) shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than two thirds of all the members of the Assembly.

(5) In this section, references to altering this Constitution or any part of this Constitution include references to—

(a) revoking it, with or without re-enactment or the making of different provision;

(b) modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and

(c) suspending its operation for any period, or terminating any such suspension.

[S. 47 amended by Act 2 of 1982; Act 48 of 1991.]

48. Regulation of procedure in National Assembly

Subject to this Constitution, the Assembly may regulate its own procedure and may, in particular, make rules for the orderly conduct of its own proceedings.

[S. 48 amended by Act 48 of 1991.]

49. Official language

The official language of the Assembly shall be English but any member may address the chair in French.

50. Presiding in National Assembly

The Speaker or in his absence the Deputy Speaker, or in their absence a member of the Assembly (not being a Minister) elected by the Assembly for the sitting, shall preside at any sitting of the Assembly.

[S. 50 amended by Act 2 of 1982; Act 48 of 1991.]

51. National Assembly may transact business notwithstanding vacancies

The Assembly may act, notwithstanding any vacancy in its membership, (including any vacancy not filled when the Assembly first meets after any general election) and the presence or participation of any person not entitled to be present at, or to participate in, the proceedings of the Assembly shall not invalidate those proceedings.

[S. 51 amended by Act 2 of 1982; Act 48 of 1991.]

52. Quorum

(1) Where at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the

transaction of business and, after such interval as may be prescribed by the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section, a quorum shall consist of 17 members of the Assembly in addition to the person presiding.

53. Voting

(1) Except as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting; and a member of the Assembly shall not be precluded from so voting by reason only that he holds the office of Speaker or Deputy Speaker or is presiding in the Assembly.

(2) Where, upon any question before the Assembly that falls to be determined by a majority of the members present and voting, the votes cast are equally divided, the Speaker, whether he is a member of the Assembly or not, or any other person presiding, shall have and shall exercise a casting vote.

[S. 53 amended by Act 1 of 1996.]

54. Bills, motions and petitions

Except upon the recommendation of a Minister, the Assembly shall not—

(a) proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the Consolidated Fund or other public funds of Mauritius or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Fund or other public funds of Mauritius of any money not charged on it or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt to the Government;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes; or

(c) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

55. Oath of allegiance

(1) No member of the Assembly shall take part in the proceedings of the Assembly (other than proceedings necessary for the purposes of this section) until he has taken and subscribed before the Assembly the oath of allegiance prescribed in the Third Schedule.

(2) Where a person other than a member of the Assembly is elected as Speaker, he shall not preside at any sitting of the Assembly unless he has taken and subscribed before the Assembly the oath of allegiance prescribed in the Third Schedule.

[S. 55 amended by Act 1 of 1996.]

56. Sessions

(1) The sessions of the Assembly shall be held in such place and begin at such time as the President by Proclamation may appoint:

Provided that the place at which any session of the Assembly is to be held may be altered from time to time during the course of the session by further Proclamation made by the President.

(2) A session of the Assembly shall be held from time to time so that a period of 12 months shall not intervene between the last sitting of the Assembly in one session and its first sitting in the next session.

(3) The President may address the Assembly at the first sitting of every session.

(4) Writs for a general election of members of the Assembly shall be issued within 60 days of the date of any dissolution of Parliament and a session of the Assembly shall be appointed to commence within 30 days of the date prescribed for polling at any general election.

[S. 56 amended by Act 2 of 1982; Act 48 of 1991.]

57. Prorogation and dissolution of Parliament

(1) The President, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament:

Provided that—

(a) where the Assembly passes a resolution that it has no confidence in the Government and—

(i) the Prime Minister does not within 3 days either resign from his office or advise the President to dissolve Parliament within 7 days or at such later time as the President, acting in his own deliberate judgment, may consider reasonable, the President, acting in his own deliberate judgment, may dissolve Parliament; or

(ii) the Prime Minister resigns from his office and, before resigning, advises the President to dissolve Parliament, the President may, where he has reason to believe that another person is capable of forming a Government with the confidence of a majority in the Assembly, and acting in his own deliberate judgment, decline to act on the advice of the Prime Minister and may invite that other person to form a Government;

(b) where the office of Prime Minister is vacant and the President considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly, the President, acting in his own deliberate judgment, may dissolve Parliament.

(2) Parliament, unless sooner dissolved, shall continue for 5 years from the date of the first sitting of the Assembly after any general election and shall then stand dissolved.

(3) At any time when Mauritius is at war, Parliament may from time to time extend the period of 5 years specified in subsection (2) by not more than 12 months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than 5 years.

(4) At any time when there is in force a Proclamation by the President declaring, for the purposes of section 19 (7) (b), that a state of public emergency exists, Parliament may from time to time extend the period of 5 years specified in subsection (2) by not more than 6 months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than one year.

(5) Where, after a dissolution and before the holding of the election of members of the Assembly, the Prime Minister advises the President that, owing to the existence of a state of war or of a state of emergency in Mauritius or any part thereof, it is necessary to recall Parliament, the President shall summon the Parliament that has been dissolved to meet.

(6) Unless the life of Parliament is extended under subsection (3) or subsection (4), the election of members of the Assembly shall proceed, notwithstanding the summoning of Parliament under subsection (5) and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day before the day prescribed for polling at that election.

[S. 57 amended by Act 2 of 1982; Act 48 of 1991; s. 4 of Act 28 of 2003 w.e.f. 15 September 2003.]

CHAPTER VI – THE EXECUTIVE

58. Executive authority of Mauritius

(1) The executive authority of Mauritius is vested in the President.

(2) Except as otherwise provided in this Constitution, that authority may be exercised by the President either directly or through officers subordinate to him.

(3) Nothing in this section shall preclude persons or authorities, other than the President, from exercising such functions as may be conferred upon them by any law.

[S. 58 amended by Act 48 of 1991.]

59. Ministers

(1) There shall be a Prime Minister and a Deputy Prime Minister who shall be appointed by the President.

(2) There shall be, in addition to the offices of Prime Minister, Deputy Prime Minister and Attorney-General, such other offices of Minister of the Government as may be prescribed by Parliament or, subject to any law, established by the President, acting in accordance with the advice of the Prime Minister:

Provided that the number of offices of Minister, other than the Prime Minister, shall not be more than 24.

(3) The President, acting in his own deliberate judgment, shall appoint as Prime Minister the member of the Assembly who appears to him best able to command the support of the majority of the members of the Assembly, and shall, acting in accordance with the advice of the Prime Minister, appoint the Deputy Prime Minister, the Attorney-General and the other Ministers from among the members of the Assembly:

Provided that—

(a) where occasion arises for making an appointment while Parliament is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed; and

(b) a person may be appointed Attorney-General, notwithstanding that he is not (or, as the case may be, was not) a member of the Assembly.

[S. 59 amended by Act 2 of 1982; Act 37 of 1991; Act 48 of 1991.]

60. Tenure of office of Ministers

(1) Where a resolution of no confidence in the Government is passed by the Assembly and the Prime Minister does not within 3 days resign from his office, the President shall remove the Prime Minister from office unless, in pursuance of section 57 (1), Parliament has been or is to be dissolved in consequence of such resolution.

(2) Where at any time between the holding of a general election and the first sitting of the Assembly thereafter the President, acting in his own deliberate judgment, considers that, in consequence of changes in the membership of the Assembly resulting from that general election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly, the President may remove the Prime Minister from office:

Provided that the President shall not remove the Prime Minister from office within the period of 10 days immediately following the date prescribed for polling at that general election unless he is satisfied that a party or party alliance in opposition to the Government and registered for the purposes of that general election under paragraph 2 of the First Schedule has at that general election gained a majority of all seats in the Assembly.

(3) The office of Prime Minister or any other Minister shall become vacant—

(a) where he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament; or

(b) where, at the first sitting of the Assembly after any general election, he is not a member of the Assembly:

Provided that paragraph (b) shall not apply to the office of Attorney-General where the holder thereof was not a member of the Assembly on the preceding dissolution of Parliament.

(4) The office of a Minister (other than the Prime Minister) shall become vacant—

(a) where the President, acting in accordance with the advice of the Prime Minister, so directs;

(b) where the Prime Minister resigns from office within 3 days after the passage by the Assembly of a resolution of no confidence in the Government or is removed from office under subsection (1) or (2); or

(c) upon the appointment of any person to the office of Prime Minister.

(5) Where for any period the Prime Minister or any other Minister is unable by reason of section 36 (1) to perform his functions as a member of the Assembly, he shall not during that period perform any of his functions as Prime Minister or Minister, as the case may be.

[S. 60 amended by Act 2 of 1982; Act 48 of 1991.]

61. The Cabinet

(1) There shall be a Cabinet for Mauritius consisting of the Prime Minister and the other Ministers.

(2) The functions of the Cabinet shall be to advise the President in the government of Mauritius and the Cabinet shall be collectively responsible to the Assembly for any advice given to the President by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in execution of his office.

(3) Subsection (2) shall not apply in relation to—

(a) the appointment and removal from office of Ministers and Junior Ministers, the assigning of responsibility to any Minister under section 62, or the authorisation of another Minister to perform the functions of the Prime Minister during absence or illness;

(b) the dissolution of Parliament; or

(c) the matters referred to in section 75.

[S. 61 amended Act 2 of 1982; Act 48 of 1991; Act 3 of 1996.]

62. Assignment of responsibilities to Ministers

The President, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of Government.

[S. 62 amended by Act 48 of 1991; Act 3 of 1996.]

63. Performance of functions of Prime Minister during absence or illness

(1) Where the Prime Minister is absent from Mauritius or is by reason of illness or of section 60 (5) unable to perform the functions conferred on him by this Constitution, the President may, by directions in writing, authorise the Deputy Prime Minister or, in his absence, some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the President.

(2) The powers of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that where the President, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's absence or illness, or where the Prime Minister is unable to tender advice by reason of section 60 (5), the President may exercise those powers without that advice and in his own deliberate judgment.

[S. 63 amended by Act 2 of 1982; Act 48 of 1991.]

64. Exercise of President's functions

(1) In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or in his own deliberate judgment.

(2) The President may request the Cabinet to reconsider any advice tendered by it and shall act in accordance with such advice as may be tendered by the Cabinet after such reconsideration.

(3) Where the President so requests, the Prime Minister shall submit for the consideration of the Cabinet any matter on which a policy decision has been taken by a Minister but which has not been considered by the Cabinet.

(4) Where the President is directed by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) (a) Subject to paragraphs (b) and (c), where the President is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether in fact he has so acted shall not be called in question in any Court of law.

(b) Where the President dissolves Parliament otherwise than under the proviso to section 57, the Prime Minister may, by motion, request the Supreme Court to enquire into the decision.

(c) Upon the hearing of a motion under paragraph (b), the Supreme Court shall determine whether or not the President has acted in accordance with the advice of the Prime Minister and where the Supreme Court declares that the President has not acted in accordance with such advice, the dissolution of the Parliament shall, subject to section 57 (2), have no effect.

(6) During any period in which the office of Leader of the Opposition is vacant by reason that there is no such opposition party as is referred to in section 73 (2) (a) and the President, acting in his own deliberate judgment, is of the opinion that no member of the Assembly would be acceptable to the leaders of the opposition parties for the purposes of section 73 (2) (b) or by reason that there are no opposition parties for the purposes of that section, the operation of any provision of this Constitution shall, to the extent that it requires the President, the Prime Minister or the Public Service Commission to consult the Leader of the Opposition, be suspended.

[S. 64 amended by Act 48 of 1991.]

65. President to be kept informed

The Prime Minister shall keep the President fully informed concerning the general conduct of the Government of Mauritius and shall furnish the President with such information as he may request with respect to any particular matter relating to the Government of Mauritius.

[S. 65 amended by Act 48 of 1991.]

66. Junior Ministers

(1) Subject to this section, the President, acting in accordance with the advice of the Prime Minister, may appoint Junior Ministers from among the members of the Assembly to assist Ministers in the performance of their duties.

(2) The number of Junior Ministers shall not exceed 10.

(3) Where occasion arises for making appointments while the Assembly is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed as a Junior Minister.

(4) The office of a Junior Minister shall become vacant—

(a) where the President, acting in accordance with the advice of the Prime Minister, so directs;

(b) where the Prime Minister resigns from office within 3 days after the passage by the Assembly of a resolution of no confidence in the Government or is removed from office under section 60 (1) or (2);

(c) upon the appointment of a person to the office of Prime Minister;

(d) where the holder of the office ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament; or

(e) where at the first sitting of the Assembly after any election, the holder of the office is not a member of the Assembly.

(5) Where for any period a Junior Minister is unable by reason of section 36 (1) to perform his functions as a member of the Assembly, he shall not during that period perform any of his functions as a Junior Minister.

[S. 66 amended by Act 3 of 1996.]

67. Oaths to be taken by Ministers and Junior Ministers

A Minister or a Junior Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by the Third Schedule.

[S. 67 amended by Act 48 of 1991; Act 3 of 1996.]

68. Direction of Government departments

Where any Minister has been charged with responsibility for the administration of any department of Government, he shall exercise general direction and control over that department and, subject to such direction and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Minister) shall be under the supervision of a Permanent Secretary or of some other supervising officer whose office shall be a public office:

Provided that—

(a) any such department may be under the joint supervision of 2 or more supervising officers; and

(b) different parts of any such department may respectively be under the supervision of different supervising officers.

69. Attorney-General

(1) There shall be an Attorney-General who shall be principal legal adviser to the Government of Mauritius.

(2) The office of Attorney-General shall be the office of a Minister.

(3) No person shall be qualified to hold the office of Attorney-General unless he is entitled to practise as a barrister in Mauritius, and no person who is not a member of the Assembly shall be qualified to hold the office if he is for any cause disqualified from membership of the Assembly:

Provided that a person may hold the office of Attorney-General notwithstanding that he holds or is acting in a public office (not being the office of Director of Public Prosecutions).

(4) Where the person holding the office of Attorney-General is not a member of the Assembly, he shall be entitled to take part in the proceedings of the Assembly, and this Constitution and any other law shall apply to him as if he were a member of the Assembly:

Provided that he shall not be entitled to vote in the Assembly.

(5) Where the person holding the office of Attorney-General is for any reason unable to exercise the functions conferred upon him by or under any law, those functions may be exercised by such other person, being a person entitled to practise as a barrister in Mauritius (whether or not he is a member of the Assembly), as the President, acting in accordance with the advice of the Prime Minister, may direct.

[S. 69 amended by Act 48 of 1991.]

70. Secretary to Cabinet

(1) There shall be a Secretary to Cabinet whose office shall be a public office.

(2) The Secretary to Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet or any of its committees and for conveying the decisions of the Cabinet or any of its committees to the appropriate person or authority, and shall have such other functions as the Prime Minister may direct.

71. Commissioner of Police

(1) There shall be a Commissioner of Police whose office shall be a public office.

(2) The Police Force shall be under the command of the Commissioner of Police.

(3) The Prime Minister, or such other Minister as may be authorised in that behalf by the Prime Minister, may give to the Commissioner of Police such general directions of policy with respect to the maintenance of public safety and public order as he may consider necessary and the Commissioner shall comply with such directions or cause them to be complied with.

(4) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 62 for the organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and controlling the operations of the Force and, except as provided in subsection (3), the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority.

72. Director of Public Prosecutions

(1) There shall be a Director of Public Prosecutions whose office shall be a public office and who shall be appointed by the Judicial and Legal Service Commission.

(2) No person shall be qualified to hold or act in the office of Director or Public Prosecutions unless he is qualified for appointment as a Judge of the Supreme Court.

(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do to—

(a) institute and undertake criminal proceedings before any Court of law (not being a Court established by a disciplinary law);

(b) take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under subsection (3) may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(5) The powers conferred upon the Director of Public Prosecutions by subsection (3) (b) and (c) shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the Court.

(6) In the exercise of the powers conferred upon him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(7) For the purposes of this section, any appeal from any determination in any criminal proceedings before any Court, or any case stated or question of law reserved for the purposes of any such proceedings to any other Court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (3) (c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such a person.

73. Leader of Opposition

(1) There shall be a Leader of the Opposition who shall be appointed by the President.

(2) Where the President has occasion to appoint a Leader of the Opposition, he shall in his own deliberate judgment appoint—

(a) where there is one opposition party whose numerical strength in the Assembly is greater than the strength of any other opposition party, the member of the Assembly who is the leader in the Assembly of that party; or

(b) where there is no such party, the member of the Assembly whose appointment would, in the judgment of the President, be most acceptable to the leaders in the Assembly of the opposition parties:

Provided that, where occasion arises for making an appointment while Parliament is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed Leader of the Opposition.

(3) The office of the Leader of the Opposition shall become vacant—

(a) where, after any general election, he is informed by the President that the President is about to appoint another person as Leader of the Opposition;

(b) where, under section 36 (1), he is required to cease to perform his functions as a member of the Assembly;

(c) where he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament;

(d) where, at the first sitting of the Assembly after any general election, he is not a member of the Assembly; or

(e) where his appointment is revoked under subsection (4).

(4) Where the President, acting in his own deliberate judgment, considers that a member of the Assembly, other than the Leader of the Opposition, has become the leader in the Assembly of the opposition party having the greatest numerical strength in the Assembly or, as the case may be, the Leader of the Opposition is no longer acceptable as such to the leaders of the opposition parties in the Assembly, the President may revoke the appointment of the Leader of the Opposition.

(5) For the purposes of this section, "opposition party" means a group of members of the Assembly whose number includes a leader who commands their support in opposition to the Government.

[S. 73 amended by Act 2 of 1982; Act 48 of 1991.]

73A. —

[S. 73A inserted by Act 31 of 2000; repealed by s. 2 of Act 33 of 2001 w.e.f. 24 December 2001.]

74. Constitution of offices

Subject to this Constitution and any other law, the President may constitute offices for Mauritius, make appointments to any such office and terminate any such appointment.

[S. 74 amended by Act 48 of 1991.]

75. Prerogative of mercy

(1) The President may—

(a) grant to any person convicted of any offence a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

(c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or

(d) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the State on account of any offence.

(2) There shall be a Commission on the Prerogative of Mercy (referred to in this section as "the Commission") consisting of a Chairperson and not less than 2 other members appointed by the President, acting in his own deliberate judgment.

(3) A member of the Commission shall vacate his seat on the Commission—

(a) at the expiration of any term of appointment specified in the instrument of his appointment; or

(b) where his appointment is revoked by the President, acting in his own deliberate judgment.

(4) (a) In the exercise of the powers conferred upon him by subsection (1), the President shall act in accordance with the advice of the Commission.

(b) The President may request the Commission to reconsider any advice tendered by it and shall act in accordance with such advice as may be tendered by the Commission after such reconsideration.

(5) The validity of the transaction of business by the Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(6) Where any person has been sentenced to death (otherwise than by a Court martial) for an offence, a report on the case by the Judge who presided at the trial (or, where a report cannot be obtained from that Judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Commission shall be taken into consideration at a meeting of the Commission which shall then advise the President whether or not to exercise his powers under subsection (1) in that case.

(7) This section shall not apply in relation to any conviction by a Court established under the law of a country other than Mauritius that has jurisdiction in Mauritius in pursuance of arrangements made between the Government

of Mauritius and another Government or an international organisation relating to the presence in Mauritius of members of the armed forces of that other country or in relation to any punishment imposed in respect of any such conviction or any penalty or forfeiture resulting from any such conviction.

[S. 75 amended by Act 48 of 1991; s. 5 of Act 28 of 2003 w.e.f. 15 September 2003.]

CHAPTER VIA – THE RODRIGUES REGIONAL ASSEMBLY

[Chapter VIA (sections 75A to 75E) inserted by s. 2 of Act 32 of 2001 w.e.f. 18 January 2002.]

75A. The Rodrigues Regional Assembly

(1) There shall be a Regional Assembly for Rodrigues to be known as "the Rodrigues Regional Assembly", in this Chapter referred to as "the Regional Assembly".

(2) The Regional Assembly shall consist of a Chairperson, who need not be an elected member of the Regional Assembly, and such other members elected and holding office on such terms and conditions as may be prescribed.

[S. 75A inserted by s. 2 of Act 32 of 2001 w.e.f. 18 January 2002.]

75B. Powers of Regional Assembly

(1) Subject to this Constitution, the Regional Assembly—

(a) shall have such powers and functions as may be prescribed and, in particular, the power to propose and adopt Bills in relation to the matters for which it shall be responsible, which Bills, when adopted by Parliament in such manner as may be prescribed, shall be known as Regional Assembly Laws and shall be so designated in the Short Title;

(b) may make regulations which shall be known as Regional Assembly Regulations and shall be so designated in the Heading.

(2) Regional Assembly Laws and Regional Assembly Regulations shall apply only to Rodrigues.

[S. 75B inserted by s. 2 of Act 32 of 2001 w.e.f. 18 January 2002.]

75C. Executive Council

(1) There shall be an Executive Council of the Regional Assembly comprising of the Chief Commissioner, the Deputy Chief Commissioner and such number of Commissioners as may be prescribed.

(2) The Chief Commissioner, the Deputy Chief Commissioner and the Commissioners shall be elected or appointed in such manner as may be prescribed.

(3) The Chief Commissioner and the other Commissioners shall have such powers and exercise such functions as may be prescribed.

[S. 75C inserted by s. 2 of Act 32 of 2001 w.e.f. 18 January 2002.]

75D. Rodrigues Capital and Consolidated Funds

There is established—

(a) a Fund to be known as "the Rodrigues Capital Fund" which shall consist of such funds as may be specified for the purposes of development;

(b) a Fund to be known as the "Rodrigues Consolidated Fund" which shall consist of—

(i) such monies as may every year be appropriated by the National Assembly for the recurrent expenditure of the Regional Assembly;

(ii) such other recurrent revenue as the Regional Assembly may lawfully collect.

[S. 75D inserted by s. 2 of Act 32 of 2001 w.e.f. 18 January 2002.]

75E. Alteration of certain written laws

Subject to the provisions of the Constitution, any law giving effect to this Chapter and to any matters incidental thereto shall not be altered without the concurrence of the Regional Assembly unless such alteration is supported at the final voting in the National Assembly by the votes of not less than two thirds of all the members.

[S. 75E inserted by s. 2 of Act 32 of 2001 w.e.f. 18 January 2002.]

CHAPTER VII – THE JUDICATURE

76. Supreme Court

(1) There shall be a Supreme Court for Mauritius which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law and such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) Subject to section 77, the Judges of the Supreme Court shall be the Chief Justice, the Senior Puisne Judge and such number of Puisne Judges as may be prescribed by Parliament:

Provided that the office of a Judge shall not be abolished while any person is holding that office unless he consents to its abolition.

77. Appointment of Judges of Supreme Court

(1) The Chief Justice shall be appointed by the President, acting after consultation with the Prime Minister.

(2) The Senior Puisne Judge shall be appointed by the President, acting in accordance with the advice of the Chief Justice.

(3) The Puisne Judges shall be appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.

(4) No person shall be qualified for appointment as a Judge of the Supreme Court unless he is, and has been for at least 5 years, a barrister entitled to practise before the Supreme Court.

(5) Where the office of Chief Justice is vacant or the person holding that office is for any reason unable to perform the functions of the office, those functions shall be discharged by such one of the other Judges of the Supreme Court as may be designated in that behalf by the President acting in accordance with the advice of the person holding the office of Chief Justice:

Provided that if the office of Chief Justice is vacant or if the person holding that office is on leave of absence, pending retirement, or if the President, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of that person owing to that person's absence or illness, the President shall act after consultation with the Prime Minister.

(6) Where the office of Senior Puisne Judge is vacant or the person holding that office is acting as Chief Justice or is for any reason unable to perform the functions of the office, such one of the Judges of the Supreme Court as the President, acting in accordance with the advice of the Chief Justice, may appoint shall act in the office of Senior Puisne Judge.

(7) Where the office of any Puisne Judge is vacant or where a person holding the office of Puisne Judge is acting as Chief Justice or as Senior Puisne Judge or is for any reason unable to perform the functions of his office or where the Prime Minister, having been informed by the Chief Justice that the state of business in the Supreme Court requires that the number of Judges should be temporarily increased and having consulted with the Chief Justice, request the President to appoint an additional Judge, the President, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint a person qualified for appointment as a Judge of the Supreme Court to act as a Puisne Judge of that Court:

Provided that a person may act as a Puisne Judge notwithstanding that he has attained the age prescribed for the purposes of section 78 (1).

(8) Any person appointed under this section to act as a Puisne Judge shall, unless he is removed from office under section 78, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Chief Justice:

Provided that a person whose appointment to act as a Puisne Judge has expired or has been revoked may, with the permission of the President, acting in accordance with the advice of the Chief Justice, continue to act as such for such a period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

[S. 77 amended by Act 48 of 1991.]

78. Tenure of office of Judges of Supreme Court

(1) Subject to this section, a person holding the office of a Judge of the Supreme Court shall vacate that office on attaining the retiring age:

Provided that he may, with the permission of the President, acting in his own deliberate judgment, in the case of the Chief justice or in any other case, in accordance with the advice of the Chief Justice, continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A Judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A Judge of the Supreme Court shall be removed from office by the President where the question of removing him from office has, pursuant to subsection (4), been referred to the Judicial Committee and the Judicial Committee has advised that the Judge ought to be removed from office for inability or misbehaviour.

(4) Where the Chief Justice or, in relation to the removal of the person holding the office of Chief Justice, the President considers that the question of removing a Judge of the Supreme Court from office for inability or misbehaviour ought to be investigated—

(a) the President shall appoint a tribunal, which shall consist of a Chairperson and not less than 2 other members, selected by the President from among persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court;

(b) the tribunal shall enquire into the matter and report on the facts to the President and recommend to the President whether the question of removing the Judge from office should be referred to the Judicial Committee; and

(c) where the tribunal so recommends, the President shall refer the question accordingly.

(5) Where the question of removing a Judge of the Supreme Court from office has been referred to a tribunal under subsection (4), the President may suspend the Judge from performing the functions of his office; and any such suspension may at any time be revoked by the President and shall in any case cease to have effect—

(a) where the tribunal recommends to the President that he should not refer the question of removing the Judge from office to the Judicial Committee; or

(b) where the Judicial Committee advises that the Judge ought not to be removed from office.

(6) The functions of the President under this section shall be exercised by him in his own deliberate judgment.

(7) The retiring age for the purposes of subsection (1) shall be the age of 62 years or such other age as may be prescribed by Parliament:

Provided that a provision of any Act of Parliament, to the extent that it alters the age at which Judges of the Supreme Court shall vacate their offices, shall not have effect in relation to a Judge after his appointment unless he consents to its having effect.

[S. 78 amended by Act 48 of 1991.]

79. Oaths to be taken by Judges

A Judge of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by the Third Schedule.

80. Courts of Appeal

(1) There shall be a Court of Civil Appeal and a Court of Criminal Appeal for Mauritius, each of which shall be a division of the Supreme Court.

(2) The Court of Civil Appeal shall have such jurisdiction and powers to hear and determine appeals in civil matters and the Court of Criminal Appeal shall have such jurisdiction and powers to hear and determine appeals in criminal matters as may be conferred upon them respectively by this Constitution or any other law.

(3) The Judges of the Court of Civil Appeal and the Court of Criminal Appeal shall be the Judges for the time being of the Supreme Court.

81. Appeals to Judicial Committee

(1) An appeal shall lie from decisions of the Court of Appeal or the Supreme Court to the Judicial Committee as of right in the following cases—

(a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;

(b) where the matter in dispute on the appeal to the Judicial Committee is of the value of 10,000 rupees or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of 10,000 rupees or upwards, final decisions in any civil proceedings;

(c) final decisions in proceedings under section 17; and

(d) in such other cases as may be prescribed by Parliament:

Provided that no such appeal shall lie from decisions of the Supreme Court in any case in which an appeal lies as of right from the Supreme Court to the Court of Appeal.

(2) An appeal shall lie from decisions of the Court of Appeal or of the Supreme Court to the Judicial Committee with the leave of the Court in the following cases—

(a) where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Judicial Committee, final decisions in any civil proceedings; and

(b) in such other cases as may be prescribed by Parliament:

Provided that no such appeal shall lie from decisions of the Supreme Court in any case in which an appeal lies to the Court of Appeal, either as of right or by the leave of the Court of Appeal.

(3) Subsections (1) and (2) shall be subject to section 37 (6) and paragraphs 2 (5), 3 (2) and 4 (4) of the First Schedule.

(4) In this section, the references to final decisions of a Court do not include any determination of a Court that any application made to it is merely frivolous or vexatious.

(5) Nothing in this section shall affect any right of the Judicial Committee to grant special leave to appeal from the decision of any Court in any civil or criminal matter.

[S. 81 amended by Act 48 of 1991.]

82. Supreme Court and subordinate Courts

(1) The Supreme Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate Court and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such Court.

(2) An appeal shall lie to the Supreme Court from decisions of subordinate Courts in the following cases—

(a) as of right from any final decision in any civil proceedings;

(b) as of right from any final decision in criminal proceedings whereby any person is adjudged to pay a fine of or exceeding such amount as may be prescribed or to be imprisoned with or without the option of a fine;

(c) by way of case stated, from any final decision in criminal proceedings on the ground that it is erroneous in point of law or in excess of jurisdiction; and

(d) in such other cases as may be prescribed:

Provided that an appeal shall not lie to the Supreme Court from the decision given by a subordinate Court in any case where, under any law—

(i) an appeal lies as of right from that decision to the Court of Appeal;

(ii) an appeal lies from that decision to the Court of Appeal with the leave of the Court that gave the decision or of some other Court and that leave has not been withheld;

(iii) an appeal lies as of right from that decision to another subordinate Court; or

(iv) an appeal lies from that decision to another subordinate Court with the leave of the Court that gave the decision or of some other Court and that leave has not been withheld.

83. Original jurisdiction of Supreme Court in constitutional questions

(1) Subject to sections 41 (5), 64 (5) and 101 (1), where any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section.

(2) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of subsection (1) or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of the person by whom the application under subsection (1) is made or, in the case of other proceedings before the Court, a party to these proceedings, are being or are likely to be affected.

(3) Where the Supreme Court makes a declaration in pursuance of subsection (2) that any provision of the Constitution has been contravened and the person by whom the application under subsection (1) was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom declaration is made, seeks relief, the Supreme Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the Supreme Court under any law for the time being in force in Mauritius, as the Court considers appropriate.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1)).

(5) Nothing in this section shall confer jurisdiction on the Supreme Court to hear or determine any such question as is referred to in section 37 or paragraph 2 (5), 3 (2) or 4 (4) of the First Schedule otherwise than upon an application made in accordance with that section or that paragraph, as the case may be.

[S. 83 amended by Act 48 of 1991.]

84. Reference of constitutional questions to Supreme Court

(1) Where any question as to the interpretation of this Constitution arises in any Court of law established for Mauritius (other than the Court of Appeal, the Supreme Court or a court martial) and the Court is of opinion that the question involves a substantial question of law, the Court shall refer the question to the Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the Court in which the question arose shall dispose of the case in accordance with that decision or, where the decision is the subject of an appeal to the Court of Appeal or the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

[S. 84 amended by Act 48 of 1991.]

CHAPTER VIII – SERVICE COMMISSIONS AND THE PUBLIC SERVICE

85. Judicial and Legal Service Commission

(1) There shall be a Judicial and Legal Service Commission which shall consist of the Chief Justice, who shall be Chairperson, and the following members—

(a) the Senior Puisne Judge;

(b) the Chairperson of the Public Service Commission; and

(c) one other member (in this section referred to as "the appointed member") appointed by the President, acting in accordance with the advice of the Chief Justice.

(2) The appointed member shall be a person who is or has been a Judge of a Court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court.

(3) Where the office of the appointed member is vacant or the appointed member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Chief Justice, may appoint a person qualified for appointment as such a member to act as a member of the Commission and any person so appointed shall continue to act until his appointment is revoked by the President, acting in accordance with the advice of the Chief Justice.

[S. 85 amended by Act 48 of 1991.]

86. Appointment of judicial and legal officers

(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Judicial and Legal Service Commission.

(2) The offices to which this section applies are the offices specified in the Second Schedule and such other offices as may be prescribed:

Provided that—

(a) where the name of any such office is changed, or any such office is abolished, this section and that Schedule shall have effect accordingly;

(b) this section shall also apply to such other offices, being offices that in the opinion of the Judicial and Legal Service Commission are offices similar to those specified in the Second Schedule, as may be prescribed by the Commission, acting with the concurrence of the Prime Minister.

87. Appointments of principal representatives of Mauritius abroad

The power to appoint persons to hold the offices of Ambassador, High Commissioner or other principal representative of Mauritius in any other country or accredited to any international organisation and to remove such persons from office shall vest in the President, acting in accordance with the advice of the Prime Minister:

Provided that, before advising the President to appoint to any such office a person who holds or is acting in some other public office, the Prime Minister shall consult the Public Service Commission.

[S. 87 amended by Act 48 of 1991.]

88. Public Service Commission

(1) There shall be a Public Service Commission, which shall consist of a Chairperson, 2 Deputy Chairpersons and 4 other Commissioners appointed by the President.

(2) No person shall be qualified for appointment as a Commissioner of the Public Service Commission if he is a member of, or a candidate for election to, the Assembly or any local authority, a public officer or a local government officer.

(3) Where the office of Chairperson of the Public Service Commission is vacant or the Chairperson is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the Deputy Chairpersons or Commissioners of the Commission as the President may appoint.

(4) Where at any time there are less than 3 Commissioners of the Public Service Commission besides the Chairperson or where any such Commissioner is acting as Chairperson or is for any reason unable to perform the functions of his office, the President may appoint a person qualified for appointment as a Commissioner of the Commission to act as a Commissioner, and any person so appointed shall continue to act until his appointment is revoked by the President.

(5) The functions of the President under this section shall be exercised by him after consultation with the Prime Minister and the Leader of the Opposition.

[S. 88 amended by Act 48 of 1991; Act 5 of 1997.]

89. Appointment of public officers

(1) Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting such offices and to remove such persons from office shall vest in the Public Service Commission.

(2) (a) The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any Commissioner of the Commission or to any public officer.

(b) The Public Service Commission may, subject to such conditions as it may prescribe, delegate, by directions in writing, its powers under this section to enquire and report to it—

(i) in the case of any professional misconduct or negligence committed by a public officer in the performance of his duties, to any appropriate statutory disciplinary body;

(ii) in the case of a public officer who has been seconded for duty or transferred to a body corporate established by law for public purposes, to that body corporate.

(3) This section shall not apply—

(a) to the office of Chief Justice or Senior Puisne Judge;

(b) except for the purpose of making appointments thereto or to act therein, to the office of Director of Audit;

(c) to the office of Ombudsman;

(d) to any office, appointments to which are within the functions of the Judicial and Legal Service Commission or the Disciplined Forces Service Commission;

(e) to any office to which section 87 applies;

(f) to any ecclesiastical office;

(g) —

(h) to any office of a temporary nature, the duties attaching to which are mainly advisory and which is to be filled by a person serving under a contract on non-pensionable terms.

(4) Before any appointment is made to the office of Secretary to the Cabinet, of Financial Secretary, of a Permanent Secretary or of any other supervising officer within the meaning of section 68, the Public Service Commission shall consult the Prime Minister and no appointment to the office of Secretary to the Cabinet, of Financial Secretary or of a Permanent Secretary shall be made unless the Prime Minister concurs in it.

(5) Notwithstanding subsections (1) to (4), the power to transfer any person holding any such office as is mentioned in subsection (4) to any other such office, being an office carrying the same emoluments, shall vest in the President, acting in accordance with the advice of the Prime Minister.

(6) Before the Public Service Commission appoints to or to act in any public office any person holding or acting in any office the power to make appointments to which is vested in the Judicial and Legal Service Commission or the Disciplined Forces Service Commission, the Public Service Commission shall consult that Commission.

(7) Before making any appointment to any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

(8) The Public Service Commission shall not exercise any of its powers in relation to any office on the personal staff of the President, or in relation to any person holding or acting in any such office, without the concurrence of the President, acting in his own deliberate judgment.

(9) References in this section to the office of Financial Secretary or of a Permanent Secretary are references to that office as established on 11 March 1968 and include references to any similar office established after that date that carries the same or higher emoluments.

[S. 89 amended by Act 19 of 1990; Act 48 of 1991; Act 5 of 1997; Act 31 of 2000; s. 3 of Act 33 of 2001 w.e.f. 24 December 2001.]

90. Disciplined Forces Service Commission

(1) There shall be for Mauritius a Disciplined Forces Service Commission which shall consist of the Chairperson of the Public Service Commission as Chairperson and 4 Commissioners who shall be appointed by the President.

(2) No person shall be qualified for appointment as a Commissioner of the Disciplined Forces Service Commission where he is a member of or a candidate for election to, the Assembly or any local authority, a public officer or a local government officer.

(3) Where at any time there are less than 2 Commissioners of the Disciplined Forces Service Commission besides the Chairperson or where any such Commissioner is for any reason unable to perform the functions of his office, the President may appoint a person who is qualified for appointment as a Commissioner of the Commission to act as a Commissioner, and any person so appointed shall continue to act until his appointment to act is revoked by the President.

(4) The functions of the President under this section shall be exercised by him after consultation with the Prime Minister and the Leader of the Opposition.

[S. 90 amended by Act 48 of 1991; Act 5 of 1997.]

91. Appointment in Disciplined Forces

(1) Subject to section 93, power to appoint persons to hold or act in any office in the disciplined forces (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Disciplined Forces Service Commission:

Provided that appointments to the office of Commissioner of Police shall be made after consultation with the Prime Minister.

(2) The Disciplined Forces Service Commission may, subject to such conditions as it thinks fit, by directions in writing delegate any of its powers of discipline or removal from office to the Commissioner of Police or to any other officer of the Disciplined Forces, but no person shall be removed from office except with the confirmation of the Commission.

[S. 88 amended by Act 5 of 1997.]

91A. Public Bodies Appeal Tribunal

(1) There shall be a Public Bodies Appeal Tribunal which shall, notwithstanding section 119 but subject to subsection (3), have jurisdiction to hear and determine appeals made by public officers against such final decisions of such Commission established under this Constitution, as may be prescribed, or of any Commissioner or other person exercising powers delegated by that Commission.

(2) The Public Bodies Appeal Tribunal may also hear and determine appeals made against final decisions of such other public bodies as may be prescribed.

(3) No appeal shall lie to the Public Bodies Appeal Tribunal from any decision taken by a Commission prescribed under subsection (1) or by a public body prescribed under subsection (2), where the decision has been taken after consultation with, or with the concurrence of, or on the advice of, the Prime Minister.

(4) The Public Bodies Appeal Tribunal shall consist of—

(a) a Chairperson who is a barrister of not less than 10 years' standing;

(b) 2 other members who hold such qualifications as may be prescribed.

(5) (a) The members of the Public Bodies Appeal Tribunal shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

(b) Where any of the 3 members of the Public Bodies Appeal Tribunal is unable to take part in the proceedings of the Tribunal on account of a direct interest in any appeal before the Tribunal, or of any other reason, another member shall be appointed, on an *ad hoc* basis, in the manner provided for under paragraph (a), to replace that member in the appeal.

(6) No person shall be appointed under subsection (5) where—

(a) he is a member of the Assembly or a local authority;

(b) he is an office bearer of a political party or other political organisation;

(c) at any time during the 10 years preceding such proposed appointment, he was engaged in politics;

(d) he is a public officer, a local government officer or an employee of a statutory body; or

(e) he is a person who receives, or is entitled to receive, fees or allowances specified in section 112 (3).

(7) A member of the Public Bodies Appeal Tribunal shall cease to hold office as such where any circumstances arise that, if he did not hold that office, would cause him to be disqualified for appointment.

(8) Where an appointment lapses or is terminated under subsection (7), no compensation shall become payable to the holder for loss of office by reason of the lapse or termination of his appointment.

(9) Notwithstanding any other provision of the Constitution—

(a) proceedings before the Public Bodies Appeal Tribunal shall not be held in public, except where the Tribunal decides otherwise with the agreement of the parties to an appeal;

(b) the Public Bodies Appeal Tribunal shall not be bound to communicate to any other person the contents of any report, document or other material produced by any Commission or public body and, except where necessary for the purpose of making its decision, the Tribunal shall make no reference to the contents thereof in its decision.

(10) A member of the Public Bodies Appeal Tribunal shall hold office for such term and on such conditions as may be determined by the President.

(11) A member of the Public Bodies Appeal Tribunal may be removed from office only for inability to discharge the functions of his office whether arising from infirmity of body or mind, or any other cause, or for misbehaviour and shall not be removed except in accordance with subsections (12) to (14).

(12) A member of the Public Bodies Appeal Tribunal shall be removed from office by the President where the question of his removal from that office has been referred to a tribunal appointed under subsection (13) and the tribunal has recommended to the President that he ought to be removed from office for inability to discharge the functions of his office or for misbehaviour.

(13) Where the President, acting in his own deliberate judgment, considers that the question of removing a member of the Public Bodies Appeal Tribunal ought to be investigated—

(a) the President, acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a Chairperson and not less

than 2 other members, being persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a Court having jurisdiction in appeals from such a Court; and

(b) that tribunal shall enquire into the matter and report on the facts to the President and recommend to the President whether the member of the Public Bodies Appeal Tribunal ought to be removed under this section.

(14) Where the question of removing a member has been referred to a tribunal under subsection (13), the President, acting in his own deliberate judgment, may suspend the member from performing the functions of his office and any such suspension may at any time be revoked by the President, acting in his own deliberate judgment, and shall in any case cease to have effect where the tribunal recommends to the President that the member should not be removed.

(15) The offices of the staff of the Public Bodies Appeal Tribunal shall be public offices.

(16) There shall be such provision as may be prescribed for such supplementary or ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this section.

[S. 91A inserted by s. 2 of Act 9 of 2008 w.e.f. 1 June 2009.]

92. Tenure of office of members of Commissions and Ombudsman

(1) Notwithstanding any provision to the contrary in this Constitution but subject to this section, a person holding an office to which this section applies (referred to in this section as a "Commissioner")—

(a) subject to paragraph (b), shall vacate his office—

(i) at the expiration of 3 years from the date of his appointment; or

(ii) where any circumstances arise that, if he did not hold that office, would cause him to be disqualified for appointment;

(b) except in the case of the appointed member of the Judicial and Legal Service Commission, may be required to vacate his office at any time after a general election held after the appointment.

(1A) Where an appointment is terminated under subsection (1) (b), no compensation shall be payable to the holder for loss of office by reason of the termination of his appointment, other than such compensation as may be prescribed under the Employment Rights Act and he shall not be entitled to any other damages or compensation under any other law whatsoever.

(2) A Commissioner may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with this section.

(3) A Commissioner shall be removed from office by the President where the question of his removal from that office has been referred to a tribunal appointed under subsection (4) and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

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(4) Where the President, acting in his own deliberate judgment, considers that the question of removing a Commissioner ought to be investigated—

(a) the President, acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a Chairperson and not less than 2 other members, being persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a Court having jurisdiction in appeals from such a Court; and

(b) that tribunal shall enquire into the matter and report on the facts to the President and recommend to the President whether the Commissioner ought to be removed under this section.

(5) Where the question of removing a Commissioner has been referred to a tribunal under this section, the President, acting in his own deliberate judgment, may suspend the Commissioner from performing the functions of his office and any such suspension may at any time be revoked by the President, acting in his own deliberate judgment, and shall in any case cease to have effect if the tribunal recommends to the President that the Commissioner should not be removed.

(6) The offices to which this section applies are those of appointed member of the Judicial and Legal Service Commission, Chairperson or Commissioner of the Public Service Commission and Commissioner of the Disciplined Forces Service Commission:

Provided that, in its application to the appointed member of the Judicial and Legal Service Commission, subsection (4) shall have effect as if for the words "acting in his own deliberate judgment" there were substituted the words "acting in accordance with the advice of the Chief Justice".

(7) This section shall apply to the office of Ombudsman as it applies to a person specified in subsection (6):

Provided that subsection (1) shall have effect as if the words "4 years" were substituted for the words "3 years".

[S. 92 amended by Act 2 of 1982; Act 48 of 1991; Act 5 of 1997.]

93. Removal of certain officers

(1) Subject to this section, a person holding an office to which this section applies shall vacate that office on attaining the retiring age.

(2) Any such person may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with this section.

(3) Any such person shall be removed from office by the President if the question of his removal from that office has been referred to a tribunal appointed under subsection (4) and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) Where the appropriate Commission considers that the question of removing any such person ought to be investigated—

(a) the President, acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a Chairperson and not less than 2 other members, being persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from such a Court; and

(b) that tribunal shall enquire into the matter and report on the facts to the President and recommend to the President whether he ought to be removed under this section.

(5) Where the question of removing any such person has been referred to a tribunal under this section, the President, acting in his own deliberate judgment, may suspend him from performing the functions of his office and any such suspension may at any time be revoked by the President, acting in his own deliberate judgment, and shall in any case cease to have effect if the tribunal recommends to the President that he should not be removed.

(6) The offices to which this section applies are those of Electoral Commissioner, Director of Public Prosecutions, Commissioner of Police and Director of Audit.

(7) In this section, "the appropriate Commission" means—

(a) in relation to a person holding the office of Electoral Commissioner or Director of Public Prosecutions, the Judicial and Legal Service Commission;

(b) in relation to a person holding the office of Commissioner of Police, the Disciplined Forces Service Commission;

(c) in relation to a person holding the office of Director of Audit, the Public Service Commission.

(8) The retiring age for holders of the offices mentioned in subsection (6) shall be 60 or such other age as may be prescribed:

Provided that a provision of any law, to the extent that it alters the age at which persons holding such offices shall vacate their offices, shall not have effect in relation to any such person after his appointment unless he consents to its having effect.

[S. 93 amended by Act 48 of 1991; Act 5 of 1997; Act 31 of 2000; s. 5 of Act 33 of 2001 w.e.f. 24 December 2001.]

94. Pension laws and protection of pension rights

(1) The law to be applied with respect to any pension benefits that were granted to any person before 12 March 1968 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pension benefits (not being benefits to which subsection (1) applies) shall—

(a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 12 March 1968, be the law that was in force immediately before that date; and

(b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 11 March 1968, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of 2 or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) In this section, "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

95. Power of Commissions in relation to pensions

(1) Where under any law any person or authority has a discretion to—

(a) decide whether or not any pensions benefits shall be granted; or

(b) withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or (2) in action taken on the ground that any person who holds or has held the office of Electoral Commissioner, Director of Public Prosecutions, Judge of the Supreme Court, Commissioner of Police, Ombudsman or Director of Audit has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section, "the appropriate Commission" means—

(a) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial and Legal Service Commission or that have been granted in respect of such service, the Judicial and Legal Service Commission;

(b) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was a member of a disciplined force, the Disciplined Forces Service Commission; and

(c) in any other case, the Public Service Commission.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Mauritius may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius:

Provided that nothing in this subsection shall be construed as preventing—

(a) the attachment, by order of a Court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a Court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or

(b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.

(6) In this section, "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

[S. 95 amended by Act 5 of 1997.]

CHAPTER IX – THE OMBUDSMAN

96. Office of Ombudsman

(1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the President, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons, if any, as appear to the President, acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as Ombudsman if he is a member of, or a candidate for election to, the Assembly or any local authority or is a local government officer, and no person holding the office of Ombudsman shall perform the functions of any other public office.

(4) The offices of the staff of the Ombudsman shall be public offices and shall consist of that of a Senior Investigations Officer and such other offices as may be prescribed by the President, acting after consultation with the Prime Minister.

[S. 96 amended by Act 48 of 1991.]

97. Investigations by Ombudsman

(1) Subject to this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken and in which—

(a) a complaint under this section is made;

(b) he is invited to do so by any Minister or other member of the Assembly; or

(c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities—

(a) any department of the Government;

(b) the Police Force or any member thereof;

(c) the Mauritius Prisons Service or any other service maintained and controlled by the Government or any officer or authority of any such service:

(d) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;

(e) the Rodrigues Regional Assembly or any officer of the said Assembly;

(f) any local authority or any officer of such local authority;

(g) such other officers or authorities as may be prescribed by Parliament;

Provided that it shall not apply in relation to any of the following officers and authorities—

(i) the President or his personal staff;

(ii) the Chief Justice;

(iii) any Commission established by this Constitution or its staff;

(iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;

(v) any person exercising powers delegated to him by the Public Service Commission or the Disciplined Forces Service Commission, being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

(3) A complaint under this section may be made by an individual, or by any body of persons whether incorporated or not, not being—

(a) an authority of the Government or a local authority or other authority or body constituted for purposes of the public service or local government; or

(b) any other authority or body whose members are appointed by the President or by a Minister or whose revenues consist wholly or mainly of money provided from public funds.

(4) Where any person by whom a complaint might have been made under subsection (3) has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as specified in this subsection, a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Mauritius (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to—

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Mauritius; or

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any Court of law:

Provided that—

(i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right or remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II has been contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him—

(a) that the complaint is merely frivolous or vexatious;

(b) that the subject matter of the complaint is trivial;

(c) that the person aggrieved has no sufficient interest in the subject matter of the complaint; or

(d) that the making of the complaint has, without reasonable cause, been delayed for more than 12 months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter where he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Mauritius.

(10) In this section, "action" includes failure to act.

[S. 97 amended by Act 2 of 1982; Act 48 of 1991; Act 5 of 1997; s. 2 of Act 19 of 2003 w.e.f. 24 April 2006.]

98. Procedure in respect of investigations

(1) Where the Ombudsman proposes to conduct an investigation under section 97, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect of it.

(2) Every such investigation shall be conducted in private but, except as provided in this Constitution or as prescribed under section 102, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to subsection (1), the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by Counsel or attorney or otherwise, in the investigation.

99. Disclosure of information

(1) For the purposes of an investigation under section 97, the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation, the Ombudsman shall have the same powers as the Supreme Court in respect of the attendance

and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Mauritius or any rule of law shall apply to the disclosure of information for the purposes of any such investigation, and the State shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee of Cabinet, and for the purposes of this subsection, a certificate issued by the Secretary to Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(6) Subject to subsection (3), no person shall be compelled for the purposes of an investigation under section 97 to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

[S. 99 amended by Act 48 of 1991.]

100. Proceedings after investigation

(1) This section shall apply in every case where, after making an investigation, the Ombudsman is of the opinion that the action that was the subject matter of investigation was—

(a) contrary to law;

(b) based wholly or partly on a mistake of law or fact;

(c) unreasonably delayed; or

(d) otherwise unjust or manifestly unreasonable.

(2) Where in any case to which this section applies the Ombudsman is of the opinion—

(a) that the matter should be given further consideration;

(b) that an omission should be rectified;

(c) that a decision should be cancelled, reversed or varied;

(d) that any practice on which the act, omission, decision or recommendation was based should be altered;

(e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;

(f) that reasons should have been given for the decision; or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of any steps that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) Where within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering any comments made by or on behalf of any department, authority, body or person affected, may send a copy of the report and recommendations to the Prime Minister and to any Minister concerned, and may thereafter make such further report to the Assembly on the matter as he thinks fit.

101. Discharge of functions of Ombudsman

(1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any Court of law.

(2) In determining whether to initiate, to continue or discontinue an investigation under section 97, the Ombudsman shall act in accordance with his own discretion, and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the President concerning the discharge of his functions, which shall be laid before the Assembly.

[S. 101 amended by Act 48 of 1991; Act 31 of 2000.]

102. Supplementary and ancillary provision

There shall be such provision as may be prescribed for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision—

(a) for the procedure to be observed by the Ombudsman in performing his functions;

(b) for the manner in which complaints under section 97 may be made (including a requirement that such complaints should be transmitted to the Ombudsman through the intermediary of a member of the Assembly);

(c) for the payment of fees in respect of any complaint or investigation;

(d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff; and

(e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

102A. —

CHAPTER X – FINANCE

103. Consolidated Fund

All revenues or other money raised or received for the purposes of the Government (not being revenues or other money that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

104. Withdrawals from Consolidated Fund or other public funds

(1) No money shall be withdrawn from the Consolidated Fund except—

(a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Mauritius; or

(b) where the issue of that money has been authorised by an appropriation law or by a supplementary estimate approved by resolution of the Assembly or in such manner, and subject to such conditions, as may be prescribed in pursuance of section 106.

(2) No money shall be withdrawn from any public fund of Mauritius, other than the Consolidated Fund, unless the issue of that money has been authorised by or under a law.

(3) No money shall be withdrawn from the Consolidated Fund except in the manner prescribed.

(4) The deposit of any money forming part of the Consolidated Fund with a bank or with the Crown Agents for Overseas Governments and Administrations or the investment of any such money in such securities as may be prescribed shall not be regarded as a withdrawal of that money from the Fund for the purposes of this section.

[S. 104 amended by Act 48 of 1991.]

105. Authorisation of expenditure

(1) The Minister responsible for the subject of finance shall cause to be prepared and laid before the Assembly, before or not later than 30 days after the commencement of each financial year, estimates of the revenues and expenditure of Mauritius for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a Bill, to be known as an Appropriation Bill, introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.

(3) Where in any financial year it is found—

(a) that the amount appropriated by the appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the appropriation law; or

(b) that any money has been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the appropriation law, or for a purpose for which no amount has been appropriated by the appropriation law,

a supplementary estimate showing the sums required or spent shall be laid before the Assembly and the heads of expenditure shall be included in a Supplementary Appropriation Bill introduced in the Assembly to provide for the appropriation of those sums, or in a motion or motions introduced into the Assembly for the approval of such expenditure.

(4) Where any supplementary expenditure has been approved in a financial year by a resolution of the Assembly in accordance with subsection (3), a Supplementary Appropriation Bill shall be introduced in the Assembly, not later than the end of the financial year next following, providing for the appropriation of the sums so approved.

106. Authorisation of expenditure in advance of appropriation

Where the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for the subject of finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of money from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of 6 months from the beginning of that financial year or the coming into operation of the appropriation law, whichever is the earlier.

107. Contingencies Fund

(1) There shall be such provision as may be prescribed by Parliament for the establishment of a Contingencies Fund and for authorising the Minister

responsible for the subject of finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Assembly, and a Bill or motion shall be introduced as soon as possible for the purpose of replacing the amount so advanced

108. Remuneration of certain officers

(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) Any alteration to the salary payable to any person holding any office to which this section applies or to his terms of office, other than allowances, that is to his disadvantage shall not have effect in relation to that person after his appointment unless he consents to its having effect.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the office of President, Chairperson or other members of the Electoral Boundaries Commission or of the Electoral Supervisory Commission, Electoral Commissioner, Director of Public Prosecutions, Chief Justice, Senior Puisne Judge, Puisne Judge, appointed member of the Judicial and Legal Service Commission, Chairperson or other member of the Public Service Commission, appointed member of the Disciplined Forces Service Commission, Commissioner of Police, Ombudsman or Director of Audit.

[S. 108 amended by Act 48 of 1991; Act 5 of 1997; Act 31 of 2000; s. 5 of Act 33 of 2001 w.e.f. 24 December 2001.]

109. Public debt

(1) All debt charges for which Mauritius is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section, "debt charges" includes interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Mauritius or the Consolidated Fund and the service and redemption of debt thereby created.

110. Director of Audit

(1) There shall be a Director of Audit, whose office shall be a public office and who shall be appointed by the Public Service Commission, acting after consultation with the Prime Minister and the Leader of the Opposition.

(2) The public accounts of Mauritius and of all Courts of law and all authorities and officers of the Government shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be prescribed.

(3) The Director of Audit shall submit his reports to the Minister responsible for the subject of finance, who shall cause them to be laid before the Assembly.

(4) In the exercise of his functions under this Constitution, the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER XI – MISCELLANEOUS

111. Interpretation

(1) In this Constitution—

"Assembly" means the National Assembly established by this Constitution;

"Commonwealth" means Mauritius and any country to which section 25 of this Constitution for the time being applies and includes the dependencies of any such country;

"Court of Appeal" means the Court of Civil Appeal or the Court of Criminal Appeal;

"disciplinary law" means a law regulating the discipline—

(a) of any disciplined force; or

(b) of persons serving prison sentences;

"disciplined force" means—

(a) a naval, military or air force;

(b) the Police Force;

(c) a fire service established by any law in force in Mauritius; or

(d) the Mauritius Prison Service;

"financial year" means the period of 12 months ending on 30 June in any year or such other day as may be prescribed by Parliament;

"*Gazette*" means the Government *Gazette* of Mauritius;

"Government" means the Government of the Republic of Mauritius;

"Island of Mauritius" includes the small islands adjacent to the Island of Mauritius;

"Judicial Committee" means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833 of the United Kingdom as from time to time amended by any Act of Parliament of the United Kingdom;

"local authority" means—

(a) the Municipal Council of any city or town;

(b) the District Council of any district;

(c) the Village Council of any village; or

(d) any new local authority created under any enactment;

"local government officer" means a person holding or acting in any office of emolument in the service of a local authority but does not include a person holding or acting in the office of Lord Mayor, Mayor, Chairperson, or other member of a local authority or standing Counsel or attorney of a local authority;

"Mauritius" includes—

(a) the Islands of Mauritius, Rodrigues, Agalega, Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia and any other island comprised in the State of Mauritius;

(b) the territorial sea and the air space above the territorial sea and the islands specified in paragraph (a);

(c) the continental shelf; and

(d) such places or areas as may be designated by regulations made by the Prime Minister, rights over which are or may become exercisable by Mauritius;

"oath" includes affirmation;

"oath of allegiance" means the oath of allegiance prescribed in the Third Schedule;

"Parliament" means the Parliament established by this Constitution;

"Police Force" means the Mauritius Police Force and includes any other police force established in accordance with such provision as may be prescribed by Parliament;

"prescribed" means prescribed in a law:

Provided that—

(a) in relation to anything that may be prescribed only by Parliament, it means prescribed in any Act of Parliament; and

(b) in relation to anything that may be prescribed only by some other specified person or authority, it means prescribed in an Order made by that other person or authority;

"President" means the President of the Republic of Mauritius;

"public office" means, subject to section 112, an office of emolument in the public service;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"public service" means the service of the State in a civil capacity in respect of the Government of Mauritius;

"Rodrigues" means the Island of Rodrigues;

"session" means the sittings of the Assembly commencing when Parliament first meets after any general election or its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Assembly is sitting continuously without adjournment, and includes any period during which the Assembly is in committee;

"State" means the Republic of Mauritius;

"subordinate Court" means any Court of law subordinate to the Supreme Court but does not include a Court martial;

"Vice-President" means the Vice-President of the Republic of Mauritius.

(2) Except as otherwise provided in this Constitution, the Interpretation Act 1889[*] shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation to it as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

[S. 111 amended by Act 2 of 1982; Act 48 of 1991; s. 22 of Act 4 of 2008 w.e.f. 1 July 2008; s. 6 of Act 1 of 2009 w.e.f. 1 July 2009; s. 3 of Act 35 of 2011 w.e.f. 12 December 2011.]

112. References to public office

(1) In this Constitution, "public office"—

(a) shall be construed as including the offices of Judges of the Supreme Court, the offices of members of all other Courts of law in Mauritius (other than Courts martial), the offices of members of the Police Force and the offices of the President's personal staff; and

(b) shall not be construed as including—

(i) the office of member of the Assembly or the Rodrigues Regional Assembly or its Chairperson;

(ii) any office, appointment to which is restricted to members of the Assembly or the Rodrigues Regional Assembly; or

(iii) the office of member of any Commission or tribunal established by this Constitution.

(2) For the purposes of this Constitution, a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of a pension or other like allowance in respect of service of the State or under a local authority.

[*] 1889 c 63 (UK).

(3) For the purposes of sections 38 (3), 88 (2) and 90 (2), a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of fees and allowances by virtue of his membership of a board, council, committee, tribunal or other similar authority (whether incorporated or not).

[S. 112 amended by Act 48 of 1991; s. 3 of Act 32 of 2001 w.e.f. 18 January 2002.]

113. Appointment to certain offices

(1) A suitably qualified person may, irrespective of his age, be appointed to hold the office of Electoral Commissioner, Director of Public Prosecutions, Chief Justice, Senior Puisne Judge, Puisne Judge, Commissioner of Police or Director of Audit for such term, not exceeding 4 years as may be specified in the instrument of appointment and this Constitution shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(2) Notwithstanding any provision to the contrary in this Constitution, but subject to subsection (3), an appointment made under section 87 or 89 (3) (h) shall be for such term as may be specified in the instrument of appointment.

(3) An appointment to which subsection (2) applies—

(a) subject to paragraph (b), shall terminate at the expiry of the term specified in the instrument of appointment;

(b) may be terminated at any time after a general election held after the appointment.

(4) Where under any law other than this Constitution, an appointment is made to an office by the Prime Minister, the Deputy Prime Minister, or any other Minister or on his advice or after consultation with him, or with his approval, the holder of the office may, notwithstanding any provision to the contrary in this Constitution, be required to vacate the office at any time after a general election held after the appointment.

(5) Where an appointment is terminated under subsection (3) (b) or (4), no compensation shall be payable to the holder for loss of office by reason of the termination of his appointment, other than such compensation as may be prescribed under the Employment Rights Act and he shall not be entitled to any other damages or compensation under any other law whatsoever.

[S. 113 amended by Act 2 of 1982; Act 38 of 1991.]

114. Acting appointments

(1) In this Constitution, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office where the holder of the office is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

115. Reappointments and concurrent appointments

(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where 2 or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

116. Removal from office

(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to and power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that—

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require any person to whom section 78 (2) to (6) or section 92 (2) to (5) apply to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(2) Any provision in this Constitution that vests in any person or authority power to remove a public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified in it.

117. Resignations

Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, and the resignation shall take effect, and the office shall accordingly become vacant—

(a) at such time or on such date (if any) as may be specified in the writing; or

(b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect where the person or authority to whom the resignation is addressed consents to its withdrawal.

118. Performance of functions of Commissions and tribunals

(1) Any Commission established by this Constitution may, by regulations, make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of any such Commission shall require the concurrence of a majority of all the members and, subject to this subsection, the Commission may act, notwithstanding the absence of any member:

Provided that where in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided, the Chairperson shall have and shall exercise a casting vote.

(3) Subject to this section, any such Commission may regulate its own procedure.

(4) Subject to section 91A, in the exercise of its functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority.

(5) In addition to the functions conferred upon it by or under this Constitution, any such Commission shall have such powers and other functions as may be prescribed.

(6) The validity of the transaction of business of any such Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(7) Subsections (1), (2), (3) and (4) shall apply in relation to a tribunal established for the purposes of sections 5 (4), 15 (4), 18 (3), 78 (4), 92 (4), or 93 (4) as they apply in relation to a Commission established by this Constitution, and any such tribunal shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

[S. 118 amended by s. 3 of Act 9 of 2008 w.e.f. 1 June 2009.]

119. Saving for jurisdiction of Courts

No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a Court of law from exercising jurisdiction in relation to any question,

whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

120. Power to amend and revoke instruments

Where any power is conferred by this Constitution to make any order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such order, regulation, rule or direction.

121. Consultation

Where any person or authority, other than the President, is directed by this Constitution to exercise any function after consultation with any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.

[S. 121 amended by Act 48 of 1991.]

122. Parliamentary control over certain subordinate legislation

All laws, other than Acts of Parliament, that make such provision as is mentioned in section 5 (1) or section 15 (3) or that establish new criminal offences or impose new penalties shall be laid before the Assembly as soon as is practicable after they are made and (without prejudice to any other power that may be vested in the Assembly in relation to any such law) any such law may be revoked by the Assembly by resolution passed within 30 days after it is laid before the Assembly:

Provided that—

(a) where it is so prescribed by Parliament in relation to any such law, that law shall not be laid before the Assembly during a period of public emergency within the meaning of Chapter II;

(b) in reckoning the period of 30 days after any such law is laid before the Assembly, no account shall be taken of any period during which Parliament is dissolved or prorogued or is adjourned for more than 4 days.

FIRST SCHEDULE

[Section 31 (2)]

1. Elected members to be returned by constituencies

(1) There shall be 62 seats in the Assembly for members representing constituencies and accordingly each constituency shall return 3 members to the Assembly in such manner as may be prescribed, except Rodrigues, which shall so return 2 members.

(2) Every member returned by a constituency shall be directly elected in accordance with this Constitution at a general election or by-election held in such manner as may be prescribed.

(3) Every vote cast by an elector at any election shall be given by means of a ballot which, except in so far as may be otherwise prescribed in relation to the casting of votes by electors who are incapacitated by blindness or other physical cause or unable to read or understand any symbols on the ballot paper, shall be taken so as not to disclose how any vote is cast; and no vote cast by any elector at any general election shall be counted unless he cast valid votes for 3 candidates in the constituency in which he is registered or, in the case of an elector registered in Rodrigues, for 2 candidates in that constituency.

2. Registration of parties

(1) Every political party in Mauritius, being a lawful association, may, within 14 days before the day appointed for the nomination of candidates for election at any general election of members of the Assembly, be registered as a party for the purposes of that general election and paragraph 5 (7) by the Electoral Supervisory Commission upon making application in such manner as may be prescribed:

Provided that any 2 or more political parties may be registered as a party alliance for those purposes, in which case they shall be regarded as a single party for those purposes; and this Schedule shall be construed accordingly.

(2) Every candidate for election at any general election may at his nomination declare in such manner as may be prescribed that he belongs to a party that is registered as such for the purpose of that general election and, if he does so, he shall be regarded as a member of that party for those purposes, while if he does not do so, he shall not be regarded as a member of any party for those purposes; and where any candidate is regarded as a member of a party for those purposes, the name of that party shall be stated on any ballot paper prepared for those purposes upon which his name appears.

(3) Where any party is registered under this paragraph, the Electoral Supervisory Commission shall from time to time be furnished in such manner as may be prescribed with the names of at least 2 persons, any one of whom is authorised to discharge the functions of leader of that party for the purposes of the proviso to paragraph 5 (7).

(4) There shall be such provision as may be prescribed requiring persons who make applications or declarations for the purposes of this paragraph to furnish evidence with respect to the matters stated in such applications or declarations and to their authority to make such applications or declarations.

(5) There shall be such provision as may be prescribed for the determination, by a Judge of the Supreme Court before the day appointed for the nomination of candidates at a general election, of any question incidental to any such application or declaration made in relation to that general election, and the determination of the Judge shall not be subject to appeal.

3. Communities

(1) Every candidate for election at any general election of members of the Assembly shall declare in such manner as may be prescribed which community he belongs to and that community shall be stated in a published notice of his nomination.

(2) Within 7 days of the nomination of any candidate at an election, an application may be made by an elector in such manner as may be prescribed to the Supreme Court to resolve any question as to the correctness of the declaration relating to his community made by that candidate in connection with his nomination, in which case the application shall (unless withdrawn) be heard and determined by a Judge of the Supreme Court, in such manner as may be prescribed, within 14 days of the nomination, and the determination of the Judge shall not be subject to appeal.

(3) For the purposes of this Schedule, each candidate at an election shall be regarded as belonging to the community to which he declared he belonged at his nomination as such, or if the Supreme Court has held in proceedings questioning the correctness of his declaration that he belongs to another community, to that other community, but the community to which any candidate belongs for those purposes shall not be stated upon any ballot paper prepared for those purposes.

(4) For the purposes of this Schedule, the population of Mauritius shall be regarded as including a Hindu community, a Muslim community and a Sino-Mauritian community; and every person who does not appear, from his way of life, to belong to one or other of those 3 communities shall be regarded as belonging to the General Population, which shall itself be regarded as a fourth community.

4. Provisions with respect to nominations

(1) Where it is so prescribed, every candidate for election as a member of the Assembly shall in connection with his nomination make a declaration in such manner as may be prescribed concerning his qualifications for election as such.

(2) There shall be such provision as may be prescribed for the determination by a returning officer of questions concerning the validity of any nomination of a candidate for election as a member of the Assembly.

(3) Where a returning officer decides that a nomination is valid, his decision shall not be questioned in any proceedings other than proceedings under section 37.

(4) Where a returning officer decides that a nomination is invalid, his decision may be questioned upon an application to a Judge of the Supreme Court made within such time and in such manner as may be prescribed, and the determination of the Judge shall not be subject to appeal.

5. Allocation of 8 additional seats

(1) In order to ensure a fair and adequate representation of each community, there shall be 8 seats in the Assembly, additional to the 62 seats for members representing constituencies, which shall so far as is possible be allocated to persons belonging to parties who have stood as candidates for election as members at the general election but have not been returned as members to represent constituencies.

(2) As soon as is practicable after all the returns have been made of persons elected at any general election as members to represent constituencies, the 8 additional seats shall be allocated in accordance with the following provisions of this paragraph by the Electoral Supervisory Commission which shall so far as is possible make a separate determination in respect of each seat to ascertain the appropriate unreturned candidate (if any) to fill that seat.

(3) The first 4 of the 8 seats shall so far as is possible each be allocated to the most successful unreturned candidate, if any, who is a member of a party and who belongs to the appropriate community, regardless of which party he belongs to.

(4) When the first 4 seats (or as many as possible of those seats) have been allocated, the number of such seats that have been allocated to persons who belong to parties, other than the most successful party, shall be ascertained and so far as is possible that number of seats out of the second 4 seats shall one by one be allocated to the most successful unreturned candidates (if any) belonging both to the most successful party and to the appropriate community or where there is no unreturned candidate of the appropriate community, to the most successful unreturned candidates belonging to the most successful party, irrespective of community.

(5) In the event that any of the 8 seats remains unfilled, then the following procedure shall so far as is possible be followed until all (or as many as possible) of the 8 seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate (if any) belonging both to the most successful of the parties that have not received any of the 8 seats and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful of those parties and to the appropriate community, and so on as respects any remaining seats and any remaining parties that have not received any of the 8 seats.

(6) In the event that any of the 8 seats still remains unfilled, then the following procedure shall so far as is possible be followed (and, if necessary, repeated) until all (or as many as possible) of the 8 seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful party and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the third most successful party (if any) and to the appropriate community, and so on as respects any remaining seats and parties.

(7) Where at any time before the next dissolution of Parliament one of the 8 seats falls vacant, the seat shall as soon as is reasonably practicable after the occurrence of the vacancy be allocated by the Electoral Supervisory Commission to the most successful unreturned candidate (if any) available who belongs to the appropriate community and to the party to whom the person to whom the seat was allocated at the last general election belonged:

Provided that, where no candidate of the appropriate community who belongs to that party is available, the seat shall be allocated to the most successful unreturned candidate available who belongs to the appropriate community and who belongs to such other party as is designated by the leader of the party with no available candidate.

(8) The appropriate community means, in relation to the allocation of any of the 8 seats, the community that has an unreturned candidate available (being a person of the appropriate party, where the seat is one of the second 4 seats) and that would have the highest number of persons (as determined by reference to the results of the published 1972 official census of the whole population of Mauritius) in relation to the number of seats in the Assembly held immediately before

the allocation of the seat by persons belonging to that community (whether as members elected to represent constituencies or otherwise), where the seat was also held by a person belonging to that community:

Provided that, if, in relation to the allocation of any seat, 2 or more communities have the same number of persons as aforesaid preference shall be given to the community with an unreturned candidate who was more successful than the unreturned candidates of the other community or communities (that candidate and those other candidates being persons of the appropriate party, where the seat is one of the second 4 seats).

(9) The degree of success of a party shall, for the purposes of allocating any of the 8 seats at any general election of members of the Assembly, be assessed by reference to the number of candidates belonging to that party returned as members to represent constituencies at that election as compared with the respective numbers of candidates of other parties so returned, no account being taken of a party that had no candidates so returned or of any change in the membership of the Assembly occurring because the seat of a member so returned becomes vacant for any cause, and the degree of success of an unreturned candidate of a particular community (or of a particular party and community) at any general election shall be assessed by comparing the percentage of all the valid votes cast in the constituency in which he stood for election secured by him at that election with the percentages of all the valid votes cast in the respective constituencies in which they stood for election so secured by other unreturned candidates of that particular community (or as the case may be, of that particular party and that particular community), no account being taken of the percentage of votes secured by any unreturned candidate who has already been allocated one of the 8 seats at that election or by any unreturned candidate who is not a member of a party:

Provided that if, in relation to the allocation of any seat, any 2 or more parties have the same number of candidates returned as members elected to represent constituencies, preference shall be given to the party with an appropriate unreturned candidate who was more successful than the appropriate unreturned candidate or candidates of the other party or parties.

(10) Any number required for the purpose of subparagraph (8) or any percentage required for the purposes of subparagraph (9) shall be calculated to not more than 3 places of decimals where it cannot be expressed as a whole number.

[Para. 5 amended by Act 2 of 1982; Act 36 of 1982; Act 48 of 1991.]

6. —

SECOND SCHEDULE

[Section 86]

Solicitor-General

Parliamentary Counsel

Judge in Bankruptcy and Master and Registrar

(including Deputy Master and Registrar and Judge in Bankruptcy)

Assistant Solicitor-General

Principal State Counsel

(including Senior State Counsel and State Counsel)

Senior State Counsel

Magistrate

(including the Presiding Magistrate or a Magistrate of the Intermediate Court or of the Industrial Court or a Senior District Magistrate)

Principal State Attorney

(including Senior State Attorney, State Attorney and Assistant State Attorney)

[Second Sch. amended by Act 48 of 1991; GN 139 of 1992.]

THIRD SCHEDULE

[Sections 21 (1), 24, 30B, 55, 67 and 79]

OATH OF PRESIDENT

I, ... , do swear (or solemnly affirm) that I will faithfully execute the office of President and will, to the best of my ability without favour or prejudice, defend the Constitution, and the institutions of democracy and the rule of law, ensure that the fundamental rights are protected and the unity of the diverse Mauritian nation maintained and strengthened.

OATH OF VICE-PRESIDENT

I, ... , do swear (or solemnly affirm) that I will bear true faith and allegiance to the Constitution and the law and that I will faithfully discharge the duty upon which I am about to enter.

OATH OF ALLEGIANCE

I, ... , do swear (or solemnly affirm) that I will be faithful and bear true allegiance to Mauritius according to law. (So help me God.)

OATH FOR THE DUE EXECUTION OF THE OFFICE OF THE PRIME MINISTER OR OTHER MINISTER OR JUNIOR MINISTER

I, ... , being appointed Prime Minister/Minister/Junior Minister, do swear (or solemnly affirm) that I will to the best of my judgment, at all times when so required, freely give my Counsel and advice to the President (or any other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Mauritius, and I do further swear (or solemnly affirm) that I will not on any account, at any time whatsoever, disclose the Counsel, advice, opinion or vote of any particular Minister or Junior Minister and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Mauritius, directly or indirectly reveal the business or proceedings of the Prime Minister/Minister/Junior Minister or any matter coming to my knowledge in my capacity as such and that in all things I will be a true and faithful Prime Minister/Minister/Junior Minister. (So help me God.)

THIRD SCHEDULE—*continued*

JUDICIAL OATH

I, ... , do swear (or solemnly affirm) that I will well and truly serve Mauritius and the Constitution in the office of Chief Justice/Judge of the Supreme Court and I will do right to all manner of people after the laws and usages of Mauritius without fear or favour, affection or ill will. (So help me God.)

[Third Sch. amended by Act 3 of 1996; s. 6 of Act 28 of 2003 w.e.f. 15 September 2003.]

FOURTH SCHEDULE

[Fourth Sch. repealed by Act 31 of 2000.]

PART II

LAWS RELATED TO THE CONSTITUTION

A. ENACTED IN UNITED KINGDOM

B. ENACTED IN MAURITIUS

A – ENACTED IN UNITED KINGDOM

MAURITIUS (APPEALS TO PRIVY COUNCIL) ORDER[1]

GN 59 OF 1968 – 12 March 1968

1. This Order may be cited as the Mauritius (Appeals to Privy Council) Order 1968.

2. (1) In this Order—

"appeal" means appeal from a decision of the Court to the Judicial Committee;

"Court" means the Court of Appeal or the Supreme Court of Mauritius;

"decision" means a decision in any proceedings originating in Mauritius;

"record" means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and decisions) proper to be laid before the Judicial Committee on the hearing of an appeal;

"Registrar" means the Registrar of the Court or other proper officer having custody of the records of the Court.

(2) The Interpretation Act 1889[2] shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purposes of interpreting, and in relation to, Acts of Parliament.

[S. 2 amended by Act 48 of 1991.]

1. This Order was published in the UK as 1968 S.I. 294. It is reproduced as at 30 September 2007.

   The Judicial Committee Rules 1957 published in the UK as 1957 S.I. 2224 were printed for information in Mauritius under GN 32 of 1958. Those Rules have been revoked and replaced by the Judicial Committee (General Appellate Jurisdiction) Rules 1982 published in the UK as 1982 S.I. 1676.

   When Mauritius became a Republic, the UK Parliament enacted the Mauritius Republic Act (1992 c. 45) which enabled Her Majesty the Queen to confer jurisdiction, by Order in Council, on the Judicial Committee to entertain appeals from Mauritius. This was done by the Mauritius Appeals to Judicial Committee Order (1992 S.I. 1716).

2. 1889 c 63 (UK).

3. Applications to the Court for leave to appeal shall be made by motion or petition within 21 days of the date of the decision to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

4. Leave to appeal to the Judicial Committee in pursuance of the provisions of any law relating to such appeals shall, in the first instance, be granted by the Court only—

(a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding 90 days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding 150,000 rupees for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay the costs of the appeal (as the case may be); and

(b) upon any other conditions as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and its despatch to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

5. A single Judge of the Court shall have power and jurisdiction—

(a) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;

(b) generally in respect of any appeal pending before the Judicial Committee, to make such order and to give such other directions as he shall consider the interests of justice or circumstances of the case require:

Provided that any order, directions or decisions made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of 3 Judges which may include the Judge who made or gave the order, directions or decisions.

[S. 5 amended by Act 48 of 1991.]

6. Where the decision appealed from requires the applicant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the decision shall be carried into execution or that its execution shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the decision to be carried into execution, the person in whose favour it was given shall, before its execution, enter into good and sufficient security to the satisfaction of the Court for the due performance of such Order as the Judicial Committee shall think fit to make on it.

[S. 6 amended by Act 48 of 1991.]

7. For the purposes of sections 4 and 6, a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

8. (1) The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection with it to the decision of the Court, and the Court shall give such directions on it as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.

(3) Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record, as finally printed (whether in Mauritius or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise the fact that, and the party by whom, the inclusion of the documents was objected to.

(4) The reasons given by Judges of the Court for or against any decision pronounced in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar, and shall be included in the record.

9. (1) The record may be printed in Mauritius or may be printed in England if the parties agree to its being printed, but in the absence of such agreement shall be duplicated by process approved by the Registrar of the Judicial Committee. If the record is to be printed it shall be printed in accordance with the rules set out in the Schedule.

(2) Where the record is printed in Mauritius the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Judicial Committee 40 copies of such record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page and by affixing the seal of the Court.

(3) Where the record is to be printed or duplicated in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Judicial Committee one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

(4) Where part of the record is printed in Mauritius and part is to be printed or duplicated in England, subsections (2) and (3) shall, as far as possible, apply to such parts as are printed in Mauritius and such as are to be printed or duplicated in England respectively.

[S. 9 amended by Act 48 of 1991.]

10. Where there are 2 or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

11. Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

12. (1) On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

(2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Judicial Committee a certificate to the effect that the respondent has received notice, or is otherwise aware, of the order of the Court granting final leave to appeal and of the transmission of the record to England.

[S. 12 amended by Act 48 of 1991.]

13. An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to the Judicial Committee.

[S. 13 amended by Act 48 of 1991.]

14. (1) An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the Court may direct.

(2) Where an appellant, having obtained final leave to appeal, desires, prior to the despatch of the record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to

stand dismissed without express Order to the Judicial Committee, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

[S. 14 amended by Act 48 of 1991.]

15. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the record to England, any respondent may, after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and where the Court sees fit to grant such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of the Judicial Committee, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

[S. 15 amended by Act 48 of 1991.]

16. (1) Where at any time between the order granting final leave to appeal and the despatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record without express Order of the Judicial Committee.

(2) Where the record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Judicial Committee showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in place of, or in addition to, the party who has died or undergone a change of status.

[S. 16 amended by Act 48 of 1991.]

17. The case of each party to the appeal may be printed in Mauritius or printed or duplicated in England and shall, if it is to be printed, be printed in accordance with the rules set forth in the Schedule; and it shall be signed by at least one of the Counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person.

18. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case and the reasons of appeal. Reference by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer, in taxing the costs of the

appeal, shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case and shall disallow the costs occasioned by it.

19. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in Mauritius, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

[S. 19 amended by Act 48 of 1991.]

20. Any Order which the Judicial Committee may think fit to make on an appeal from a decision of the Court may be enforced in like manner as any decision of the Court should or might have been executed.

[S. 20 amended by Act 48 of 1991.]

SCHEDULE

I. Records and cases in appeals to the Judicial Committee shall be printed in the form known as *demy quarto*.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ inches in width.

III. The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter and notes.

IV. The number of lines on each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

[Sch. amended by Act 48 of 1991.]

B – ENACTED IN MAURITIUS

CONTENTS

B – ENACTED IN MAURITIUS

ELECTORAL BOUNDARIES COMMISSION REGULATIONS

GN 86 of 1976 – 29 June 1976

1. These regulations may be cited as the Electoral Boundaries Commission Regulations.

2. In these regulations—

"Commission" means the Electoral Boundaries Commission.

3. In carrying out its functions under section 39 of the Constitution in respect of the review of the constituencies, the Commission may—

(a) take into account representations made to it in respect of any proposed alteration of a boundary;

(b) allow representations to be so made, give public notice of any proposed alteration and fix the manner in which and the time within which any such representation may be made.

ELECTORAL DISTRICTS BOUNDARIES OF THE ISLAND OF MAURITIUS

General Notice 552 of 2000 – 10 August 2000

CONSTITUENCY NO. 1

GRAND RIVER NORTH WEST AND PORT LOUIS WEST

BOUNDARIES:

East: Starting from the mouth of Pouce Stream at Caudan Bassin, the boundary runs along Pouce Stream in a south easterly direction to its junction with the New Southern Entrance Road (M 1); thence South West along the New Southern Entrance Road (M 1) up to a point opposite the prolongation of the eastern wall of the former Central Railway Station at Victoria Square; thence in a south easterly direction along the prolongation of that wall and along that wall to its junction with the southern wall of that building; thence along that wall to a point in Victoria Square opposite Jemmapes Street; thence South through Victoria Square in the direction, of Jemmapes Street; thence along Jemmapes Street to its junction with Barracks Street; thence North East along Barracks Street to its junction with St. Georges Street; thence South East along St. Georges Street to its junction with Brown Sequard Street; thence South West along Brown Sequard Street to its junction with Orleans Street; thence South West again along Orleans Street to its junction with Petricher Square; thence South West across Petricher Square to a catchwater drain; thence South West along that catchwater drain to Armoury Bridge on Monseigneur Leen Avenue; thence South West in a straight line to Signal Mountain; thence by the watershed in a south easterly direction to Quoin Bluff, Spear Grass Peak, Goat Rock, Snail Rock to Le Pouce.

South: From Le Pouce the boundary runs West along the watershed through Guiby Peak and Berthelot Peak to Montagne Ory Trigonometrical Station (STP 12); thence West in a straight line to its junction with Old Moka Road and Bell Village – Phoenix Trunk Road (M 2).

West: From the last mentioned point the boundary runs North West along Bell Village – Phoenix Trunk Road (M 2) to its junction with a road leading to Max Works Limited; thence along the said road on a developed length of 110 metres to its junction with an estate road; thence West along the said estate road and its prolongation to its junction with Grand River North West; thence North along Grand River North West to its junction with the concrete wall separating Sunray Hotel and Bata Shoe Co. Ltd; thence West along that wall to its junction with the Port Louis – St. Jean Road (A 1); thence South to its junction with the trace of the Midland Old Railway Line; thence generally South West along that Old Railway Track to its junction with the prolongation of the northern boundary of Richelieu Livestock Feed Factory (formerly Richelieu Maize Mill); thence South East along that boundary to its junction with the eastern boundary of the abovenamed factory; thence South along that boundary for 113 metres to its junction with Richelieu Approach Road; thence West along Richelieu Approach Road to its junction with the

former Midland Railway Line; thence South West along the former Midland Railway Line on a developed length of approximately 1300 metres to its junction with an estate road; thence North along the said estate road for approximately 1200 metres to its junction with McNamara Road; then West along McNamara Road to its junction with Rivière Noire Road (A 3); thence North East along Rivière Noire Road (A 3) for 50 metres to its junction with La Jouliette Road; thence North West along La Jouliette Road for 180 metres to its junction with the Old Railway Line; thence generally West along the trace of the Railway Line to its junction with the road leading to the Mauritius Stationary Manufacturers Limited; thence South along the said road for 230 metres to its junction with Pointe aux Sables Road (B 31); thence generally North West along Pointe aux Sables Road (B 31) to a point 215 metres North of the intersection of the trace of Old Railway Road and Pointe aux Sables Road (B 31); thence in a generally south westerly direction along a straight line to the sea at Pointe aux Caves Lighthouse.

North: From the last mentioned point the boundary follows the seashore in a generally north easterly direction to the starting point.

The Constituency includes Flat Island and Gunners' Quoin.

CONSTITUENCY NO. 2

PORT LOUIS SOUTH AND PORT LOUIS CENTRAL

BOUNDARIES:

North: Starting from a point which links the north westwards prolongation of Queen Elizabeth II Avenue to the sea at Caudan Waterfront, the boundary runs South East first along that prolongation and then along Queen Elizabeth II Avenue to its junction with Chaussée and Intendence Streets; thence South West along Chaussée Street to its junction with La Poudrière Street; thence South East along La Poudrière Street to its junction with Labourdonnais Street; thence North East along Labourdormais Street to its junction with Pope Hennessy Street; thence across that street and North East along Dr GMD Atchia Street to its junction with Monseigneur Gonin Street; thence North West along Monseigneur Gonin Street to its junction with Sir Seewoosagur Ramgoolam Street; thence North East along Sir Seewoosagur Ramgoolam Street to its junction with Sir Edgar Laurent Street; thence South East along Sir Edgar Laurent Street and Boulevard Pitot to its junction with Boulevard Victoria; thence North East along Boulevard Victoria up to the corner of the western and southern walls of the boundary of Diego Garcia Reservoir; thence the boundary runs North East along the western wall mentioned above up to a path leading to Canal Anglais; thence North East along that path to its junction with Canal Anglais; thence easterly along an imaginary line up to the Priest Peak.

East: From the last mentioned point the boundary runs South along the watershed from the Priest Peak and through The Window up to Le Pouce.

South and West: By the eastern boundary of Constituency No. 1.

CONSTITUENCY NO. 3

PORT LOUIS MARITIME AND PORT LOUIS EAST

BOUNDARIES:

North: Starting from the mouth of Rivulet Terre Rouge, the boundary follows Rivulet Terre Rouge upstream to its junction with Tamarind Street.

East: From the last mentioned junction the boundary runs South along Tamarind Street, part of Lavaud Street and Cotton Street to its junction with Lataniers Stream; thence East along Lataniers Stream to its junction with Noor-e-Islam Mosque Street; thence generally West along Noor-e-Islam Mosque Street to its junction with St. François Xavier Street; thence Southerly along the last mentioned Street to its junction with Military Road and Easterly along Military Road to its junction with Pamplemousses Road; thence North East along Pamplemousses Road to Fortification Bridge; thence South Easterly along an imaginary line to Dumas Battery and Southerly up to the Priest Peak.

South: By part of the Northern boundary of Constituency No. 2.

West: From a point which is the prolongation of Queen Elizabeth II Avenue to the sea at Caudan Waterfront, the boundary runs generally North along the seashore to its junction with the mouth of Rivulet Terre Rouge.

The Constituency includes the island of Agaléga made up of 2 islands commonly referred to as the North Island and South Island separated from each other by a *bras de mer* of 1900 metres.

[EDITORIAL NOTE: No reference is made to Agaléga in General Notice No. 552 of 2000.]

[Amended by GN 1 of 1999.]

CONSTITUENCY NO. 4

PORT LOUIS NORTH AND MONTAGNE LONGUE

BOUNDARIES:

North: Starting from the junction of Rivulet Terre Rouge with Northern Entrance Road the boundary runs North East along the Northern Entrance Road for 720 metres up to its junction with an estate road; thence North West along that estate road for a distance of 670 metres up to its junction with a second estate road; thence North East along that estate road for 40 metres up to its junction with a third estate road; thence North West partly along that estate road for 70 metres and partly along the west bank of a reservoir; thence North East partly along the North bank of that reservoir and partly along an irrigation canal for 170 metres; thence North West along the said irrigation canal for 320 metres to its junction with an estate road; thence North East along that estate road for 235 metres up to its junction with Riche Terre Road (B 33); thence South East along Riche Terre Road (B 33) for 95 metres; thence along the boundaries of the Baie du Tombeau Receiving Station as follows: East for 170 metres, South East for 152 metres,

North East for 819 metres, North for 186 metres and East for 134 metres to its junction with an estate road; thence South East along that estate road for 890 metres to its junction with another estate road; thence East for 104 metres to its junction with a bridge on Northern Entrance Road; thence in a straight line to another bridge on Port Louis-Central Flacq Road (A 2); thence South East along Feeder Sèche to its junction with an imaginary line joining Long Mountain Trigonometrical Station (STP 3) and the junction of an estate road with Montagne Longue Road (B 19) at a distance of 610 metres North West of the junction of the last mentioned road with Notre Dame Junction Road; thence 631 metres North East along that estate road to its junction with Feeder St. Louis; thence 325 metres North along Feeder St. Louis to its junction with an estate road; thence 890 metres North East along that estate road to its junction with Notre Dame Junction Road at a point about 500 metres South of the junction of the last mentioned road with Old Flacq Road (B 20); thence North along Notre Dame Junction Road to its junction with Old Flacq Road (B 20); thence East along Old Flacq Road (B 20) to its junction with River des Calebasses at Calebasses Bridge; thence East along River des Calebasses to its junction with River Ruisseau Rose; thence upstream that river to its junction with Ilot Branch Road; thence South South East along an imaginary line to the top of Mt Bonamour (STP 24); thence North Fast along an imaginary line to the junction of River des Calebasses with the road leading to Congomah, 864 metres from the latter's junction with Old Flacq Road (B 20) at Camp Créole; thence South East along an imaginary line to the top of Rosalie Spur (STP 19); thence North East along an imaginary line to the junction of an estate road with Rivulet des Pamplemousses 201 metres West of Port Louis-Central Flacq Road (A 2); thence South East partly along that estate road and partly along Port Louis-Central Flacq Road (A 2) to its junction with La Nicolière Distributary Channel.

East: From the last mentioned junction the boundary runs South West along La Nicolière Distributary Channel to La Nicolière Flank Dam; thence South West and East along the banks of La Nicolière Reservoir, to its junction with a rivulet which lies approximately at a distance of 350 metres West of Le Juge de Segrais Bridge: thence South West along that rivulet to its junction with the District Boundary between Pamplemousses and Flacq.

South: From the last mentioned junction the boundary runs South West along the District Boundary between Pamplemousses and Flacq to the junction of the District Boundaries of Pamplemousses, Moka and Flacq; thence West along the District Boundaries between Pamplemousses and Moka and between Port Louis and Moka up to Le Pouce.

West: From the last mentioned point the boundary runs generally North along the eastern boundaries of Constituencies Nos. 2 and 3 to its junction with Rivulet Terre Rouge; thence West along part of the northern boundary of Constituency No. 3 to the starting point.

CONSTITUENCY NO. 5

PAMPLEMOUSSES AND TRIOLET

BOUNDARIES:

West: Starting from the junction of Rivulet Terre Rouge with the seashore the boundary runs in a generally northern direction along the seashore up to its junction with the north west prolongation of a wall lying between the state land leased to Mr Jacques Gerard Philippe Hitié and the northern boundary of Trou aux Biches public beach opposite Le Grand Bleue Hotel and Casuarina Village Hotel.

North: From the last mentioned junction the boundary runs South East along the said prolongation and the wall to its junction with the Pointe aux Piments Mon Choisy Coast Road (B 38); thence generally South West along that road on 94 metres to its junction with the north eastern boundary of Casuarina Village Hotel; thence South East along that boundary and its prolongation to its junction with Mon Choisy Cap Malhereux Road (B 13); thence generally South East along the last mentioned road on a developed length of approximately 500 metres to its junction with Grand Baie Road (A 4); thence South West along that road to its junction with Fond du Sac Road; thence South East along the last mentioned road to its junction with an estate road which runs south westwards and stands at 1195 metres West of the junction of Fond du Sac Road and Plaines des Papayes Road (B 11).

East: The boundary runs South West along the estate road last referred to on 1622 metres to its junction with a second estate road; thence South East along that estate road on 683 metres to its junction with a third estate road; thence South West along that estate road on 674 metres to its junction with Plaines des Papayes Road (B 11) at a point 36 metres North West of the Boodhoo Memorial; thence South East along Plaines des Papayes Road (B 11) on approximately 40 metres to its junction with an estate road; thence South West along that estate road on 428 metres to its junction with a second estate road thence South East along that estate road on 512 metres to its junction with a third estate road; thence South West along that estate road on 450 metres to its junction with a fourth estate road; thence South East along that estate road on 950 metres to its junction with a fifth estate road; thence North East along that road on 700 metres to its junction with a sixth estate road; thence South East along that estate road on 830 metres to its junction with a seventh estate road; thence North East along that estate road on 70 metres to its junction with an eighth estate road; thence South East along that estate road on 280 metres to its junction with Mapou-Goodlands Road (A 5); thence South West along the said road to its junction with an estate road which runs South East and stands at 325 metres North East of the Railway Level Crossing on Mapou-Goodlands Road (A 5); the South East along that estate road on 484 metres to its junction with a second estate road; thence again South East along that estate road on 125 metres to its junction with a third estate road: thence North East along that estate road on 271 metres to its junction with a fourth estate road; thence South East along

that estate road on 379 metres to its junction with a fifth estate road; thence North East along that estate road on 50 metres to its junction with a sixth estate road; thence South East along that estate road on 903 metres to its junction with a seventh estate road; thence South West and South East along that estate road on a developed length of 165 metres to its junction with an eighth estate road; thence North East along that estate road on 769 metres to its junction with a ninth estate road; thence South East along that estate road on 419 metres to its junction with a tenth estate road; thence East along that estate road on 20 metres to its junction with an eleventh estate road; thence South East along that estate road on 490 metres to its junction with a twelfth estate road; thence South West along that estate road on 73 metres to its junction with a thirteenth estate road; thence South East along that estate road on 292 metres to its junction with Mon Piton-Rivière du Rempart Road (A 6) at a point 207 metres North East of the ninth milestone; thence North East along Mon Piton-Rivière du Rempart (A 6) on 639 metres to its junction with La Nicolière Distributory Channel; thence South along La Nicolière Distributory Channel to its junction with Port Louis-Central Flacq Road (A 2).

South: By the northern boundary of Constituency No. 4 up to the junction of Northern Entrance Road and Rivulet Terre Rouge and along part of the northern boundary of Constituency No. 3 to the starting point.

CONSTITUENCY NO. 6

GRAND BAIE AND POUDRE D'OR

BOUNDARIES:

South: Starting from the junction with the seashore of a drain which intersects Goodlands-Poste de Flacq Road (B 15) at 108 metres North West of Talewan Bhogun Memorial the boundary runs South West along that drain to its junction with Goodlands-Poste de Flacq Road (B 15); thence North West along Goodlands-Poste de Flacq Road (B 15) for 17 metres to its junction with the prolongation of an estate road; thence South West first along the prolongation and then along the estate road itself for 235 metres to its junction with a second estate road; thence North West along that estate road for 634 metres to its junction with a third estate road; thence North East along that estate road for 81 metres to its junction with Goodlands-Poste de Flacq Road (B 15); thence North West along Goodlands-Poste de Flacq Road (B 15) for 50 metres to its junction with Rivière Grand Marais; thence South West along Rivière Grand Marais to its junction with an estate road which runs North West and abuts on Poudre d'Or Road (B 16) at 442 metres North East of Schoenfeld Branch Road; thence North West along the estate road last mentioned for approx 1750 metres to its junction with Poudre d'Or Road (B 16); thence North East along that road for 40 metres to its junction with an estate road; thence North West along that estate road for 890 metres to its junction with a second estate road; thence North East along that estate road for 112 metres to its junction with a third estate road; thence North West along that estate road for 1320 metres to its junction with a fourth estate

road; thence South West along that estate road for 60 metres to its junction with a fifth estate road; thence North West along that estate road for 770 metres to its junction with Venkatasawmy Road opposite Kalimaye; from the last mentioned junction the boundary runs North East along Venkatasawmy Road for 73 metres to its junction with an estate road; thence North West along that estate road for 880 metres to its junction with another estate road; thence South West along that estate road for 1400 metres to its junction with Fond du Sac-Forbach Road at a point 463 metres North West of its junction with Venkatasawmy Road; thence North West along Fond du Sac-Forbach Road to its junction with Mapou-Goodlands Road (A 5); thence South West in a straight line to Butte aux Papayes Trigonometrical Station (STP 21); thence West in a straight line to an estate road which runs South West and abuts on Middle Road (B 17) at 786 metres North West of the main entrance to Belle Vue Harel Factory, the last mentioned junction lies at a distance of 546 metres from Middle Road (B 17); thence North West in a straight line to its junction with Toolsy Road at a distance of approximately 300 metres South East of Plaine de Papayes Road (B 11); thence North West along Toolsy Road to its junction with Plaine des Papayes Road (B 11); thence South West along an imaginary line for 790 metres to the junction of 2 estate roads, 1 of them running South West at a distance of 674 metres from its junction with Plaine des Papayes Road (B 11) at a point 36 metres North West of Boodhoo Memorial and the other running North West; thence along part of the eastern boundary and the whole of the northern boundary of Constituency No. 5 to the seashore.

West, North and East: From the last mentioned point the boundary runs generally North, East and South along the seashore to the starting point.

The islets lying off the coast and facing the Constituency are included in it.

CONSTITUENCY NO. 7

PITON AND RIVIERE DU REMPART

BOUNDARIES:

North: Starting from the junction with the seashore of the southern boundary of Constituency No. 6 the boundary of Constituency No. 7 runs West along the southern boundary of Constituency No. 6 to the junction of the southern boundary of that Constituency with the eastern boundary of Constituency No. 5.

West: From the last mentioned point Constituency No. 7 is bounded by Constituency No. 5 to the junction of Port Louis-Central Flacq Road (A 2) with La Nicolière Distributary Channel; thence by Constituency No. 4 to La Nicolière Mountain at the junction of the District Boundaries of Moka, Pamplemousses and Flacq.

South: From the last mentioned point, the boundary runs generally South East along the District Boundary between Flacq and Moka to its junction with Ripailles-Nicolière Road (B 49) at a point approximately 700 metres from

the junction of Ripailles-Nicolière Road (B 49) and Nouvelle Decouverte Road; thence North along the sinuosities of that road to Le Juge de Segrais Bridge over La Nicolière Spillway; thence North East along Rivière du Rempart to its intersection with Amaury Branch Road; thence South East along Amaury Branch Road for 604 metres to its junction with a road known as "Chemin Maleppa"; thence South East along "Chemin Maleppa" for a developed length of 1283 metres; thence North East along "Chemin Maleppa" for a developed length of about 320 metres to its junction with an estate road; thence South East along that estate road for 220 metres to its junction with a second estate road; thence North East along that estate road for about 320 metres to its junction with a third estate road; thence South East along that estate road for 300 metres to its junction with a fourth estate road; thence North East along that estate road on a developed length of about 800 metres to its junction with Belle Vue Road (B 22); thence along Belle Vue Road (B 22) in a south easterly direction up to its junction with Aubin Road. From this last mentioned point, the boundary runs North East along an imaginary line to Pointe Roches Noires.

East: From the last mentioned point the boundary runs North West and North along the seashore to the starting point.

The islets lying off the coast and facing the Constituency are included in it.

CONSTITUENCY NO. 8

QUARTIER MILITAIRE AND MOKA

BOUNDARIES:

North: Starting from the junction of Grand River North West with the western boundary of Constituency No. 1 the boundary runs generally East along part of the western and along the southern boundaries of Constituency No. 1, along part of the southern boundary of Constituency No. 4 and along part of the southern boundary of Constituency No. 7 up to the junction of the District Boundary between Moka and Flacq with Ripailles-Nicolière Road (B 49).

East: From the last mentioned point the boundary runs along the District Boundary between Moka and Flacq to its junction with Nouvelle Decouverte Road at Pont Bondieu; thence West along Nouvelle Decouverte Road for 19 metres to its junction with La Nicolière Feeder Channel; thence South along La Nicolière Feeder Channel to its junction with Rivière du Poste at Pondard Dam, thence South East along Rivière du Poste to its junction with an estate road which abuts on Higginson Road (B 24) at a point 1380 metres South West of the junction of United Junction Road and Higginson Road (B 24); thence South along that estate road for 192 metres to its junction with Higginson Road (B 24); thence North East along Higginson Road (B 24) for 343 metres to its junction with an estate road; thence South along that estate road for 360 metres to its junction with a drain.

South: From the last mentioned point the boundary runs West along that drain for 1481 metres to its junction with an estate road; thence North along that estate road for 146 metres to its junction with a second estate road; thence West along that estate road for 299 metres to its junction with a third estate road; thence North along that estate road for 21 metres to its junction with a fourth estate road; thence West along that estate road for 446 metres to its junction with a fifth estate road; thence North along that estate road for 411 metres to its junction with a sixth estate road; thence West along that estate road for 302 metres to its junction with Mont Ida Branch Road; thence South and South West along Mont Ida Branch Road for 482 metres to its junction with an estate road; thence North West along the sinuosities of that estate road for 879 metres to its junction with a second estate road; thence South West along that estate road for 186 metres to its junction with a third estate road; thence West along that estate road for 501 metres to its junction with a fourth estate road; thence North along that estate road for 157 metres to its junction with Higginson Road (B 24) at a point 886 metres South West of the 16th Milestone; thence South West along Higginson Road (B 24) for 1475 metres up to its junction with an estate road; thence South along that estate road for 488 metres to its junction with Moka-Camp de Masque-Flacq Road (A 7); thence East along Moka-Camp de Masque-Flacq Road (A 7) for 1042 metres to its junction with an estate road; thence South along that estate road for 424 metres to its junction with a second estate road; thence East along that estate road for 124 metres to its junction with a third estate road; thence South along that estate road and its prolongation (in a straight line) for 791 metres to the trace of the Old Moka-Flacq Branch Railway; thence North West along that trace for 782 metres to its junction with an estate road; thence South along that estate road for 12 metres to its junction with a second estate road; thence West along that estate road for 597 metres to its junction with Montagne Blanche-Bel Air Road (B 27) at a point 1035 metres South East of the junction of Montagne Blanche-Bel Air Road (B 27) and Moka-Camp de Masque-Flacq Road (A 7); thence West by an imaginary line to Vuillemin Bridge on Vuillemin Branch Road; thence North West along a straight line approximately 1600 metres to its junction with the trace of the Old Moka-Flacq Branch Railway; thence North West along the trace of the Old Moka-Flacq Branch Railway to a point 274 metres South East of its junction with Vyapooree Road; thence South along a straight line passing through a point 274 metres East of the junction of Quartier Militaire Road (B 6) with Vyapooree Road up to a point approximately 400 metres South of Quartier Militaire Road (B 6); thence generally South West along a line parallel to Quartier Militaire Road (B 6) up to a point which is 400 metres on a perpendicular to Quartier Militaire Road (B 6); the perpendicular lying at a distance of 800 metres South West of the junction of Quartier Militaire Road (B 6) and Verdun Road (B 50); thence South West along Quartier Militaire Road (B 6) for 200 metres and West along a straight line to the intersection of Rivulet Françoise and Cote d'Or Road (B 48); thence West along Rivulet François to its junction with River Terre Rouge; thence North and West along River Terre Rouge to its junction with River Cascade at Reduit Bridge on Reduit Road (B 1); thence West along Reduit Road (B 1) to its junction with River Plaines Wilhems at Robertson Bridge.

West: From the last mentioned point the boundary runs downstream along River Plaines Wilhems and Grand River North West to the starting point.

CONSTITUENCY NO. 9

FLACQ AND BON ACCUEIL

BOUNDARIES:

East: Starting from the junction with the seashore at Pointe Roches Noires of the District Boundary between Rivière du Rempart and Flacq the boundary runs South along the seashore to its junction with the prolongation of the boundary between Belle Mare and Palmar Government Reserves; thence along that boundary to its junction with Belle Mare-Palmar-Trou d'Eau Douce Road (B 59).

South: From the last mentioned junction the boundary runs South along the Belle Mare-Palmar-Trou d'Eau Douce Road (B 59) to its junction with the Palmar Government Onion Store Road; thence generally South West along that road to its junction with an estate road which passes East of Palmar Football Ground and lies at a distance of 120 metres North East of the junction of High Street and Anemones Avenue at Palmar village; thence South East along that estate road for 92 metres to its junction with a second estate road; thence South West along that estate road for 41 metres to its junction with a third estate road; thence South East along that estate road for 245 metres to its junction with Quatre Cocos Road (B 61); thence East along Quatre Cocos Road (B 61) for 76 metres to its junction with an estate road; thence South West along that estate road for 139 metres to its junction with a second estate road; thence South East along that estate road for 82 metres to its junction with a third estate road; thence South West along the sinuosities of that estate road for 210 metres to its junction with a fourth estate road; thence North West along the sinuosities of that estate road for 504 metres to its junction with a fifth estate road; thence South West along that estate road for approximately 815 metres to its junction with the trace of North Line of Railway; thence North West along the trace of North Line of Railway for 1241 metres to its junction with an estate road which passes South of Camp Marcelin; thence South West along that estate road to its junction with Trou d'Eau Douce Road (B 26); thence South East along Trou d' Eau Douce Road (B 26) for 137 metres to its junction with an estate road; thence South West along that estate road up to a point 457 metres East of Flacq-Mahebourg Road (B 28); thence North West along an imaginary line running parallel to Flacq-Mahebourg Road (B 28) up to its junction with Trou d'Eau Douce Road (B 26); thence across Trou d'Eau Douce Road (B 26) North East along Chinata Road also called Lall Bahadoor Shastri Road for 280 metres to its junction with Kalipa Road; thence South East along the prolongation of Kalipa Road for 180 metres to its junction with an estate road; thence North East along that estate road for 150 metres to its junction with the prolongation of Riche Mare-Bramsthan Through Road; thence North West first along the prolongation mentioned above and along Riche Mare-Bramsthan

Through Road to its junction with Argy Road (B 60); thence again North West across Argy Road (B 60) and along an estate road and its prolongation to its junction with River Coignard; thence South West along River Coignard to d'Epinay Bridge; thence again South West along River Coignard for 183 metres and generally South East along a line 183 metres parallel to Flacq-Mahebourg Road (B 28) up to its junction with an estate road at a point 183 metres South West of the junction of Flacq-Mahebourg Road (B 28) and Trou d'Eau Douce Road (B 26); thence South West along that estate road for 274 metres up to a point 457 metres South West of the above mentioned junction; thence generally South East along a line 457 metres parallel to the Flacq-Mahebourg Road (B 28) to its junction with an estate road at a point 457 metres West of La Laura Sign Post on the Flacq-Mahebourg Road (B 28); thence South West along that estate road for a distance of 561 metres to its junction with a second estate road; thence South along that estate road for 437 metres to its junction with a third estate road; thence South West along that estate road for 101 metres to its junction with a fourth estate road; thence South along that estate road for 422 metres to its junction with Ruisseau Mare Triton at a point 1106 metres upstream from its junction with Rivière Sèche; thence West along Ruisseau Mare Triton to its junction with Belle Rose Branch Road; thence North West in a straight line to East Peak on Fayences Mountain; thence along the watershed to West Peak (Fayence Mountain) Trigonometrical Station; thence North West in a straight line to the junction of Mare Goyaves Branch Road with River Coignard; thence North East along River Coignard to its junction with Queen Victoria Branch Road; thence South West along Queen Victoria Branch road to its junction with Camp de Masque Road (B 55); thence North West along Camp de Masque Road (B 55) to its junction with Moka-Camp de Masque-Flacq Road (A 7); thence North East along Moka-Camp de Masque-Flacq Road (A 7) to an estate road which stands at 124 metres North East of the junction of Camp de Masque Road (B 55) and Camp de Masque-Flacq Road (A 7); thence North along the last mentioned estate road for 359 metres to its junction with a second estate road; thence South West along that estate road for 174 metres to its junction with a third estate road; thence West along that estate road for 591 metres to its junction with Unité Junction Road; thence South along that road for 647 metres to its junction with Moka-Camp de Masque-Flacq Road (A 7); thence South West along Moka-Camp de Masque-Flacq Road (A 7) for 1168 metres to its junction with an estate road which stands at 168 metres East of the 9th Milestone; thence North along the estate road last referred to for 1469 metres to its junction with Higginson Road (B 24); thence West along Higginson Road (B 24) for 343 metres to its junction with an estate road; thence North along that estate road for 192 metres to its junction with Rivière du Poste; thence North West along Rivière du Poste to its junction with La Nicolière Feeder Channel.

West: By part of the eastern boundary of Constituency No. 8.

North: By the southern boundary of Constituency No. 7 to the starting point.

The islets lying off the coast and facing the Electoral District are included in it.

CONSTITUENCY NO. 10

MONTAGNE BLANCHE AND GRAND RIVER SOUTH EAST

BOUNDARIES:

East: Starting from the junction of the eastern and southern boundaries of Constituency No. 9 with the seashore at the prolongation of the boundary between Belle Mare and Palmar Government Reserves, the boundary runs generally South along the seashore to the mouth of Grand River South East, thence North West along Grand River South East to its junction with the boundary between Beau Champ and Deux Frères.

South: From the last mentioned junction the boundary runs South West along the Beau Champ-Deux Frères boundary to its junction with the watershed of Beau Champ Mountain; thence again South West along the watershed of Beau Champ, Mount Villars Bambous, Pic Grand Fond Mountains to Table A Perrot Mountain.

West: From the last mentioned point the boundary runs North first along a straight line to Feeder Eau Rouge and along Feeder Eau Rouge itself, to its confluence with Rivière Dubois; thence North East along Rivière Dubois and Rivière Canard to its confluence with Grand River South East; thence North West along Grand River South East to its confluence with River Vacoas; thence again North West along River Vacoas to its junction with Sans Souci canal; thence East along Sans Souci canal to its junction with FUEL canal; thence North East along FUEL canal to its junction with River Françoise; thence upstream along River Françoise; to its intersection with La Nicolière Feeder channel; thence generally North along La Nicolière Feeder channel to its junction with an estate road situated 23 metres South East of the junction of La Nicolière Feeder channel and Montagne Blanche-Bel Air Road (B 27); thence South West along that estate road for 596 metres to its junction with a second estate road; thence North West and North along that estate road for 2286 metres to its junction with Montagne Blanche-Bel Air Road (B 27); thence North West along Montagne Blanche-Bel Air Road (B 27) for 1033 metres to its junction with an estate road 1035 metres South East of the junction of Montagne Blanche-Bel Air Road (B 27) and Moka-Camp de Masque-Flacq Road (A 27).

North: From the last mentioned point the boundary runs along part of the southern boundary of Constituency No. 8 and part of the southern boundary of Constituency No. 9 to the starting point.

CONSTITUENCY NO. 11

VIEUX GRAND PORT AND ROSE BELLE

BOUNDARIES:

North: Starting from Lagrave Trigonometrical Station the boundary runs generally East partly along the District Boundary of Grand Port and Moka and

partly along the District Boundary of Grand Port and Flacq up to its junction with the western boundary of Constituency No. 10 at Table a Perrot; thence along the southern boundary of Constituency No. 10.

East: From the last mentioned junction the boundary runs South along Grand River South East to its mouth; thence generally South West along the seashore to the mouth of Rivière des Créoles.

South: From the last mentioned junction the boundary runs West along Rivière des Créoles to its junction with the prolongation of part of Ruisseau des Délices Road; thence along the abovementioned prolongation and along Ruisseau des Délices Road itself up to its junction with Deux Bras-Cent Gaulettes Road (B 7); thence South East along Deux Bras-Cent Gaulettes Road (B 7) for 784 metres to its junction with a private road leading to the former Beau Vallon Sugar Factory; thence West along an estate road for 466 metres to its junction with a secondary road; thence South East along that secondary road up to its junction with Rivière La Chaux at Ste. Hélène Bridge; thence generally West along the sinuosities of Rivière La Chaux to its confluence with Ruisseau Copeaux; thence West along Ruisseau Copeaux to its junction with an estate road; thence North West along that estate road for 279 metres to its junction with a road known as "Chemin Mallet"; thence South West along "Chemin Mallet" for 725 metres to its junction with an estate road; thence North West along that estate road for 482 metres to its junction with another estate road; thence South West along that estate road for a developed length of 497 metres to its junction with a third estate road; thence South West along that estate road for 355 metres to its junction with Phoenix-Mahebourg Road (A 10); thence across Phoenix-Mahebourg Road (A 10) to Gros Bois Road; thence again South West along Gros Bois Road for 1878 metres to its junction with an estate road; thence West along that estate road for 514 metres to its junction with a second estate road; thence North along the last mentioned estate road for 558 metres to its junction with a third estate road; thence South West along that estate road for 133 metres to its junction with a fourth estate road; thence North West along that estate road for 416 metres to its junction with New Grove Road (B 82) at a point 1449 metres South West of its junction with the trace of Old Midland Line of Railways; thence South West along New Grove Road (B 82) for 149 metres to its junction with an estate road; thence North West along that estate road for 1216 metres to its junction with a second estate road; thence South West along that estate road and its prolongation to its junction with Rivière Tabac; thence North West along Rivière Tabac to its confluence with Rivière du Poste; thence upstream along Rivière du Poste to its junction with the District Boundary between Plaines Wilhems and Grand Port.

West: From the last mentioned junction the boundary runs North East along the District Boundary between Plaines Wilhems and Grand Port to the starting point.

The islets lying off the coast and facing the Constituency are included in it.

CONSTITUENCY NO. 12
MAHEBOURG AND PLAINE MAGNIEN

BOUNDARIES:

North: Starting at a point on Rivière Tabac which lies at approximately 560 metres South East of Railway Bridge No. 3, the boundary runs along part of the southern boundary of Constituency No. 11 to the mouth of Rivière des Créoles.

East and South: From the last mentioned point the boundary runs along the seashore to the mouth of Rivière Tabac.

West: From the last mentioned point the boundary runs North along Rivière Tabac to a point 29 metres South East of Rivière Tabac Bridge, (on La Barraque Road (B 8) at L'Escalier); thence North East in a straight line for 27 metres to its junction with a dry rubble wall and a masonry wall (which encloses and separates La Barraque Factory Grounds from L'Escalier Village); thence North West along the said rubble wall and masonry wall for a total developed length of 228 metres to its junction with La Barraque Road (B 8); thence North East along La Barraque Road (B 8) for 113 metres to its junction with a tramway; thence North West along that tramway for 130 metres to its junction with a road which leads from La Barraque Road (B 8) to the Old Gros Bois Sugar Factory; thence North along that road for 668 metres to its junction with an estate road; thence North along that estate road for 611 metres to its junction with a second estate road; thence West along that estate road for 725 metres to its junction with a third estate road; thence North along that estate road for 316 metres to its junction with a fourth estate road; thence West along that estate road for 317 metres to its junction with a fifth estate road; thence North West along that estate road for 145 metres to its junction with a sixth estate road; thence West along that estate road for 924 metres to its junction with a seventh estate road; thence North West along that estate road for 532 metres to its junction with an eighth estate road; thence South West along that estate road itself and its prolongation for 439 metres to its junction with Rivière du Poste; thence upstream along Rivière du Poste to its junction with an estate road; thence North East along that estate road for 290 metres to its junction with a second estate road; thence South East along that estate road for 93 metres to its junction with a third estate road; thence North East along that estate road for 247 metres to its junction with New Grove Road (B 82); thence South East along New Grove Road (B 82) for 170 metres to its junction with a tramway; thence North and East along that tramway for a developed length of 241 metres to its junction with an estate road; thence North East along that estate road for 666 metres to its junction with a second estate road; thence North West along that estate road for 241 metres to its junction with a third estate road; thence North East along that estate road for 150 metres to its junction with a tramway; thence North West along that tramway for 71 metres to its junction with a tramway bridge on Rivière Tabac; thence upstream along Rivière Tabac to the starting point.

The islets lying off the coast and facing the Constituency are included in it.

CONSTITUENCY NO. 13

RIVIERE DES ANGUILLES AND SOUILLAC

BOUNDARIES:

North: Starting from the junction of the District Boundary between Plaines Wilhems and Savanne with Les Mares Road the boundary runs East in a straight line (along the District Boundary above mentioned) to its junction with Rivière du Poste; thence downstream along Rivière du Poste to its junction with the District Boundaries of Grand Port, Savanne and Plaines Wilhems; thence along part of the southern boundary of Constituency No. 11 up to Railway Bridge No. 3 on Rivière Tabac.

East: From the last mentioned point the constituency is bounded by the western boundary of Constituency No. 12 to the seashore at the mouth of Rivière Tabac.

South: From the last mentioned point the boundary runs West along the seashore to the mouth of Rivière Savanne.

West: From the last mentioned point the boundary runs North along Rivière Savanne to its confluence with Rivière Patates; thence upstream along Rivière Patates to a point lying on an imaginary line from the centre of Bassin Blanc to Piton Savanne Trigonometrical Station; thence East along that imaginary line to Piton Savanne Trigonometrical Station; thence from Piton Savanne Trigonometrical Station in a north westerly direction to Cocotte Mountain Trigonometrical Station; thence North East to the starting point.

CONSTITUENCY NO. 14

SAVANNE AND BLACK RIVER

BOUNDARIES:

North: Starting from the mouth of Rivière Belle Isle the boundary runs North East in a straight line to the junction of a branch of La Ferme Irrigation Canal with an estate road 1532 metres north of the latter's junction with Rivière Noire Road (A 3) at a point 18 metres from the 10th Milestone; thence East and South East along the sinuosities of that canal on 1184 metres to its junction with a second branch of La Ferme Irrigation Canal; thence again South East along the second canal on 130 metres to its junction with an estate road; thence north along that estate road for a developed length of 414 metres to its junction with the prolongation of an estate road which abuts on Rivière Noire Road (A 3); thence South East along first the said prolongation and along the estate road itself on a total distance of 453 metres to its junction with Rivière Noire Road (A 3); thence South West along Rivière Noire Road (A 3) on 151 metres to its junction with a road leading to La Ferme Dam; thence South East along that road on 246 metres to its junction with La Ferme Dam; thence North and East along the bank of La Ferme Reservoir to its junction with La Ferme Feeder Channel; thence generally North East along

that Feeder Channel to its junction with the District Boundary between Plaines Wilhems and Black River.

East: From the last mentioned junction the boundary runs South and South East along the District Boundary between Plaines Wilhems and Black River to the Trigonometrical Point (STP 32) on top of Corps de Garde Mountain; thence South East to the District Boundary Post on Corps de Garde Mountain; thence South along an imaginary line to its junction with the intersection of Charlie Avenue and a rivulet at the foot of Corps de Garde Mountain; thence South West along Charlie Avenue on 780 metres to its junction with Cremation Avenue; thence South East along Cremation Avenue on 132 metres to its junction with Soobarah Lane; thence along Soobarah Lane to its junction with Palma Road (B 2); thence North East along Palma Road (B 2) to its junction with Western Boundary Avenue; thence South East along the said road on 183 metres to its junction with Bassin Road; thence South West along Bassin Road on 190 metres to its junction with Kingstone Avenue; thence South East along Kingstone Avenue on 488 metres to its junction with Avenue La Paix; thence South West along Avenue La Paix to its junction with Hospital Road; thence along Hospital Road on 180 metres to its junction with West Lane; thence in an easterly direction along West Lane on 96 metres to its junction with a Common Road; thence South along that Common Road on 210 metres to its junction with a second Common Road; thence generally West along the last mentioned Common Road and its prolongation to the District Boundary between Plaines Wilhems and Black River; thence along the said district boundary up to Trois Mamelles; thence generally South along the District Boundary between Plaines Wilhems and Black River up to its junction with District Boundary between Plaines Wilhems and Savanne at Boundary Stone 35 at the top of Black River Gorges; thence the boundary follows the District Boundary between Plaines Wilhems and Savanne to its junction with Les Mares Road; thence South along the western boundary of Constituency No. 13 to the seashore.

South and West: From the last mentioned point the boundary follows the seashore first in a westerly direction to Le Morne then in a northerly direction to the starting point.

The islets lying off the coast and facing the Constituency are included in it.

CONSTITUENCY NO. 15

LA CAVERNE AND PHOENIX

BOUNDARIES:

North: Starting at a point on West Lane at 210 metres East of Candos-Vacoas Road (B 3) the boundary runs East along West Lane across Candos-Vacoas Road (B 3); thence in a general north easterly direction along Lall Bahadoor Shastri Avenue for 510 metres to its junction with the foot of Candos Hill; thence North East in a straight line to a boundary stone marked WD No. 4 on the western boundary of Candos Rifle Range at the top of Candos Hill;

thence North East along the western boundary of Candos Rifle Range to a boundary stone marked WD No. 5; thence East along the northern boundary of Candos Rifle Range for 488 metres to its junction with an estate road; thence North along that estate road for 192 metres to its junction with another estate road leading to the Sewerage Farm; thence East along that estate road for 1039 metres to its junction with Bell Village-Phoenix Trunk Road (M 2); thence North West along Bell Vill-Phoenix Trunk Road (M 2) for 424 metres; thence East across Bell Vill-Phoenix Trunk Road (M 2) and again East along the northern limit of the property of Maurifoods Limited for 248 metres to its junction with River Sèche; thence North by an imaginary line to the confluence of Rivulet Vaucluse and River Plaines Wilhems; thence North East by an imaginary line to a point on River Terre Rouge approximately 580 metres North West of the Temple at Bagatelle; thence along the southern boundary of Constituency No. 8 up to its junction with Quartier Militaire Road (B 6).

East: From the last mentioned junction the boundary runs generally South West along Quartier Militaire Road (B 6) to its intersection with the Phoenix-La Vigie Road.

South: From the last mentioned intersection the boundary runs generally North West along Phoenix-La Vigie Road for 500 metres to its junction with an estate road; thence South West along that estate road for 447 metres to its junction with a second estate road; thence North West along that estate road for 800 metres to its junction with a third estate road; thence South West along that estate road for 469 metres to its junction with a fourth estate road (known as Camp La Serpe Road); thence South East along that estate road for 61 metres to its junction with a drain; thence North West along that drain for 169 metres to its junction with River du Mesnil; thence South along River du Mesnil to its junction with a boundary road which abuts on Phoenix-Mahebourg Road (A 10) at 21 metres South of the junction of Engrais Martial Road; Phoenix-Mahebourg Road (A 10); thence West along that boundary road for 124 metres to its junction with Phoenix-Mahebourg Road (A 10); thence North along Phoenix-Mahebourg Road (A 10) for 21 metres to its junction with Engrais Martial Road; thence South West along Engrais Martial Road for 227 metres to its junction with an estate road; thence North along that estate road for 187 metres to its junction with Hazareesingh Road; thence West along Hazareesingh Road for 55 metres to its junction with an estate road; thence North along that estate road for 179 metres to its junction with Ganachaud Lane; thence West along Ganachaud Lane for 138 metres to its junction with an estate road; thence North along that estate road for 204 metres to its junction with Allée Brilliant Road (B 74); thence South West along Allée Brillant Road (B 74) to its junction with River Sèche; thence North along River Sèche to its intersection with St. Paul Road (B 4); thence South West along St. Paul Road (B 4) to its junction with Candos-Vacoas Road (B 3); thence South along Candos-Vacoas Road (B 3) to its junction with Seeballuck Road (which starts at a distance of 32 metres South of the junction of Vacoas-La Marie Road (B 64) with Candos-Vacoas Road (B 3); thence West along Seeballuck Road for 608 metres to its junction with Chemin des Vergues; thence South East along Chemin des Vergues for 350 metres to its junction with an estate road which starts at 358 metres South of the junction of Vacoas-La Marie Road (B 64) with Candos-Vacoas

Road (B 3); thence West along that estate road and its prolongation to the District Boundary between Plaines Wilhems and Black River.

West: From the last mentioned point the boundary runs along part of the eastern boundary of Constituency No. 14 to the starting point.

CONSTITUENCY NO. 16

VACOAS AND FLOREAL

BOUNDARIES:

North: Starting at the junction of the southern boundary of Constituency No. 15 with the District Boundary between Black River and Plaines Wilhems, the boundary follows the southern boundary of Constituency No. 15 easterly to its intersection with Phoenix-Mahebourg Road (A 10).

East: From the last mentioned junction the boundary runs generally South East and South West along Phoenix-Mahebourg Road (A 10) to its junction with Remono Street; thence South West along Remono Street to its junction with Sir William Newton Street; thence North West along Sir William Newton Street and Emile Sauzier Street to its junction with Georges Guibert Street; thence South West along Georges Guibert Street and Lahausse de la Louvière Street to the junction of the latter with Crater Lane; thence South East along Crater Lane for 115 metres to its junction with a tarred estate road; thence South West along that road for 772 metres to its junction with Chemin Berthaud; thence South East along Chemin Berthaud for 39 metres to its junction with an estate road; thence North West along that estate road for 75 metres to its junction with Robinson Road; thence South along Robinson Road to its junction with River Grand Tatamaka; thence generally West and North West along River Grand Tatamaka to its intersection with an estate road formerly known as "Chemin Tres Bon"; thence South West and South along that estate road formerly known as "Chemin Tres Bon" to its junction with Old Broken Bridge Road; thence North West and West along Old Broken Bridge Road to its junction with River Petit Tatamaka; thence South East along River Petit Tatamaka to its junction with an estate road; thence East along that estate road for 98 metres to its junction with a second estate road; thence South along that estate road for 227 metres to its junction with La Brasserie Road (B 70); thence East along La Brasserie Road (B 70) for 707 metres to its junction with Ligne Berthaud; thence South East along Ligne Berthaud to its junction with the District Boundary between Plaines Wilhems and Grand Port.

South: From the last mentioned junction the boundary runs South West along the District Boundary between Plaines Wilhems and Grand Port to its junction to the District Boundary between Plaines Wilhems and Savanne; thence generally West along the District Boundary between Plaines Wilhems and Savanne to Boundary Stone 35.

West: From the last mentioned point the boundary runs generally North along the District Boundary between Plaines Wilhems and Black River to the starting point.

CONSTITUENCY NO. 17

CUREPIPE AND MIDLANDS

BOUNDARIES:

North: Starting at a point on Phoenix-Mahebourg Road (A 10) 21 metres South of its junction with Engrais Martial Road, the boundary runs along part of the southern and eastern boundaries of Constituency No. 15 and part of the southern boundary of Constituency No. 8 up to its junction with Montagne Blanche-Bel Air Road (B 27) at a point 1035 metres South East of the junction of Montagne Blanche-Bel Air Road (B 27) with Moka-Camp de Masque-Flacq Road (A 7).

East: By the western boundary of Constituency No. 10 up to Table a Perrot Mountain.

South: Partly by the northern boundary and partly by the western boundary of Constituency No. 11.

West: By the eastern boundary of Constituency No. 16.

CONSTITUENCY NO. 18

BELLE ROSE AND QUATRE BORNES

BOUNDARIES:

West: Starting from the junction of Soobarah Lane with Palma Road, the boundary runs North along part of eastern boundary of Constituency No. 14 to the boundary post on Corps de Garde Mountain; thence North East in a straight line to the junction of Boundary Road (B 75) with Ligne Berthaud Avenue (B 73); thence North East along Boundary Road (B 75) to its junction with Hugnin Road (B 76); thence North West along Hugnin Road (B 76) to its junction with Père Jean de Roton Street; thence North East along Père Jean de Roton Street and along its prolongation to Duncan Taylor Street; thence South along Duncan Taylor Street to its junction with Boundary Road (B 75); thence North East along Boundary Road and its prolongation to River Plaines Wilhems; thence North along River Plaines Wilhems to Roberston Bridge on Réduit Road (B 1).

North: From the last mentioned point the boundary runs along part of the southern boundary of Constituency No. 8, to a point on River Terre Rouge, 580 metres North West of the temple at Bagatelle.

East and South: By part of the northern boundary of Constituency No. 15 and part of the eastern boundary of Constituency No. 14 to the starting point.

CONSTITUENCY NO. 19

STANLEY AND ROSE HILL

BOUNDARIES:

North: Starting from the junction of René Maingard de Ville-es-Offrans Street (formerly Allée des Manguiers) with Ariane Street (Morcellement La Comète) the boundary runs East along René Maingard de Ville-es-Offrans Street to its junction with Hugnin Road (B 76); thence South along Hugnin Road (B 76) to its junction with Père Laval Street; thence East along Père Laval Street, across Port Louis-St Jean Road (A 1) and along Révérend Lebrun Street and its prolongation to River Plaines Wilhems.

East and South: By part of the western boundary of Constituency No. 8 and part of the western boundary of Constituency No. 18 up to the District Boundary Post on Corps de Garde Mountain.

West: From the last mentioned point, the boundary runs along part of the eastern boundary of Constituency No. 14 and part of the northern boundary of Constituency No. 14 and along La Ferme Feeder Channel up to its junction with La Chaumière Branch Road; thence North along that Road to its junction with an estate road at a point 800 metres from the junction of La Chaumière Branch Road with St Martin Cemetery Road; thence East along that estate road to its junction with Ariane Street (opposite Independence Avenue, Roches Brunes); thence North along Ariane Street to the starting point.

CONSITUENCY NO. 20

BEAU BASSIN AND PETITE RIVIERE

BOUNDARIES:

West: Starting from the mouth of River Belle Isle the boundary runs North along the seashore to its junction with Pointe aux Caves Lighthouse.

North and East: By part of the western boundary of Constituency No. 1 up to its junction with the western boundary of Constituency No. 8; thence South along part of the western boundary of Constituency No. 8 up to the junction of Plaines Wilhems River with the prolongation eastwards of Reverend Lebrun Street.

South: By the northern boundary and part of the western boundary of Constituency No. 19 and the northern of Constituency No. 14 to the starting point.

DISCIPLINED FORCES SERVICE COMMISSION REGULATIONS

GN 204 of 1997 – 28 August 1997

PART I – PRELIMINARY

1. These regulations may be cited as the Disciplined Forces Service Commission Regulations.

2. (1) In these regulations—

"appointment" means—

(a) the conferment of an office of emolument in any Disciplined Force, whether or not subject to subsequent confirmation, upon a person not in such a Disciplined Force;

(b) the grant of permanent and pensionable terms of service in any Disciplined Force to a person recruited and serving on contract terms of service or in an unestablished capacity in a pensionable or non-pensionable public office;

(c) the engagement, in an office in any Disciplined Force, of a person on contract terms of service for a further period of service on the conclusion of his previous period of engagement on contract terms in the same or another office in such Disciplined Force;

(d) the transfer of a member of any Disciplined Force to another office in another Disciplined Force carrying the same salary or salary scale;

(e) the appointment of a member of any Disciplined Force to act in any office in such Disciplined Force other than the office to which he is substantively appointed;

"Chairperson" means the Chairperson of the Public Service Commission in his capacity of *ex officio* Chairperson of the Disciplined Forces Service Commission and includes any other person appointed to act temporarily as Chairperson of the Public Service Commission;

"Commission" means the Disciplined Forces Service Commission established by section 90 of the Constitution;

"Commissioner" means any Commissioner of the Commission and includes the Chairperson and any person appointed to act as a Commissioner under section 90 (3) of the Constitution;

"disciplinary control" includes control in so far as it relates to dismissal;

"Disciplined Force" means the appropriate Disciplined Force specified and defined in section 111 of the Constitution;

"member of a Disciplined Force"—

(a) means a holder of an office of emoluments in any Disciplined Force;

(b) does not include an employee in the general service;

"official document" means any document prepared by any public officer in the course of his employment or any document which comes into the custody of any public officer in the course of such employment;

"promotion" means the conferment upon a member of a Disciplined Force of an office in the Force to which is attached a higher salary or salary scale than that attached to the office to which he was last substantively appointed or promoted;

"responsible officer" means—

(a) in relation to a member of the Police Force, the Commissioner of Police;

(b) in relation to the Commissioner of Prisons, the administrative head of the Ministry to which responsibility for the Mauritius Prison Service is assigned;

(c) in relation to any other member of the Mauritius Prison Service, the Commissioner of Prisons;

(d) in relation to the Controller of Fire Services, the administrative head of the Ministry to which responsibility for the Mauritius Fire Services is assigned;

(e) in relation to any other member of the Mauritius Fire Services, the Controller of Fire Services;

(f) in relation to a member of the Mauritius Prison Service or of the Mauritius Fire Services appointed to serve in Rodrigues and to whom paragraph (c) or (e) does not apply, the Island Secretary;

"salary" means basic salary attached to a public office;

"Secretary" means the Secretary to the Commission;

"seniority" means the relative seniority of members of a Disciplined Force and, except as may otherwise be provided by the Commission or in these regulations, shall be determined and shall be regarded as having always been determined as between members of the Disciplined Force of the same rank as follows—

(a) by reference to the dates on which they respectively were substantively appointed or promoted to that rank; or

(b) in the case of members of any Disciplined Force who were substantively promoted to that rank on the same day, by reference to their seniority on the day immediately preceding that day;

(c) in the case of members of any Disciplined Force who were substantively appointed to that rank on the same day, by reference to their respective ages:

Provided that when assessing the seniority of a pensionable member of any Disciplined Force, service by himself or any other person in a non-pensionable capacity shall not be taken into account.

(2) Nothing in these regulations empowering a responsible officer or any other person to perform any function or duty or exercise any power vested in the Commission shall preclude the Commission from itself performing that function in any particular case.

PART II – GENERAL

3. The Secretary of the Public Service Commission shall be the Secretary of the Disciplined Forces Service Commission and every member of the staff of the Public Service Commission shall also be a member of the staff of the Disciplined Forces Service Commission.

4. Every meeting of the Commission shall be presided over by the Chairperson.

5. A record shall be kept of the Commissioners present and of the business transacted at every meeting of the Commission.

6. Decisions may be made by the Commission without a meeting by circulation of the relevant papers among the Commissioners and the expression of their views in writing, but any Commissioner shall be entitled to require that any such decision shall be deferred until the subject-matter shall be considered at a meeting of the Commission.

7. Any Commissioner shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons for it set out in the records of the Commission.

8. The Chairperson and 2 Commissioners will constitute a quorum for a meeting of the Commission and a like number of Commissioners will be required for a decision of the Commission arrived at by the circulation of written papers.

9. (1) The Commission, in considering any matter, may consult with any public officer or other person as the Commission may consider proper and desirable and may require any public officer to attend and give information before it concerning any matter which it is required to consider in the exercise of its functions.

(2) The Commission may require the production of any official document relevant to any exercise of its functions and any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

(3) Any public officer who, without reasonable excuse, fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach of discipline and the Commission may direct the person responsible for initiating disciplinary proceedings against such public officer that disciplinary proceedings should be instituted against him.

10. The Commission shall, at the request of a responsible officer, hear him or his representative personally in connection with any matter he has referred to the Commission.

11. (1) In carrying out its duties under the Constitution and these regulations, the Commission shall not take into account any representations made to it otherwise than in accordance with the Constitution or with these regulations.

(2) Nothing in paragraph (1) shall be deemed to prohibit the Commission taking into account a *bona fide* reference or testimonial of service.

12. (1) Every Commissioner shall, on appointment, take an oath in the form set out in the Schedule.

(2) The Secretary, and such other member or members of the staff of the Commission as the Chairperson may require so to do shall, on appointment, take an oath in the form set out in the Schedule.

(3) Every oath or affirmation taken by a Commissioner shall be administered by a Judge and every oath or affirmation taken by the Secretary or any other member of the staff of the Commission shall be administered by the Chairperson.

PART III – APPOINTMENTS, CONFIRMATION OF APPOINTMENTS, PROMOTIONS AND TERMINATION OF APPOINTMENTS (OTHERWISE THAN BY DISCIPLINARY PROCEEDINGS)

13. This Part shall apply to the members of any Disciplined Force, except the Commissioner of Police.

14. (1) In selecting candidates for appointment or promotion within a Disciplined Force, the Commission shall have regard primarily to the efficiency of that Force.

(2) As between serving members of a Disciplined Force, professional or technical qualifications, experience, merit and suitability for the office in question shall be given greater weight than seniority.

(3) Where a post cannot be filled either—

(a) by the appointment or promotion of a suitable person already in the Disciplined Force; or

(b) by the appointment of a suitable person who has been specially trained for the Disciplined Force, wholly or partly at public expense,

the Commission shall call for applications for the post by advertisement unless—

(i) for special reasons, in its discretion, it decides not to do so; and

(ii) where it is satisfied that no suitable candidates with the requisite qualifications are available in Mauritius, it decides that the recruitment be undertaken by some agency outside Mauritius and arranges for such recruitment to be carried out.

15. (1) The Commission may appoint one or more than one selection board to assist in the selection of candidates for appointment to a Disciplined Force and the composition of any such board and the form in which its reports are to be submitted shall be decided by the Commission.

(2) On the consideration of any report of a selection board, the Commission may summon for interview any of the candidates recommended by the Board.

16. The Commission shall determine the form of advertisement issued in accordance with regulation 14 (3), and the qualifications specified in the advertisement shall be those specified by the Secretary to Cabinet and Head of the Civil Service, with the agreement of the Commission, for the vacancy under consideration.

17. The Commission shall determine—

(a) the procedure to be followed in dealing with applications for appointment to any Disciplined Force including the proceedings of any selection board appointed by the Commission to interview candidates;

(b) the forms to be used in connection with the discharge of its functions.

18. In order to discharge its duties under this Part, the Commission may issue such directions to a responsible officer as it may see fit for the maintenance of a system of annual confidential reports on members of a Disciplined Force and for their safe custody.

19. (1) (a) Where a vacancy occurs, or it is known that a vacancy is likely to occur in an office to which this Part applies, the responsible officer shall, if he desires the vacancy to be filled, report the fact to the Secretary, certifying at the same time that there is no establishment or financial or other objection to the vacancy being filled.

(b) The report under paragraph (c) shall include a recommendation as to the manner in which the vacancy should be filled and whether or not the vacancy should be advertised, and a copy of the report of vacancy shall be forwarded to the Secretary to Cabinet and Head of the Civil Service.

(c) The responsible officer shall, as may be required by the special or general directions of the Commission, constitute a promotion board to advise him on the matter.

(2) Where the responsible officer recommends that such vacancy should be filled by the appointment or promotion of a member of any Disciplined Force, he shall, when reporting the vacancy to the Secretary, forward a list of all the members of that Force eligible for consideration who are senior to the recommended member of that Force, together with their records of service and that of the recommended member of that Force, and give his reasons for recommending their supersession.

(3) Where the responsible officer does not recommend that the vacancy should be filled, by the appointment or promotion of a member of any Disciplined Force he shall, when reporting the vacancy to the Secretary—

(a) report to the Secretary the names of the most senior members of the Disciplined Force then serving in the rank from which the promotion would normally be made and state why he does not consider that the members of that Disciplined Force named are suitable for promotion to fill the vacancy; and

(b) forward to the Secretary a draft advertisement setting out the details of the vacancy and the duties and qualifications attached to it.

(4) Where the Commission has decided that a person should be appointed or promoted to a vacancy in any Disciplined Force, the responsible officer, on being informed of the decision by the Secretary, shall issue the letter of appointment or promotion to the person concerned and shall make such further arrangements as may be necessary to complete the procedure for appointment or promotion.

20. (1) All first appointments to pensionable offices in any Disciplined Force on permanent terms shall be on 12 months' probation.

(2) Where a member of any Disciplined Force has been appointed on probation, the responsible officer shall, 6 months after the commencement of the probationary period, inform the Commission if he considers the work or conduct of that member to be unsatisfactory, and not less than one month before the expiration of the probationary period, the responsible officer shall inform the Commission whether in his opinion—

(a) that member should be confirmed in his office;

(b) the probationary period should be extended so as to afford that member further opportunity to pass any examination, the passing of which is a condition for confirmation, his service otherwise being satisfactory;

(c) the probationary period should be extended to afford that member the opportunity of improvement in any respect in which his work or conduct has been adversely reported on; or

(d) the appointment of that member should be terminated.

(3) (a) The responsible officer shall not recommend the extension or termination of an appointment under paragraph (2) (c) or (d) unless he has first, by letter, informed the member of the relevant Disciplined Force of his intention and of the right of the member of that Force to make representations thereon within a period to be specified in such letter.

(b) The responsible officer shall attach copies of all such correspondence to his recommendation.

(4) Where a member of a Disciplined Force who is on probation has been granted—

(a) sick leave in excess of 28 days;

(b) vacation leave taken overseas or locally;

(c) vacation leave taken as casual leave;

(d) leave without pay;

(e) study leave without pay;

(f) extension of study leave, while he is on study leave with pay, in case of failure at examination or awaiting results before resuming duty;

(g) maternity leave; or

(h) injury leave,

the probationary period shall be extended by an equivalent period.

21. (1) Where the holder of an office to which this Part applies is for any reason unable to perform the functions of his office and the responsible officer is of the opinion that some other member of a Disciplined Force should be appointed to act in that office, the responsible officer shall report the matter to the Secretary and shall submit, for the consideration of the Commission, the name of the member of the Force whom he recommends should be appointed to act in that office.

(2) Where any recommendation under paragraph (1) involves the supersession of any more senior member of the Disciplined Force eligible for consideration, the responsible officer shall inform the Secretary of his reasons for recommending the supersession of each such member of that Force.

(3) In considering recommendations for acting appointments, the Commission shall apply the standards prescribed in regulation 14, except that consideration may also be given to the interests of departmental efficiency.

(4) Notwithstanding paragraph (3), a responsible officer may recommend that a member of a Disciplined Force be assigned the duties of another office in the same Disciplined Force and the Commission may so assign such duties where—

(a) the member of the Force cannot be appointed to perform the functions of that other office in an acting capacity because that member—

(i) does not hold the official qualifications applicable to that office; or

(ii) is not the most senior member of the Disciplined Force serving in the particular rank from which an appointment in an acting capacity would normally be made; and

(b) such assignment of duties is considered to be in the interests of departmental efficiency and desirable on the ground of administrative convenience.

[R. 21 amended by GN 38 of 1998.]

22. (1) Where a responsible officer is of the opinion that a pensionable member of a Disciplined Force should be called upon to retire from that Force on the grounds that he has attained the age at which he can, under any enactment, lawfully be required to retire from that Force, he shall—

(a) inform that member that he intends to recommend that he be compulsorily retired from that Force;

(b) ask that member whether he wishes to make, within a period of time appointed by the responsible officer, any representations why he should not be so retired; and

(c) after the expiration of the period, forward his recommendation to the Secretary together with a copy of any representations made by that member and his comments on them and the Commission shall decide whether that member should be called upon to retire.

(2) On being advised of the decision of the Commission, the responsible officer shall notify the member of the Disciplined Force concerned and, where that member is to be retired, the responsible officer shall make such further arrangements as may be necessary to complete the procedure for the retirement of that member.

(3) A member of a Disciplined Force whose compulsory retirement is under consideration under this regulation may, where possible, be given the option to retire voluntarily provided that the reasons for requiring his retirement do not involve disciplinary action.

23. (1) Where it appears to a responsible officer that a member of a Disciplined Force is incapable by reason of any infirmity of mind or body of discharging the functions of his office, he may call upon that member to present himself before a medical board (which shall be appointed by the Permanent Secretary of the Ministry of Health) with a view to it being ascertained whether or not that member is incapable as aforesaid.

(2) (a) After the member of the Disciplined Force has been examined, the Permanent Secretary of the Ministry of Health shall forward the medical board's proceedings, together with his comments on it, to the responsible officer who in turn shall forward them together with his own observations on the case to the Secretary.

(b) Unless the Commission considers that further enquiry is necessary, in which case it will issue directions to the responsible officer accordingly, it shall decide whether that member should be called upon to retire on medical grounds.

(3) On being advised of the decision of the Commission, the responsible officer shall notify the member of the Disciplined Force and, if the member is to be retired on medical grounds, he shall make such further arrangements as may be necessary to complete the procedure for the retirement of that member.

24. Where a member of a Disciplined Force is serving on a contract or agreement and is willing to engage for a further period of service, the responsible officer shall forward to the Secretary, 6 months before that member is due to proceed to leave on the expiration of his contract or agreement, a notification of the date of the expiration of the contract or agreement and his recommendation whether it should be renewed or not.

25. Any member of a Disciplined Force attempting to bring influence to bear on the Commission or on any of its Commissioners or on his responsible officer for the purpose of obtaining an appointment or promotion may be disqualified for the appointment or promotion and render himself liable to disciplinary action.

PART IV – DISCIPLINE

26. This Part shall apply to the disciplinary control of all members of the Disciplined Forces, except the Commissioner of Police.

27. The Commission shall not exercise its powers in connection with the dismissal, the disciplinary punishment or the termination of appointment otherwise than by way of dismissal of a member of a Disciplined Force except in accordance with these regulations or such other regulations as may be made by the Commission.

28. (1) Where a responsible officer considers that the public interest requires that a member of a Disciplined Force should instantly cease to exercise the powers and functions of his office, he may interdict that member at once from the exercise of those powers and functions where proceedings for dismissal are being taken, or where criminal proceedings are being instituted, or where proceedings for retirement on grounds of public interest are being taken against that member, informing the Secretary that he has done so and applying for covering authority from the Commission.

(2) A member of a Disciplined Force who is under interdiction may not leave Mauritius without the permission of the responsible officer.

29. (1) Where a preliminary investigation or a disciplinary enquiry discloses that an offence against any law may have been committed by a member of a Disciplined Force other than a member of the Police Force, the responsible officer shall forthwith refer the case to the Commissioner of Police for enquiry and submission to the Director of Public Prosecutions for advice as to whether a prosecution should be instituted.

(2) Where it is apparent to the Commissioner of Police that an offence against any law may have been committed by a member of the Police Force, the Commissioner of Police shall seek the advice of the Director of Public Prosecutions as to whether a prosecution should be instituted.

(3) Where the Director of Public Prosecutions does not advise a prosecution under paragraph (1) or (2) but advises that disciplinary action should be taken under these regulations against the member of the Disciplined Force or the Police Force, as the case may be, the responsible officer shall institute disciplinary proceedings against the member in accordance with either regulation 35 or regulation 36.

30. Where criminal proceedings of a nature likely to warrant disciplinary proceedings are instituted against a member of a Disciplined Force in any Court, the responsible officer of that member shall forthwith report the facts to the Secretary with a statement as to whether the member has or has not been interdicted from the exercise of his powers and duties, and thereafter the matter shall be dealt with under regulation 32 or 33, as the case may be.

31. (1) No disciplinary proceedings against a member of a Disciplined Force upon any grounds involved in a criminal charge shall be taken until the conclusion of the criminal proceedings and the determination of any appeal.

(2) Nothing in this regulation shall be construed as prohibiting or restricting the power of the responsible officer to interdict that member.

32. (1) A member of a Disciplined Force acquitted of a criminal charge in any Court shall not be dismissed or otherwise punished on any charge upon which he has been acquitted, but nothing in this regulation shall prevent the institution of fresh proceedings with a view to his being dismissed or otherwise punished on any other charges arising out of his conduct in the matter provided that they do not raise substantially the same issue as that on which he has been acquitted.

(2) In all cases in which a member of a Disciplined Force is acquitted of a criminal charge in any Court, the responsible officer of that member shall forward to the Secretary a copy of the judgment and of the proceedings of the Court if they are available, provided that the charge is not in respect of minor offences which would not in any event warrant disciplinary proceedings.

(3) Where a member of a Disciplined Force who is under interdiction is acquitted of a criminal charge in any Court, he shall be reinstated and, where further proceedings are instituted against him under paragraph (1), interdiction, if that course is decided upon, shall not have effect from any earlier date than that on which the new proceedings are instituted.

33. (1) Where a member of a Disciplined Force is convicted in any Court of a criminal offence which, in the opinion of the responsible officer of that member, warrants disciplinary proceedings, he shall forward a copy of the charge and of the judgment and any judgment or order made on appeal or revision and his own recommendation to the Commission for consideration, and the Commission shall decide whether that member should be dismissed or subjected to any of the other punishments mentioned in regulation 38 or whether his service should be terminated in the public interest if the proceedings disclose grounds for doing so, without any of the proceedings prescribed in regulations 35, 36 or 37 of these regulations being instituted.

(2) (a) Disciplinary proceedings subsequent to a conviction in a Court of law should normally be confined to cases in which the conviction was in respect of an offence under any law where a prison sentence may be imposed other than in default of payment of a fine.

(b) Disciplinary proceedings subsequent to a conviction should not normally be taken in respect of minor offences under the Road Traffic Act and of minor offences not entailing fraud or dishonesty and not related to the employment of a member of a Disciplined Force.

34. Where proceedings have been taken against a member of a Disciplined Force under this Part, that member shall be informed—

(a) of the findings on each charge which has been preferred against him; and

(b) of any punishment to be imposed.

35. (1) Where a responsible officer considers it necessary to institute disciplinary proceedings against any member of a Disciplined Force on the grounds of misconduct which, if proved, would justify his dismissal from the public service, he shall, after such preliminary investigation as he considers necessary and after seeking the advice of the Solicitor-General on the terms of the charge or charges, forward to the member concerned a statement of the charge or charges preferred against him together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based, and call upon such member to state in writing before a day to be specified by the responsible officer any grounds on which he relies to exculpate himself.

(2) Where the member does not furnish a reply to any charge forwarded under paragraph (1) within the period specified or where, in the opinion of the responsible officer, he fails to exculpate himself, the responsible officer shall forward to the Secretary copies of his report, the statement of the charge or charges, the reply, if any, of the accused member and his own comments on it.

(3) (a) Where, on consideration of the report of the responsible officer, the Commission is of the opinion that proceedings for the dismissal of the member should be continued, it shall appoint a committee, which shall consist of not less than 3 members, who shall be public officers, to enquire into the matter.

(b) One member of the committee shall be a Judge, Magistrate or a public officer who is or has been a barrister, and all members shall be selected with due regard to the standing of the accused member.

(c) Neither the responsible officer nor any other officer serving in the accused member's Ministry or Department shall be a member of the committee.

(4) The committee shall inform the accused member that on a specified day the charges made against him will be investigated and that he will be allowed or, if the committee so determines, will be required to appear before it to defend himself.

(5) Where witnesses are examined by the committee, the accused member shall be given an opportunity of being present and of putting questions on his own behalf to the witnesses, and no documentary evidence shall be used against him unless he has previously been supplied with a copy of it or given access to it.

(6) (a) The committee may permit the prosecuting party or the accused member to be represented by a public officer or a legal practitioner.

(b) Where the committee permits the prosecuting party to be represented, it shall permit the accused member to be represented in a similar manner.

(7) Where during the course of the enquiry grounds for the preferment of additional charges are disclosed, the committee shall so inform the responsible officer who shall follow the same procedure as was adopted in preferring the original charges.

(8) (a) The committee, having enquired into the matter, shall forward its report to the Commission together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the enquiry.

(b) The report of the committee shall include—

(i) a statement whether in the committee's opinion the accused member has or has not committed the offence or offences charged and a brief statement of the reasons for the opinion;

(ii) details of any matters which in the committee's opinion aggravate or alleviate the gravity of the case; and

(iii) a summing-up and such comments as will indicate clearly the opinion of the committee on the matter under enquiry.

(9) The committee shall not make any recommendation regarding the form of punishment.

(10) The Commission, after consideration of the report of the committee, may, if it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the committee for further investigation and report.

(11) The Commission, after consideration of the report of the committee or of any further report called for under paragraph (10), shall determine the punishment, if any (including retirement under regulation 37), which should be inflicted on the accused member.

36. (1) Where the responsible officer considers it necessary to institute disciplinary proceedings against a member of any Disciplined Force and is of the opinion that the misconduct alleged, if proved, would not be serious enough to warrant dismissal under regulation 35, he shall, after such preliminary investigation as he considers necessary, forward to the member concerned

a statement of the charge or charges against him and shall call upon him to state in writing before a day to be specified any grounds on which he relies to exculpate himself.

(2) Where such member does not furnish a reply to the charge or charges against him within the period specified or does not, in the opinion of the responsible officer, exculpate himself, the responsible officer shall forward to the Secretary a report on the case together with copies of the charge or charges preferred against the member, the member's reply, if any, and his own recommendations.

(3) Where the Commission, on consideration of any report submitted to it by the responsible officer, is of the opinion that the matter warrants further disciplinary proceedings—

(a) the Commission shall appoint a public officer to enquire into the matter;

(b) the accused member shall be entitled to know the whole case against him and shall have an adequate opportunity of making his defence;

(c) the public officer conducting such enquiry shall, within 14 days of the conclusion of the proceedings, submit his report to the Commission, together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the enquiry, and his report shall include—

(i) a statement whether in his opinion the accused member has or has not committed the offence or offences charged and a brief statement of the reasons for his opinion;

(ii) details of any matters which in his opinion aggravate or alleviate the gravity of the case; and

(iii) a summing up and such other comments as will indicate clearly his opinion on the matter under enquiry;

(d) the public officer conducting the enquiry shall not make any recommendation regarding the form of punishment;

(e) the Commission may, where it, considers that the results of the enquiry should be amplified in any way or that further investigation is desirable, refer the matter back to the person conducting the enquiry for further enquiry and report; and

(f) the Commission, on consideration of the report submitted by the person conducting the enquiry, shall determine what punishment, if any (other than dismissal), should be inflicted on the member.

(4) Notwithstanding paragraphs (1), (2) and (3), where at any stage during proceedings taken under this regulation—

(a) it appears to the Commission that the offence if proved would justify dismissal; or

(b) the Commission considers that if the offence is proved, proceedings for the retirement of the member from the Disciplined Force

concerned on grounds of public interest would be more appropriate,

the proceedings so taken shall be discontinued and the procedure prescribed in regulations 35 and 37, as the case may be, shall be followed.

37. (1) Where a responsible officer, after having considered every report in his possession made with regard to a member of a Disciplined Force, is of the opinion that it is desirable in the public interest that the service of that member should be terminated on grounds which cannot be suitably dealt with under any other provisions of these regulations, he shall notify that member, in writing, specifying the complaints by reason of which his retirement is contemplated together with the substance of any report or part of it that is detrimental to the member.

(2) Where, after giving the member concerned an opportunity of showing cause why he should not be retired in the public interest, the responsible officer is satisfied that the member should be required to retire in the public interest, he shall forward to the Secretary the report on the case, the member's reply and his own recommendation, and the Commission shall decide whether the member should be required to retire in the public interest.

38. (1) The following punishments may be inflicted upon a member of a Disciplined Force as a result of proceedings under these regulations—

(a) dismissal;

(b) reduction in rank or seniority;

(c) stoppage of increment;

(d) withholding of increment;

(e) deferment of increment;

(f) suspension from work without pay for a period of not less than one day and not more than 14 days;

(g) reprimand (including severe reprimand);

(h) recovery of the cost or part of the cost of any loss or breakage or damage of any kind caused by default or negligence, provided that no such cost has been recovered by surcharge action under the appropriate financial instructions or regulations.

(2) Nothing in this regulation shall limit the powers conferred by these regulations to require a member of a Disciplined Force to retire from the Force on the grounds of public interest.

39. Where a member of a Disciplined Force is absent from duty without leave, and does not return to duty when instructed to do so, his absence shall be reported by the responsible officer to the Commission which, on receiving a report from the responsible officer, may summarily dismiss that member.

40. All acts of misconduct by members of the Disciplined Forces shall be dealt with under this Part as soon as possible after their occurrence.

41. (1) Where the responsible officer considers that the conduct of a member of a Disciplined Force who is serving on contract or agreement (including agreement for temporary appointment) is unsatisfactory, he shall report the matter to the Secretary and the Commission shall determine what action, if any, should be taken regarding the member of the Force in respect of whom the report has been made.

(2) Nothing in this regulation shall affect the power of the Commission to order the termination of any contract or agreement in accordance with a term or condition contained in it.

42. (1) Any member of a Disciplined Force, in respect of whom the Commission's powers of discipline or removal from office have been delegated to a responsible officer or any other officer by directions under section 91 (2) of the Constitution, may appeal, to the Commission against the punishment awarded, and the decision of the Commission shall be final.

(2) A member of a Disciplined Force who wishes to appeal under paragraph (1) shall, within 7 days of the communication to him of the award of punishment by the responsible officer or other officer, as the case may be, submit a memorandum of appeal through the appropriate channels to the responsible officer who shall forward a copy of the proceedings, together with such comment as he may think relevant, to the Commission.

(3) On any appeal to the Commission under paragraph (1), the Commission may, without hearing the appellant, dismiss or allow the appeal or vary the punishment.

43. This Part shall not apply to any member of any Disciplined Force in respect of whom the Commission's powers of discipline or removal from office have been delegated to any responsible officer or any other officer by directions under section 91 (2) of the Constitution, except in so far as may be required by such directions or as provided in regulation 42.

PART V – MISCELLANEOUS AND TRANSITIONAL PROVISIONS

44. Where under these regulations—

(a) it is necessary either—

(i) to serve any notice, charge or other document upon a member of a Disciplined Force; or

(ii) to communicate any information to any such member who has absented himself from duty; and

(b) it is not possible to effect such service upon or communicate the information to that member personally,

it shall be sufficient if the notice, charge or other document, or a letter containing the information, is sent by registered post addressed to his usual or last known address.

45. Subject to such instructions as the Commission may issue, matters within the function of the Commission which, at the date of coming into

force of these regulations have been commenced under the provisions of the Police Service Commission Regulations 1967, but not finally determined, shall be concluded, so far as is practicable, by following these regulations as to procedure.

46. The Secretary shall advise the responsible officer concerned of the decision of the Commission on any particular matter and the responsible officer shall take the appropriate action.

47. All correspondence for the Commission from any responsible officer or from any other person shall be addressed to the Secretary.

48. Any case not covered by these regulations shall be dealt with in accordance with such instructions as the Commission may issue.

49. – 50. —

SCHEDULE

[Regulation 12]

OATH OF COMMISSIONER

I, ..., having been appointed as Chairperson/Commissioner of the Disciplined Forces Service Commission do swear/solemnly and sincerely declare and affirm that I will without fear or favour, affection or ill-will, discharge the functions of the office of Chairperson/Commissioner of the Disciplined Forces Service Commission and that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised persons otherwise than in the course of duty.

Sworn/affirmed before me this .....

day of ..... 20 .....

.....
Judge of Supreme Court

OATH OF SECRETARY AND OTHER STAFF OF COMMISSION

I, ..., being called upon to exercise the functions of Secretary to/a member of the staff of the Disciplined Forces Service Commission, do swear/solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal to any unauthorised person otherwise than in the course of duty the contents or any part of the contents of any documents, communication or information which may come to my knowledge in the course of my duties as such.

Sworn/affirmed before me this .....

day of ..... 20 .....

.....
Chairperson of the Disciplined Forces
Service Commission

JUDICIAL AND LEGAL SERVICE COMMISSION REGULATIONS

GN 90 of 1967 – 12 August 1967

1. These regulations may be cited as the Judicial and Legal Service Commission Regulations.

2. In these regulations—

"office" means any office to which section 86 of the Constitution applies.

3. The Commission shall appoint a Secretary to the Commission, who shall not be a Commissioner, and such other staff as may be authorised.

4. A record shall be kept of the Commissioners present and of the business transacted at every meeting of the Commission.

5. Any Commissioner shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons therefor set out in the records of the Commission.

6. (1) The Commission may require any public officer to attend and give information before it concerning any matter which it is required to consider in the exercise of its functions.

(2) The Commission may require the production of any official document relevant to any exercise of its functions and any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

(3) Any public officer who without reasonable excuse fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach of discipline and the Commission shall report the matter to the appropriate authority exercising disciplinary control over him.

7. For the purpose of making appointments to vacancies to any office or to the offices of the Director of Public Prosecutions and the Electoral Commissioner in accordance with its powers under the Constitution, the Commission shall consider the eligibility of all officers for promotion, may interview candidates for such appointments and shall in respect of each candidate consider, amongst others, the following matters—

(a) his qualifications;

(b) his general fitness;

(c) any previous employment of the candidate in the public service or in private practice.

8. (1) Where it appears to the Chief Justice or, as the case may be, to the Head of the Attorney-General's Office, that an officer who has attained the age at which he can, under any enactment lawfully be required to retire from

the public service, ought to be called upon so to retire, the Chief Justice or the Head of the Attorney-General's Office shall report the matter together with his reasons therefor to the Commission and the Commission shall decide whether such officer should be called upon to retire.

(2) Any such officer shall be afforded an opportunity of submitting to the Commission any representation he may wish to make regarding his proposed retirement.

9. (1) Notwithstanding regulation 8, where it is represented to the Commission or the Commission considers it desirable in the public interest that an officer ought to be required to retire from the public service on grounds which cannot suitably be dealt with by the procedure prescribed by these regulations, it shall call for a full report from the Chief Justice or, as the case may be, the Head of the Attorney-General's Office.

(2) Where, after considering such report and giving the officer an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the public service, the usefulness of the officer thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall direct that the officer should retire.

10. (1) Where it appears to the Chief Justice or, as the case may be, to the Head of the Attorney-General's Office, that an officer is incapable by reason of any infirmity of mind or body of discharging the functions of his office, the officer may be called upon to present himself before a medical board (which shall be appointed by the Permanent Secretary of the Ministry of Health) with a view to its being ascertained whether or not the officer is incapable.

(2) After the officer has been examined, the Permanent Secretary of the Ministry of Health shall forward the medical board's proceedings, together with his comments thereon, to the Secretary to the Commission and the Commission shall decide, after such further inquiry, if any, as may be thought necessary, whether the public officer should be retired on medical grounds.

11. Where an offence against any law appears, whether before or at any stage of a preliminary investigation or disciplinary enquiry, to have been committed by an officer, the Commission shall obtain the advice of the Director of Public Prosecutions as to whether criminal proceedings ought to be instituted against the officer concerned; and where the Director of Public Prosecutions advises that criminal proceedings ought to be so instituted the Commission shall not initiate disciplinary proceedings before the determination of the criminal proceedings so instituted.

12. (1) Any report of misconduct on the part of an officer shall be dealt with under regulations 11 to 24 as soon as possible.

(2) In any case not covered by these regulations the Commission may issue instructions as to how the case is to be dealt with, and the case shall be dealt with accordingly.

13. (1) Where criminal proceedings have been instituted in any Court against an officer, proceedings for his dismissal upon any grounds arising out of the criminal charge shall not be taken until after the Court has given judgment and the time allowed for an appeal from the judgment has expired, and where an officer after conviction has appealed, proceedings for his dismissal shall not be taken until after the withdrawal or determination of the appeal.

(2) Nothing in this regulation shall prevent the officer from being interdicted from duty under regulation 14.

14. (1) Where there have been or are about to be instituted against an officer—

(a) disciplinary proceedings for dismissal; or

(b) criminal proceedings,

and the Commission is of opinion that the public interest requires that officer should forthwith cease to perform the functions of his office, the Commission may interdict him.

(2) An officer who is under interdiction from duty may not leave Mauritius without the permission of the Commission.

15. An officer acquitted of a criminal charge shall not be dismissed or otherwise punished in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.

16. Where an officer is convicted on a criminal charge, the Commission may consider the relevant proceedings of the Court and if it is of opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon impose such lesser punishment as is specified in regulation 17.

17. (1) The penalties which may be imposed on an officer against whom a disciplinary charge has been established are—

(a) dismissal;

(b) reduction in rank;

(c) stoppage or deferment of increments;

(d) a reprimand.

(2) An officer who is absent from Mauritius without permission shall be liable to summary dismissal.

18. (1) An officer charged with any misconduct shall be entitled to know the whole case made against him and to have an adequate opportunity of making his defence.

(2) He shall further be entitled without charge to him to receive copies of or to be allowed access to any documentary evidence which is produced in the course of a disciplinary enquiry and may obtain a copy of notes of the evidence heard at the enquiry on making an application in that behalf to the Secretary to the Commission.

19. Where—

(a) it is represented to the Commission that an officer has been guilty of misconduct; and

(b) the Commission is of opinion that the misconduct alleged is not so serious as to warrant proceedings under regulation 20 with a view to dismissal; and

(c) the Commission is of opinion that the allegation has been proved,

the Commission may, subject to regulation 18, award such punishment other than dismissal as may seem just.

20. (1) An officer may be dismissed only in accordance with the procedure prescribed by this regulation.

(2) The following procedure shall apply to an investigation with a view to the dismissal of an officer—

(a) the Commission (after consultation with the Director of Public Prosecutions, if necessary) shall cause the officer to be notified in writing of the charges and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself;

(b) the Commission shall inform the officer charged that on a specified day the charges against him will be enquired into by the Commission and that upon such enquiry he will be permitted to appear and defend himself;

(c) where—

(i) the investigation of matters other than those forming the subject of charges is incomplete at the time of the making of the charges; and

(ii) the Commission desires that the charges already made should be expeditiously disposed of,

the notification of charges under paragraph (a) above may include a notice that further matters then under investigation may form the subject of additional charges;

(d) where witnesses are examined by the Commission, the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy of it or given access to it;

(e) the Commission may permit the officer charged or the person or authority preferring the charges to be represented by a public officer, or by a barrister or an attorney;

(f) where during the course of the enquiry further grounds which may justify dismissal are disclosed, and the Commission thinks fit to proceed against the officer on such further grounds, the Commission shall cause the officer to be furnished with charges in writing and the same steps shall be taken as those prescribed by this regulation in respect of the original charges;

(g) the Commission, after holding the enquiry, shall determine the punishment, if any, including retirement from the public service under regulation 9, to which should be inflicted on the officer.

21. Where an officer charged under these regulations admits in writing the facts giving rise to the charges, it shall not be necessary to hold an enquiry or investigation under these regulations unless in the opinion of the Commission such enquiry or investigation is likely to find such circumstances as may modify the view taken of and the punishment to be imposed for the offence.

PUBLIC SERVICE COMMISSION REGULATIONS

GN 76 of 1967 – 12 August 1967

PART I – PRELIMINARY

1. (1) These regulations may be cited as the Public Service Commission Regulations.

(2) These regulations shall apply to all public offices, other than public offices in respect of which the power to appoint persons to hold or act in such offices (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office is, by virtue of section 89 (3) of the Constitution, not vested in the Commission.

2. (1) In these regulations—

"appointment" means—

(a) the conferment of an office of emolument in the public service, whether or not subject to subsequent confirmation, upon a person not in the public service;

(aa) the conferment upon a public officer, following a selection exercise, of a public office other than the office to which the public officer is substantively appointed;

(b) the grant of permanent and pensionable terms of service in a public office to a person recruited and serving on contract terms of service or in an unestablished capacity in a pensionable or non-pensionable public office;

(c) the engagement in a public office of a person on contract terms of service for a further period of service on the conclusion of his previous period of engagement on contract terms in the same or other public office;

(d) the permanent transfer to an office in the public service of a member of the civil service of another country who is serving on temporary transfer in an office in the public service;

(e) the transfer of an officer serving in one public office to another office in the public service carrying the same salary or salary scale;

(f) the appointment of a public officer to act in any public office other than the office to which he is substantively appointed;

"Chairperson" means the Chairperson of the Commission, or any Deputy Chairperson or Commissioner appointed to act temporarily as Chairperson of the Commission under section 88 (3) of the Constitution;

"Commission" means the Public Service Commission established by section 88 of the Constitution;

"Commissioner"—

(a) means any Commissioner of the Commission; and

(b) includes the Chairperson, any Deputy Chairperson and any person appointed to act as Commissioner under section 88 (4) of the Constitution;

"Deputy Chairperson" means any Deputy Chairperson of the Commission;

"disciplinary control" includes control insofar as it relates to dismissal;

"office of emolument", in relation to the definition of public office in the Constitution, means any pensionable or non-pensionable office;

"official document" means any document prepared by any public officer in the course of his employment or any document which comes into the custody of any public officer in the course of such employment;

"promotion" means the conferment upon a person in the public service of a public office to which is attached a higher salary or salary scale than that attached to the public office to which he was last substantively appointed or promoted;

"responsible officer" means—

(a) in relation to a public officer serving in a department specified in the first column of Part I of the First Schedule, the person holding the office specified opposite that department in the second column;

(b) in relation to a public officer serving in a class or rank specified in the first column of Part II of the First Schedule, the person holding the office specified opposite that class or rank in the second column;

(c) in relation to a public officer appointed to serve in Rodrigues and to whom paragraph (a) or (b) does not apply, the Island Chief Executive, Rodrigues;

(d) in relation to a public officer serving in a Ministry and to whom paragraph (a), (b) or (c) does not apply, the official head of the Ministry in or under which he is serving or as may be otherwise designated by the Secretary to Cabinet and Head of the Civil Service;

(e) in relation to any other public officer, the Secretary to Cabinet and Head of the Civil Service;

"salary" means the basic salary attached to a public office;

"scheme of service", in relation to an office in the public service, means the scheme of service prescribed under regulation 15;

"Secretary" means the Secretary to the Commission;

"seniority" means the relative seniority of officers and, except as may be otherwise provided by the Commission or in these regulations, shall be determined and shall be regarded as having always been determined as follows—

(a) as between officers of the same grade—

(i) by reference to the dates on which they respectively entered the grade;

(ii) in cases of appointment (including appointment on completion of training) or promotion, following a selection exercise, by reference to the order of merit determined by the Commission following that exercise, irrespective of the dates of their assumption of duty,

provided that—

(A) where any officer had been allowed by the Commission to assume duty more than 2 months after the date on which he was initially requested to do so, his seniority shall be determined by reference to the date of his assumption of duty, and where 2 or more such officers assumed duty on the same date, by reference to their respective rank in the order of merit;

(B) in the case of a trainee, where the trainee assumed duty after the period referred to in sub subparagraph (A) or, during his traineeship, had taken leave for a period exceeding the period referred to in sub subparagraph (A) or where the aggregate of the period approved by the Commission and any leave taken

during the traineeship exceeded 2 months, his seniority shall be determined by reference to the date of his appointment on completion of training, and where 2 or more such officers were appointed on the same date, their seniority shall be determined by their respective rank in the order of merit;

(b) as between officers promoted from one grade to another—

(i) by reference to the effective date of promotion and where 2 or more officers were promoted on the same date, their seniority shall be determined by reference to their relative seniority in the next lower grade;

(ii) where the promotion of 2 or more officers took effect from date of assumption of duty, by reference to their relative seniority in the next lower grade, irrespective of the dates of their assumption of duty,

provided that where any officer had been allowed by the Commission to assume duty more than 2 months after the date on which he was initially requested to do so, his seniority shall be determined by reference to the date of his assumption of duty;

(c) as between officers of different classes—

(i) by reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate;

(ii) on the same salary scale or on the same maximum point on their salary scales or the same flat rate of salary, by reference to the effective dates of their appointment,

provided that—

(A) where any such officers in different classes were appointed or promoted in their respective grade or in their respective class on the same date, their seniority shall be determined by reference to their relative seniority in the next lower grade or class;

(B) in case the seniority remains the same after consideration of the matter specified in sub subparagraph (A), by reference to their respective seniority in the second lower grade in their class or in different classes, and if need be, by reference to their seniority in further lower grades in their class or in different classes; and

(C) where the seniority remains the same, their relative seniority to each other shall be determined by reference to their respective ages:

Provided that when assessing the seniority of a pensionable public officer, unbroken service by himself or any other person in a non-pensionable capacity shall only be taken into account insofar as during such service the officer or other person concerned was fully qualified to serve in the grade or class in question on pensionable terms;

"transfer"—

(a) means the conferment upon a public officer, whether permanently or otherwise, of some public office other than that to which the officer was last substantively appointed, not being a promotion or an appointment following a selection exercise; and

(b) includes a transfer, which is approved by the Commission under regulation 25 (2), of a public officer to an approved service; but

(c) does not include the posting of an officer between posts in the same grade, except where the posting is made to another Ministry or department where he falls under the responsibility of a different responsible officer.

(2) Nothing in these regulations empowering a responsible officer or any other person to perform any function shall preclude the Commission from itself performing that function in any particular case.

[R. 2 amended by GN 3 of 1992; GN 117 of 1997; GN 177 of 2010 w.e.f. 18 September 2010.]

PART II – GENERAL

3. The Commission shall appoint a Secretary to the Commission, who shall not be a Commissioner of the Commission, and such other staff as may be authorised.

[R. 3 amended by GN 117 of 1997.]

4. Every meeting of the Commission shall be presided over by the Chairperson.

5. A record shall be kept of the Commissioners present and of the business transacted at every meeting of the Commission.

[R. 5 amended by GN 117 of 1997.]

6. Decisions may be made by the Commission without a meeting by circulation of the relevant papers among the Commissioners and the expression of their views in writing, but any Commissioner shall be entitled to require that any such decision shall be deferred until the subject matter is considered at a meeting of the Commission.

[R. 6 amended by GN 117 of 1997.]

7. Any Commissioner shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons therefor set out in the records of the Commission.

[R. 7 amended by GN 117 of 1997.]

8. At a meeting of the Commission, the Chairperson and 3 Commissioners shall constitute a quorum and a like number of Commissioners will be required for a decision of the Commission arrived at by the circulation of written papers.

[R. 8 amended by GN 117 of 1997.]

9. (1) The Commission may require any public officer to attend and give information before it concerning any matter which it is required to consider in exercise of its functions.

(2) The Commission may require the production of any official document relevant to any exercise of its functions, and any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

(3) Any public officer who without reasonable excuse fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach of discipline and the Commission may direct the person responsible for initiating disciplinary proceedings against such public officer that disciplinary proceedings should be instituted against him.

10. The Commission shall, at the request of a responsible officer, hear him or his representative personally in connection with any matter referred by him to the Commission.

11. (1) In carrying out its duties under the Constitution and these regulations, the Commission shall not take into account any representations made to it otherwise than in accordance with the Constitution or with these regulations.

(2) Nothing in paragraph (1) shall be deemed to prohibit the Commission from taking into account a bona fide reference or testimonial of service.

[R. 11 reprinted by Reprint 1 of 1983.]

12. (1) Every Commissioner shall, on appointment, take an oath in the form set out in the Second Schedule.

(2) The Secretary and such other member or members of the staff of the Commission as the Chairperson may require so to do, shall, on appointment, take an oath in the form set out in the Second Schedule.

(3) Every oath or affirmation taken by a Commissioner shall be administered by a Judge and every oath or affirmation taken by the Secretary or any other member of the staff of the Commission shall be administered by the Chairperson.

[R. 12 amended by GN 117 of 1997.]

PART III – APPOINTMENTS, PROMOTIONS, CONFIRMATION OF APPOINTMENTS, AND TERMINATION OF APPOINTMENTS (OTHERWISE THAN BY DISCIPLINARY PROCEEDINGS)

13. In order to discharge its duties under this Part, the Commission shall exercise supervision over and approve—

(a) all schemes for admission to any public office by examination, whether specified or not in the relevant schemes of service, and all schemes for the award of scholarships for special training for the public service; and

(b) all methods of recruitment, including the appointment and procedure of boards for the selection of candidates.

[R. 13 repealed and replaced by GN 177 of 2010 w.e.f. 18 September 2010.]

14. (1) In exercising its powers of appointment and promotion, including, subject to paragraph (5), promotion by selection, the Commission shall—

(a) have regard to the maintenance of the high standard of efficiency necessary in the public service;

(b) give due consideration to qualified officers serving in the public service and to other Mauritian citizens provided they hold the required qualifications; and

(c) in the case of officers serving in the public service, take into account qualifications, experience, merit and suitability for the office in question before seniority.

(2) Where the public office cannot be filled—

(a) by the appointment or promotion of a suitable public officer in the same Ministry, department or general service; or

(b) by the appointment of a suitable public officer specially trained for the office in question, whether wholly or partly at public expense,

the Commission shall, subject to paragraph (3), call for applications, by public advertisement, from—

(i) all public officers; or

(ii) the general public, including all public officers.

(3) Notwithstanding paragraphs (1) and (2), the Commission may, where it is satisfied that no suitable candidate with the requisite qualifications is available in Mauritius or for any other special reason, decide that—

(a) no application by public advertisement shall be called;

(b) recruitment shall be undertaken by some agency outside Mauritius and arrangements for such recruitment shall be carried out.

(4) Recommendations made to the Commission for promotion, in cases other than those referred to in paragraph (5), shall state whether the person

recommended is the senior public officer in the particular class or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of every person in that same class or grade over whom it is proposed that the person recommended should be promoted.

(5) Where the scheme of service of a post specifically provides for promotion of public officers to that post through a selection exercise, the Commission may require the responsible officer to make a report on each of the candidates on any matter related to the scheme of service.

(6) Subject to the provisions pertaining to seniority in regulation 2, a candidate shall be available to assume the functions of the office to which he has been appointed or promoted, within such reasonable period of time as may be specified or approved by the Commission.

[R. 14 repealed and replaced by GN 177 of 2010 w.e.f. 18 September 2010.]

15. (1) The Commission shall, where a scheme of service is to be prescribed for a public office, consider and agree to the statement of qualifications and duties for, and, where appropriate, the mode of appointment to, the public office before the scheme of service is prescribed.

(2) Any scheme of service under paragraph (1) shall be prescribed by the supervising officer of the Ministry responsible for the subject of civil service.

(3) The scheme of service shall specify the salary attached to, the qualifications required for and duties of, and, where appropriate, the mode of appointment to, the office to which it relates.

[R. 15 amended by GNs 3 of 1992; 117 of 1997; repealed and replaced by GN 177 of 2010 w.e.f. 18 September 2010.]

15A. (1) The Commission shall determine the form of advertisement to be issued in accordance with regulation 14.

(2) The advertisement shall include the qualifications specified in the scheme of service for the public office in respect of which the vacancy has occurred.

(3) Paragraphs (1) and (2) shall be without prejudice to the powers of the Commission under regulation 13.

[R. 15A inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

16. (1) In exercising its powers in connection with appointment or promotion to any office in the public service, the Commission may—

(a) consult with any other person or persons; and

(b) seek the advice of a selection board constituted by the Commission who may appoint to it Commissioners and other persons who are not Commissioners.

(2) The Chairperson shall, where he is satisfied that a Commissioner, or any other person, on a selection board is unable to take part in an ongoing interviewing exercise, in respect of one or more candidates, on account of a direct interest or for any other reason, appoint another Commissioner or any

other person to replace that Commissioner or person on the selection board in respect of the said candidate or candidates.

[R. 16 amended by GN 117 of 1997; GN 177 of 2010 w.e.f. 18 September 2010.]

17. (1) The Commission shall determine the procedure to be followed in dealing with applications for appointment to the public service, including the proceedings of any selection board appointed by the Commission to interview candidates.

(2) The Commission shall determine the forms to be used in connection with the discharge of its functions.

18. In order to discharge its functions under this Part, the Commission may issue such directions as it may determine for the maintenance of a reporting system on public officers and for their safe custody.

[R. 18 amended by GN 177 of 2010 w.e.f. 18 September 2010.]

19. (1) (a) Where a vacancy occurs, or it is known that a vacancy will occur, in any public office in any Ministry or department or general service, the responsible officer shall, if he desires that the vacancy be filled immediately and after ascertaining that the details of the vacancy have been verified and that there is no establishment or financial or other objection to the vacancy being filled, report the fact to the Secretary as soon as possible.

(b) The report shall include a recommendation as to the manner in which the vacancy should be filled and whether or not the vacancy should be advertised, and a copy of the report of the vacancy shall be forwarded to the supervising officer of the Ministry responsible for the subject of civil service.

(2) Where the responsible officer is unable to recommend that the vacancy should be filled immediately, he shall so inform the Secretary and state the reasons therefor and the temporary arrangements he is making for the performance of the duties of the vacant office.

(3) (a) Where the responsible officer recommends, in accordance with the mode of appointment provided for in the scheme of service, that such vacancy should be filled by the promotion of a public officer serving in the Ministry or department or general service in which the vacancy has occurred or will occur, he shall forward the particulars of service of that officer and state whether the officer satisfies the requirements of that office.

(b) Where a recommendation made under paragraph (a) involves the supersession of any officer, the responsible officer shall forward a list of all eligible officers who are senior to the recommended officer, together with their particulars of service and give his reasons for recommending their supersession.

(4) The responsible officer shall, when so required by the special or general directions of the Commission, constitute a promotion board to advise him on any matter relating to the filling of vacancies.

(5) Where the responsible officer recommends, in accordance with the mode of appointment provided for in the scheme of service, that the vacancy should be filled by selection from—

(a) public officers serving in the Ministry or department or general service in which the vacancy has occurred or will occur;

(b) all public officers; or

(c) the general public, including all public officers,

he shall, when reporting the vacancy to the Secretary, submit a draft advertisement setting out the details of the vacant office and the duties and qualifications attached to it and recommend the manner in which the vacancy should be filled.

(6) No appointment or promotion to a vacancy in the public service may be made before the Commission has determined the suitability of the person concerned.

(7) Where the Commission decides that a person should be appointed or promoted to a vacancy in the public service, the responsible officer shall be informed of the appointment or promotion authorised in his Ministry or department or general service and he shall issue the letter of appointment or promotion to the person concerned and shall make such further arrangements as may be necessary to complete the procedure for the appointment or promotion.

(8) Where the Commission takes a decision following an appointment exercise from among public officers, it shall arrange for the public notification of the decision.

[R. 19 amended by GN 3 of 1992; GN 117 of 1997; repealed and replaced by GN 177 of 2010 w.e.f. 18 September 2010.]

19A. The procedure for filling vacancies shall be followed where it is desired to nominate or select an officer for a scholarship, or a special course of training, which is designed to prepare him for a higher office or which may enhance his qualifications for appointment to a higher office or for promotion.

[R. 19A inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

20. Where a vacancy is to be filled—

(a) according to the results of examinations which are conducted by or supervised by the Commission; or

(b) on the successful completion of a course of study or training by a person who is selected for such study or training with the intention that, when trained, he shall be appointed to or promoted within the public service,

the Commission may make such arrangements as it may determine.

21. (1) All first appointments to pensionable offices on permanent terms shall be on 12 months' probation.

(2) Notwithstanding paragraph (1), where a public officer reckons satisfactory service in a temporary or supernumerary capacity or employment to give assistance—

(a) in the same pensionable post as the one to which the officer is subsequently appointed on permanent terms; or

(b) in a pensionable post the duties and responsibilities of which are in the opinion of the Commission similar to those of the one to which the officer is subsequently appointed on permanent terms,

that satisfactory previous non-pensionable service before the date of first appointment on permanent terms shall be counted towards the required period of 12 months' probation.

(3) Where a public officer is appointed on probation, the responsible officer shall, 6 months after the commencement of the probationary period, inform the Commission if he considers the work or conduct of the public officer to be unsatisfactory, and not less than one month before the expiration of the probationary period the responsible officer shall inform the Commission whether in his opinion—

(a) the public officer should be confirmed in his office;

(b) the probationary period should be extended so as to afford the public officer further opportunity to pass any examination, the passing of which is a condition for confirmation, his service otherwise being satisfactory;

(c) the probationary period should be extended to afford the public officer the opportunity of improvement in any respect in which his work or conduct has been adversely reported on; or

(d) the public officer's appointment should be terminated.

(4) (a) The responsible officer shall not recommend the extension or termination of an appointment under paragraph (3) (c) or (d) unless he has first, by letter, informed the public officer of his intention and of the right of the public officer to make representations thereon within a period to be specified in the letter.

(b) The responsible officer shall attach copies of all such correspondence to his recommendation.

(5) Where a public officer who is on probation is granted—

(a) sick leave in excess of 21 days;

(b) vacation leave taken overseas or locally;

(c) vacation leave taken as casual leave;

(d) leave without pay;

(e) study leave without pay;

(f) extension of study leave, while he is on study leave with pay, in case of failure at examination or awaiting results before resuming duty;

(g) maternity leave; or

(h) injury leave,

the probationary period shall be extended by an equivalent period.

[R. 21 amended by GN 100 of 1990; GN 15 of 2012 w.e.f. 2 February 2012.]

22. (1) Where the holder of a public office is for any reason unable to perform the functions of his office and the responsible officer is of the opinion that some other public officer should be appointed to act in such office, the responsible officer shall report the matter to the Secretary and shall submit, for the consideration of the Commission, the name of the public officer whom he recommends should be appointed to act in such office.

(2) Where a recommendation involves the supersession of any more senior officer serving in the Ministry or department, the responsible officer shall inform the Secretary of his reasons for recommending the supersession of every such officer.

(3) In considering recommendations for acting appointments, the Commission shall apply the standards prescribed in regulation 14, except that consideration may also be given to the interests of departmental efficiency.

(4) Notwithstanding paragraph (3), a responsible officer may recommend that a public officer be assigned the duties of another office and the Commission may so assign such duties where—

(a) the public officer cannot be appointed to perform the functions of that other office in an acting capacity because the officer—

(i) does not hold the official qualifications applicable to that office; or

(ii) is not the most senior officer serving in the particular class or grade from which an appointment in an acting capacity is normally made; and

(b) such assignment of duties is considered to be in the interests of departmental efficiency and desirable on the ground of administrative convenience.

[R. 22 amended by GN 11 of 1998.]

23. (1) Where a responsible officer is of the opinion that a public officer who is serving in his Ministry or a department within his Ministry and who holds a pensionable office should be called upon to retire from the public service on the grounds that he has attained the age at which he can under any enactment lawfully be required to retire from the public service, he shall—

(a) inform the officer that he intends to recommend that he be compulsorily retired from the public service;

(b) ask the officer concerned whether he wishes to make, within a period of time appointed by the responsible officer, any representations why he should not be so retired; and

(c) after the expiration of the period, forward his recommendations to the Secretary, together with a copy of any representations made by the officer concerned and his comments on them,

and the Commission shall decide whether the public officer should be called upon to retire.

(2) On being advised of the decision of the Commission, the responsible officer shall notify the public officer and, where the public officer is to be retired, the responsible officer shall make such further arrangements as may be necessary to complete the procedure for the retirement of the public officer.

(3) A public officer whose compulsory retirement is under consideration under this regulation may, where possible, be given the option to retire voluntarily provided that the reasons for requiring his retirement do not involve disciplinary action.

24. (1) Where it appears to a responsible officer that a public officer is incapable by reason of any infirmity of mind or body of discharging the functions of his public office, he may call upon such public officer to present himself before a medical board (which shall be appointed by the Permanent Secretary of the Ministry responsible for the subject of health) with a view to it being ascertained whether or not such public officer is incapable.

(2) (a) After the public officer has been examined, the Permanent Secretary of the Ministry responsible for the subject of health shall forward the medical board's proceedings, together with his comments, to the responsible officer who in turn shall forward them together with his own observations on the case to the Secretary.

(b) Unless the Commission considers that further inquiry is necessary, in which case it will issue directions to the responsible officer accordingly, it shall decide forthwith whether the public officer should be called upon to retire on medical grounds.

(3) On being advised of the decision of the Commission, the responsible officer shall notify the public officer and, where the public officer is to be retired on medical grounds, he shall make such further arrangements as may be necessary to complete the procedure for the retirement of the public officer.

25. (1) No public officer may be transferred from his present Ministry or department to another Ministry or department unless approval for such transfer is given by the Commission, but the posting of an officer between posts in the same grade within the same Ministry or department or the posting of an officer in a general service from one Ministry or department to another Ministry or department shall not be regarded as a transfer for the purpose of this regulation.

(2) Subject to a statutory body or an international organisation being an approved service as defined in the Pensions Act, the Commission may approve the permanent transfer of a public officer to serve in the statutory body or in the international organisation on such terms and conditions as the Commission may approve.

(3) —

(4) The Commission may also approve the temporary transfer of a public officer to serve in another Ministry or department or in a statutory body or in an international organisation or institution having legal existence on the following terms and conditions—

(a) that during the period of his temporary transfer, the officer is responsible to the designated responsible officer of the Ministry or department concerned, in all matters of discipline, including the right to take proceedings with a view to dismissal;

(b) that the resumption of duty of the officer in the parent Ministry or department concerned will not be considered if during the period of his temporary transfer he has committed an act of misconduct involving fraud or dishonesty to the detriment of Government or the institution concerned.

(5) The Commission may take disciplinary action under Part IV against a public officer on temporary transfer to any body, organisation or institution referred to in paragraph (4), where—

(a) he is dismissed from the service of the institution for any reason involving fraud, dishonesty, wilful mismanagement or misbehaviour;

(b) he is convicted of an offence involving fraud or dishonesty.

(6) No public officer who is on temporary transfer to any body, organisation or institution referred to in paragraph (4) may resume duty in the public service where—

(a) proceedings are being taken for his dismissal; or

(b) criminal proceedings are being taken which are likely to result in his dismissal,

from the service of the body, organisation or institution to which he is transferred.

[R. 25 amended by GN 136 of 1985; GN 177 of 2010 w.e.f. 18 September 2010.]

26. Where a public officer is serving on a contract or an agreement and is willing to engage for a further term of service, the responsible officer shall forward to the Secretary, 6 months before the officer is due to proceed on leave on the expiration of his contract or agreement, a notification of the date of the expiration of the contract or agreement and his recommendation whether it should be renewed or not.

27. Any public officer attempting to bring influence to bear on the Commission or any of its Commissioners for the purpose of obtaining an appointment or promotion may be disqualified for such appointment or promotion and render himself liable to disciplinary action.

[R. 27 amended by GN 117 of 1997.]

28. Where the Commission is satisfied that the interest of the public service requires that any matter relating to the appointment, promotion, transfer or confirmation in his appointment of a public officer be dealt with otherwise than in accordance with the procedure laid down in this Part, it shall take such action or issue such direction with regard to that matter as appears to it to be most appropriate in the circumstances.

[R. 28 amended by GN 177 of 2010 w.e.f. 18 September 2010.]

29. This Part shall not apply to public offices in respect of which the power to make or terminate appointments is delegated to any public officer or class of public officer by directions under section 89 (2) of the Constitution, except insofar as may be required by such directions.

PART IV – DISCIPLINE

30. The Commission shall not exercise its powers in connection with the disciplinary punishment of any officer in the public service except in accordance with these regulations or such other regulations as may be made by the Commission.

[R. 30 amended by GN 76 of 2003 w.e.f. 1 July 2003.]

31. (1) Where a responsible officer considers that the interest of the public service requires that a public officer should instantly cease to exercise the powers and functions of his office, he may interdict the officer at once from the exercise of those powers and functions where proceedings for dismissal are being taken, or where criminal proceedings are being instituted, or where proceedings for retirement on grounds of interest of the public service are being taken against him, informing the Secretary that he has done so and applying for covering authority from the Commission.

(2) An officer who is under interdiction may not leave Mauritius without the permission of the responsible officer.

[R. 31 amended by GN 76 of 2003 w.e.f. 1 July 2003.]

32. (1) Where a preliminary investigation or disciplinary inquiry discloses that an offence against any law may have been committed by a public officer, the responsible officer shall forthwith refer the case to the Commissioner of Police who shall promptly take necessary action.

(2) Where the Director of Public Prosecutions does not advise a prosecution but advises that disciplinary action should be taken against the public officer, the responsible officer shall institute disciplinary proceedings against the public officer in accordance with regulation 37 or 38, as the case may be.

(3) Where the Director of Public Prosecutions advises no further action against the public officer following a criminal investigation, the responsible officer shall, where the officer was under interdiction in connection with the criminal investigation, reinstate the public officer and inform the Secretary accordingly.

(4) Where the Director of Public Prosecutions decides to discontinue criminal proceedings against a public officer, the responsible officer shall reinstate the public officer and inform the Secretary accordingly.

[R. 32 amended by GN 76 of 2003 w.e.f. 1 July 2003; GN 177 of 2010 w.e.f. 18 September 2010.]

33. Where criminal proceedings of a nature likely to warrant disciplinary proceedings are instituted against a public officer in any Court, the responsible officer shall forthwith report the facts to the Secretary with a statement as to whether the officer has or has not been interdicted from the exercise of his powers and performance of his duties, and thereafter the matter shall be dealt with in accordance with regulation 35 or 36, as the case may be.

34. (1) No disciplinary proceedings against an officer on any ground involved in a criminal charge shall be instituted until the conclusion of the criminal proceedings and the determination of the appeal, if any.

(2) Nothing in this regulation shall be construed as prohibiting or restricting the power of the responsible officer to interdict such public officer.

[R. 34 amended by GN 76 of 2003 w.e.f. 1 July 2003.]

35. (1) A public officer acquitted or dealt with as specified in regulation 32 (4) of a criminal charge in any Court or in relation to whom proceedings have been discontinued under regulation 32 (4) shall not be dismissed or otherwise punished on any charge upon which he has been acquitted or dealt with as specified in regulation 32 (4), but nothing in this regulation shall prevent his being dismissed or otherwise punished on any other charges arising out of his conduct in the matter, provided that the Solicitor-General is of the opinion that they do not raise substantially the same issue as that on which he has been acquitted or dealt with as specified in regulation 32 (4), and, if the Commission thinks fit, proceedings under these regulations may be taken for the purpose.

(2) In all cases in which a public officer is acquitted of a criminal charge in any Court, the responsible officer shall forward to the Secretary a copy of

the judgment and of the proceedings of the Court if they are available, provided that the charge is not in respect of minor offences which would not in any event warrant disciplinary proceedings.

(3) Where a public officer who is under interdiction is acquitted of a criminal charge in any Court, the responsible officer shall reinstate him and inform the Secretary accordingly.

(4) —

[R. 35 amended by GN 76 of 2003 w.e.f. 1 July 2003; GN 177 of 2010 w.e.f. 18 September 2010.]

35A. Where further proceedings are instituted against the public officer under regulation 35 (1), interdiction, if that course is decided upon, shall not have effect from any earlier date than that on which the new proceedings are instituted.

[R. 35A inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

36. (1) (a) Where a public officer is found guilty in any Court of a criminal charge likely to warrant disciplinary proceedings, the responsible officer shall forthwith forward to the Secretary a copy of the charge and of the judgment and of the proceedings of the Court if they are available, and his own recommendation.

(b) The Commission shall determine whether the officer should be dismissed or retired in the interest of the public service or subjected to some lesser disciplinary punishment if the proceedings disclose grounds for doing so, without any of the proceedings prescribed in regulation 37, 38 or 39 being instituted.

(2) (a) Disciplinary proceedings subsequent to a conviction in a Court of law shall normally be confined to cases in which the conviction was in respect of an offence under any law where a prison sentence may be imposed other than in default of payment of a fine.

(b) Disciplinary proceedings subsequent to a conviction shall not normally be instituted in respect of minor offences under the Road Traffic Act, and of minor offences not entailing fraud or dishonesty and not related to an officer's employment.

[R. 36 amended by GN 76 of 2003 w.e.f. 1 July 2003.]

37. (1) Where a responsible officer considers it necessary to institute disciplinary proceedings against a public officer on the grounds of misconduct which, if proved, would justify his dismissal from the public service, he shall, after such preliminary investigation as he considers necessary and after seeking the advice of the Solicitor-General on the terms of the charge or charges to be preferred against the officer, forward to the officer a statement of the charge or charges preferred against him together with a brief statement of the allegations, insofar as they are not clear from the charges themselves, on which each charge is based, and call upon such officer to state in writing before a day to be specified by the responsible officer any grounds on which he relies to exculpate himself.

(2) Where the officer does not furnish a reply to any charge forwarded under paragraph (1) within the period specified or where in the opinion of the

responsible officer he fails to exculpate himself, the responsible officer shall forward to the Secretary copies of his report, the statement of the charge or charges, the reply, if any, of the accused officer and his own comments on it.

(3) (a) Where, upon consideration of the responsible officer's report, the Commission is of the opinion that proceedings for the dismissal of the officer should be continued, it shall appoint a committee, which shall consist of not less than 3 members, who shall be public officers or former public officers, to inquire into the matter.

(b) The Chairperson of the committee shall be a Judge, Magistrate or public officer who is or has been a barrister, and all members shall be selected with due regard to the status of the accused officer.

(c) Neither the responsible officer nor any public officer who is serving, or has for any period during the 5 years preceding the alleged misconduct served, in the accused officer's Ministry or department, shall be a member of the committee.

(4) The committee shall inform the accused officer that on a specified day the charges made against him will be investigated and that he will be allowed or, where the committee so determines, will be required to appear before it to defend himself.

(5) Where witnesses are examined by the committee, the accused officer shall be given an opportunity to be present and of putting questions on his own behalf to the witnesses and no documentary evidence shall be used against him unless he has previously been supplied with a copy of it or given access to it.

(6) (a) The committee may permit the prosecuting party or the accused officer to be represented by a public officer or legal practitioner.

(b) Where the committee permits the prosecuting party to be represented, it shall permit the accused officer to be represented in a similar manner.

(7) Where during the course of the inquiry grounds for the preferment of additional charges are disclosed, the committee shall so inform the responsible officer who shall follow the same procedure as was adopted in preferring the original charges.

(8) (a) The committee, having inquired into the matter, shall forward its report to the Commission—

(i) together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the inquiry;

(ii) as far as is reasonably practicable, within a period not exceeding 6 months as from the date of its appointment.

(b) The report of the committee shall include—

(i) a statement whether in the committee's opinion the accused officer has or has not committed the offence or offences charged and a brief statement of the reasons for their opinion;

(ii) details of any matters which in the committee's opinion aggravate or alleviate the gravity of the case; and

(iii) a summing up and such comments as will indicate clearly the opinion of the committee on the matter under inquiry.

(9) The committee shall not make any recommendations regarding the form of punishment.

(10) The Commission, after considering the report of the committee, may, if it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the committee for further investigation and report within a period to be determined by the Commission.

(11) The Commission, after considering the report of the committee or any further report called for under paragraph (10), shall determine the punishment, if any, which should be inflicted on the accused officer.

[R. 37 amended by GN 76 of 2003 w.e.f. 1 July 2003; GN 177 of 2010 w.e.f. 18 September 2010.]

38. (1) Where a responsible officer considers it necessary to institute disciplinary proceedings against a public officer but is of the opinion that the misconduct alleged, if proved, would not be serious enough to warrant dismissal under regulation 37, he shall, after such preliminary investigation as he considers necessary, forward to the officer a statement of the charge or charges against him and shall call upon him to state in writing before a day to be specified any grounds on which he relies to exculpate himself.

(2) Where such officer does not furnish a reply to the charge or charges preferred against him within the period specified or does not, in the opinion of the responsible officer, exculpate himself, the responsible officer shall appoint a disciplinary committee to inquire into the matter.

(3) The disciplinary committee shall consist of 3 members chosen from a panel of public officers or former public officers drawn up on a yearly basis by the Secretary to Cabinet and Head of the Civil Service after consultation with the Commission.

(4) The Chairperson and members of the committee shall be selected with due regard to the status of the accused officer.

(5) Neither the responsible officer nor any public officer who is serving, or has for any period during the 5 years preceding the alleged misconduct served, in the accused officer's Ministry or department shall be a member of the committee.

(6) The accused officer shall be entitled to know the whole case against him and shall have an adequate opportunity to make his defence.

(7) The committee shall inform the accused officer that on a specified day the charges made against him will be investigated and that he will be allowed or, where the committee so determines, will be required to appear before it to defend himself.

(8) Where witnesses are examined by the committee, the accused officer shall be given an opportunity of being present and of putting questions on his own behalf to the witnesses and no documentary evidence shall be used against him unless he has previously been supplied with a copy of it or given access to it.

(9) The accused officer shall be allowed to defend himself personally or be represented by another public officer.

(10) The committee shall, within 14 days of the conclusion of the proceedings, submit its report to the responsible officer together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the inquiry, and its report shall include—

(a) a statement whether in its opinion the accused officer has or has not committed the offence or officences charged and a brief statement of the reasons for its opinion;

(b) details of any matters which in its opinion aggravate, or alleviate the gravity of, the case; and

(c) a summing up and such other comments as will indicate clearly its opinion on the matter under inquiry.

(11) The committee shall not make any recommendation regarding the form of punishment.

(12) The committee shall, as far as is reasonably practicable, submit its report to the responsible officer within a period not exceeding 3 months from the date of its appointment.

(13) The responsible officer may, where he considers that the report of the committee should be amplified in any way or that further investigation is desirable, refer the matter back to the committee for further inquiry and report within a period to be determined by the responsible officer.

(14) The responsible officer shall, after considering the report submitted by the committee, shall determine what punishment, if any (other than dismissal and retirement in the interest of the public service), should be inflicted on the officer.

(15) The responsible officer, where he considers that the punishment to be inflicted on the officer should be a reduction in rank or seniority, or stoppage or deferment of increment beyond one year, shall seek the approval of the Commission before inflicting the punishment.

(16) Notwithstanding paragraphs (1) to (15), where at any stage during proceedings instituted under this regulation it appears to the responsible officer that the offence, if proved, would justify dismissal or retirement in the interest of the public service, the proceedings so instituted shall be discontinued and the procedure prescribed in regulation 37 or 39, as the case may be, shall be followed.

[R. 38 amended by GN 76 of 2003 w.e.f. 1 July 2003.]

39. (1) Where the Secretary to Cabinet and Head of the Civil Service or a responsible officer, after having considered every report in his possession

made with regard to a public officer, is of the opinion that it is desirable in the interest of the public service that the service of the public officer should be terminated on grounds which cannot be suitably dealt with under any other provision of these regulations, he shall notify the public officer in writing, specifying the complaints by reason of which his retirement is contemplated, together with the substance of any report or part thereof that is detrimental to the public officer.

(2) Where the responsible officer, after giving the public officer an opportunity to show cause why he should not be retired in the interest of the public service, is satisfied that the public officer should be required to retire in the interest of the public service, he shall forward to the Secretary the report on the case, the public officer's reply and his own recommendation, and the Commission shall decide whether the public officer should be required to retire in the interest of the public service.

[R. 39 amended by GN 3 of 1992; GN 117 of 1997; GN 76 of 2003 w.e.f. 1 July 2003.]

40. Notwithstanding regulations 37, 38 and 39, a responsible officer may represent to the Commission that a public officer has been guilty of misconduct or unsatisfactory service and, where the Commission is of the opinion that the misconduct or unsatisfactory service warrants proceedings with a view to dismissal or to retirement in the interest of the public service or to a lesser punishment, the Commission may cause proceedings to be instituted against the public officer in accordance with the procedure prescribed in this Part as appropriate.

[R. 40 revoked and replaced by GN 76 of 2003.]

41. (1) The following punishments may be inflicted on any public officer as a result of proceedings under this Part—

(a) dismissal;

(b) retirement in the interest of the public service;

(c) reduction in rank or seniority;

(d) stoppage of increment;

(e) deferment of increment;

(f) suspension from work without pay for a period not less than one day and not more than 4 days;

(g) severe reprimand;

(h) reprimand.

(2) No punishment shall be inflicted on any public officer which would be contrary to any enactment.

[R. 41 amended by GN 100 of 1990; GN 76 of 2003 w.e.f. 1 July 2003; GN 15 of 2012 w.e.f. 2 February 2012.]

42. (1) Subject to paragraph (2), but notwithstanding any other regulation, a responsible officer may, without reference to the Commission—

(a) after investigation which will be recorded and after seeking the explanations of a public officer in writing, inflict upon him any of the following punishments, on grounds of unsatisfactory service or conduct—

(i) stoppage of increment for a period not exceeding one year;

(ii) deferment of increment for a period not exceeding one year;

(iii) suspension from work without pay for a period of not less than one day nor more than 4 days;

(iv) severe reprimand;

(v) reprimand;

(b) deduct from the salary of a public officer who has been absent without leave or without reasonable excuse an amount which bears the same relation to his monthly salary as such period of absence bears to one month;

(c) deduct from the salary of a public officer who is consistently late for work an amount representing the number of work hours lost over a period of one month.

(2) Where any stoppage or deferment under paragraph (1) (a) is recommended to be continued beyond one year, the matter shall be referred to the Commission for its decision.

(3) (a) Nothing in these regulations shall prevent a responsible officer or a head of department, without reference to the Commission, from administering a warning to any officer in his Ministry or department on the ground of unsatisfactory work or conduct.

(b) The intention to administer a warning shall be communicated to the officer in writing, and he shall be given an opportunity to reply.

(c) A warning, where administered, shall be entered in the officer's personal file and the officer shall be so informed.

(4) A responsible officer exercising the powers conferred on him by this regulation shall act in accordance with these regulations and any other appropriate regulation as may be in force.

[R. 42 amended by GN 34 of 1981; GN 100 of 1990; revoked and replaced by GN 76 of 2003 w.e.f. 1 July 2003; amended by GN 15 of 2012 w.e.f. 2 February 2012.]

42A. (a) Nothing in these regulations shall preclude the Secretary to Cabinet and Head of the Civil Service from instituting disciplinary proceedings against any public officer on grounds of misconduct or unsatisfactory service which, if proved, would justify his dismissal or retirement in the interest of the public service, or a lesser punishment.

(b) Where the Secretary to Cabinet and Head of the Civil Service intends to initiate disciplinary action against a public officer, he shall follow the procedures laid down in regulation 37, 38, 39 or 42 as appropriate.

[R. 42A inserted by GN 76 of 2003 w.e.f. 1 July 2003; reprinted by Reprint 2 of 2003 w.e.f. 1 July 2003.]

42B. (1) (a) A public officer aggrieved by the decision of a responsible officer to inflict upon him a punishment under regulation 38 (14) or 42 (1) (a), or by the decision of the Secretary to Cabinet and Head of the Civil Service to inflict upon him a punishment other than dismissal or retirement in the interest of the public service pursuant to regulation 42A, may appeal to the Commission.

(b) The Commission may approve, vary or remit the punishment provided that the appeal is so made in writing within 21 days of the notification of the punishment.

(2) A public officer aggrieved by the decision of the Commission to inflict upon him a punishment under regulation 37, 38 (15) or 39 may appeal to the Commission for a review of its decision provided this is done within 21 days of the notification of the punishment and new arguments are put forward to support his appeal.

[R. 42B inserted by GN 76 of 2003 w.e.f. 1 July 2003.]

43. A public officer who is absent from duty without leave or who fails to return to duty on expiry of leave granted is liable to be treated as having vacated his office or to be summarily dismissed, and such absence from duty shall be reported by the responsible officer to the Commission which may declare the office of the public officer to be vacant or summarily dismiss the officer.

44. (1) All acts of misconduct by public officers shall be dealt with under this Part as soon as possible after their occurrence.

(2) Where disciplinary proceedings are instituted against a public officer under this Part, the Secretary to Cabinet and Head of the Civil Service or the responsible officer shall ensure that at each stage of the proceedings, the Secretary is kept informed of the action taken, and where the Commission may determine, it shall be open to the Commission in any particular case to provide for or to discontinue disciplinary proceedings against a public officer.

[R. 44 amended by GN 76 of 2003 w.e.f. 1 July 2003.]

45. Where proceedings have been taken against a public officer under this Part, such officer shall be informed—

(a) of the findings on each charge which has been preferred against him; and

(b) of the punishment to be imposed.

46. This Part shall not apply to public officers in respect of whom the power of disciplinary control has been delegated to any public officer or class of public officer by directions under section 89 (2) of the Constitution, except insofar as may be required by such directions.

PART IVA – DISCIPLINARY CONTROL THROUGH STATUTORY DISCIPLINARY BODY

[PART IVA inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

46A. (1) Where the Commission, in pursuance of section 89 (2) (b) (i) of the Constitution, delegates its powers to enquire and report, in the case of any professional misconduct or negligence committed by a public officer in the performance of his duties, to any appropriate statutory disciplinary body, such delegation shall be subject to the conditions set out in this Part.

(2) The statutory disciplinary body to which the Commission has delegated its powers shall forthwith inform the Commission and, where the

relevant responsible officer has not himself so informed the statutory disciplinary body, the relevant responsible officer, of any prima facie act of professional misconduct, malpractice, fraud, dishonesty, negligence or act constituting a breach of any applicable code of practice or ethics.

(3) (a) The responsible officer may, whether on being informed under paragraph (2), or after becoming aware of a report from any source that such an act or breach may have been committed—

(i) require a public officer to instantly cease to exercise the powers and functions of his office where he considers that it is in the interest of the public service to do so and shall forthwith apply for the covering approval of the Commission; and

(ii) decide to refer the act or breach under paragraph (2) to the statutory disciplinary body.

(b) Where the responsible officer makes a referral under subparagraph (a), he shall, having regard to the nature of the act or breach, specify in the referral whether disciplinary proceedings shall be envisaged with a view to the officer being—

(i) dismissed;

(ii) retired in the interest of the public service; or

(iii) subjected to any other form of punishment as specified in regulation 46E (5) (b).

(4) A public officer under interdiction may not leave Mauritius without the permission of the responsible officer.

(5) Where a preliminary investigation or a disciplinary inquiry into any such act or breach discloses that an offence against any law may have been committed by the public officer, the statutory disciplinary body shall forthwith—

(a) refer the case to the Commissioner of Police who shall, promptly, take necessary action; and

(b) inform the Commission and the relevant responsible officer of the referral.

(6) Where the Director of Public Prosecutions does not advise prosecution but advises that disciplinary action should be taken against the public officer, the responsible officer shall seek the approval of the Commission thereon and refer the matter to the statutory disciplinary body which shall—

(a) proceed with disciplinary proceedings against the public officer in accordance with this Part; and

(b) inform the Commission and the relevant responsible officer of any action taken under subparagraph (a).

(7) Where the Director of Public Prosecutions advises disciplinary action for an act or other wrong which does not fall under the ambit of the delegated power, the responsible officer shall institute proceedings in accordance with regulation 32 (2).

[R. 46A inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

46B. (1) No disciplinary proceedings against a public officer under this Part upon any grounds involved in a criminal charge shall be instituted until the conclusion of the criminal proceedings and the determination of the appeal, if any.

(2) Nothing in this regulation shall be construed as prohibiting or restricting the power of the responsible officer to interdict such public officer.

[R. 46B inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

46C. (1) Where after such preliminary investigation as may be necessary, a statutory disciplinary body considers it necessary to prefer charges against a public officer, it shall, after seeking legal advice, where appropriate, on the charges to be preferred, forward to the officer a statement of the charges to be preferred against him together with a brief statement of the allegations, insofar as they are not clear from the charges themselves, and call upon such officer to state in writing, before a date to be specified by the statutory disciplinary body, any grounds on which he relies to exculpate himself.

(2) The officer shall also be informed by the statutory disciplinary body of the punishment envisaged, being a punishment referred to in the referral under regulation 46A (3) (b).

[R. 46C inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

46D. A statutory disciplinary body shall follow such procedures as may be established by or under its enabling Act, or related regulations, for the conduct of disciplinary proceedings.

[R. 46D inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

46E. (1) The statutory disciplinary body, having inquired into the charges, shall forward its report to the Commission together with the record of the charges preferred, the evidence led, the defence and other proceedings relevant to the inquiry.

(2) The report of the statutory disciplinary body shall include—

(a) a statement as to whether, in the opinion of the statutory disciplinary body, the accused officer has or has not committed the offence or offences and a brief statement of the reasons for its opinion;

(b) details of any matter which, in the opinion of the statutory disciplinary body, aggravates or alleviates the gravity of the case; and

(c) a summing up and such comments as will indicate clearly the opinion of the statutory disciplinary body on the matter under inquiry.

(3) The statutory disciplinary body shall not make any recommendations regarding the form of punishment.

(4) The Commission, on considering the report of the statutory disciplinary body, may, where it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the

matter back to the statutory disciplinary body for further investigation and report within a period to be determined by the Commission.

(5) (a) The Commission, after consideration of the report of the statutory disciplinary body or of any further report called for under paragraph (4), shall determine the punishment, if any, which shall be inflicted on the accused officer.

(b) The following punishments may be inflicted on any public officer as a result of the proceedings under this Part—

(i) dismissal;

(ii) retirement in the interest of the public service;

(iii) reduction in rank or seniority;

(iv) stoppage of increment;

(v) deferment of increment;

(vi) suspension from work without pay for a period of not less than one day nor more than 4 days;

(vii) severe reprimand;

(viii) reprimand.

[R. 46E inserted by GN 177 of 2010 w.e.f. 18 September 2010; amended by GN 15 of 2012 w.e.f. 2 February 2012.]

46F. Nothing in this Part shall preclude a responsible officer and the Commission from exercising disciplinary control in conformity with this Part on a public officer over whom the statutory disciplinary body may exercise disciplinary control where the act or breach in question—

(a) was not done by the officer in the performance of his duties; or

(b) is not covered by the delegation of powers to the statutory disciplinary body.

[R. 46F inserted by GN 177 of 2010 w.e.f. 18 September 2010.]

PART V – MISCELLANEOUS

47. Where under these regulations—

(a) it is necessary—

(i) to serve any notice, charge or other document on a public officer; or

(ii) to communicate any information to any public officer who absents himself from duty; and

(b) it is not possible to effect the service on or communicate the information to the public officer personally,

it shall be sufficient if the notice, charge or other document, or a letter containing the information, is sent by registered post addressed to his usual or last known address.

48. —

49. The Secretary shall advise the responsible officer concerned of the decision of the Commission on any particular matter and the responsible officer shall take the appropriate action.

50. All correspondence for the Commission from responsible officers and other persons shall be addressed to the Secretary.

51. Any case not covered by these regulations shall be dealt with in accordance with such instructions as the Commission may issue.

FIRST SCHEDULE

[Regulation 2]

PART I

Attorney-General's Office	Solicitor-General
Civil Aviation Department	Director of Civil Aviation
Electoral Commissioner's Office	Electoral Commissioner
Employment Relations Tribunal	President, Employment Relations Tribunal
Local Government Service Commission Mauritius	Secretary, Local Government Service Commission
Mauritius Fire and Rescue Service	Chief Fire Officer
Mauritius Meteorological Services	Director
Mauritius Prisons Service	Commissioner of Prisons
National Archives	Director
National Assembly	Clerk of the National Assembly
National Audit Office	Director of Audit
National Transport Authority	Road Transport Commissioner
Office of the Director of Public Prosecutions	Director of Public Prosecutions
Office of the President	Secretary to the President
Office of the Vice-President	Secretary for Home Affairs
Ombudsman's Office	Senior Investigations Officer, Ombudsman's Office
Ombudsperson for Children's Office	Secretary, Ombudsperson for Children's Office
Pay Research Bureau	Director
Police	Commissioner of Police
Printing Department	Government Printer
Public Service Commission and Disciplined Forces Service Commission	Secretary, Public and Disciplined Forces Service Commissions
Registrar-General's Department	Registrar-General
Statistics Mauritius	Director of Statistics
The Judiciary	Judge in Bankruptcy and Master and Registrar
Treasury	Accountant-General
Valuation Department	Permanent Secretary, Ministry of Finance and Economic Development

PART II

Administrative Cadre	Secretary to Cabinet and Head of the Civil Service
Confidential Secretary	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Executive Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Financial Operations Cadre	Financial Secretary
Higher Executive Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Human Resource Management Cadre	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Internal Control Cadre	Financial Secretary
Library Cadre	Senior Chief Executive or other supervising officer; Ministry responsible for the subject of education
Machine Minder/Senior Machine Minder (Bindery)	Government Printer
Management Support Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Care Attendant Cadre	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Management Assistant	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Management Executive	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Superintendent	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Office Supervisor	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Procurement and Supply Cadre	Financial Secretary
Receptionist/Telephone Operator	Permanent Secretary or other supervising officer, Ministry responsible for the subject of information technology
Senior Receptionist/Telephone Operator	Permanent Secretary or other supervising officer, Ministry responsible for the subject of information technology
Senior Word Processing Operator	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service

Special Clerical Officer	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service
Word Processing Operator	Senior Chief Executive or other supervising officer, Ministry responsible for the subject of civil service

[First Sch. amended by GN 37 of 1975; GN 3 of 1992; GN 117 of 1997; repealed and replaced by GN 177 of 2010 w.e.f. 18 September 2010; amended by GN 134 of 2017 w.e.f. 14 June 2017.]

SECOND SCHEDULE

[Regulation 12]

OATH OF COMMISSIONER

I, ..., having been appointed as Chairperson/Deputy Chairperson/Commissioner of the Public Service Commission do swear/solemnly and sincerely declare and affirm that I will without fear or favour, affection or ill-will, discharge the functions of the office of Chairperson/Deputy Chairperson/Commissioner of the Public Service Commission, and that I will not, directly or indirectly, reveal any matters relating to such functions to any unauthorised persons otherwise than in the course of duty.

Sworn/solemnly affirmed before me this .....

..... day of Before me

..... 20 .....

.....

Judge of the Supreme Court

OATH OF SECRETARY AND OTHER STAFF OF COMMISSION

I, ..., being called upon to exercise the functions of Secretary to/a member of the staff of the Public Service Commission, do swear/solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal to any unauthorised person otherwise than in the course of duty the contents or any part of the contents of any documents, communication or information whatsoever which may come to my knowledge in the course of my duties as such.

Sworn/solemnly affirmed before me this .....

..... day of Before me

..... 20 .....

.....

Chairperson of the Public Service Commission

[Second Sch. amended by GN 117 of 1997.]

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SERVICE COMMISSIONS REGULATIONS

GN 67 of 1967 – 12 August 1967

1. These regulations may be cited as the Service Commissions Regulations.

2. In these regulations—

"Chairperson" means the Chairperson of a Commission;

"Commission"—

(a) means the Judicial and Legal Service Commission constituted under section 85 of the Constitution or the Public Service Commission constituted under section 88 of the Constitution or the Disciplined Forces Service Commission constituted under section 90 of the Constitution; and

(b) in regulations 5 and 6, includes a Commission, any Commissioner, the Secretary, any member of the staff of a Commission or any person or body of persons appointed to assist a Commission in the exercise of its functions or duties.

[R. 2 amended by Act 5 of 1997.]

3. Any Chairperson or member shall have all the protection and privileges in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty as is by law given to any Judge or Magistrate acting in the execution of his office.

4. Any report, statement or other communication, written or oral, or record of any meeting, inquiry or proceedings which a Commission may make in the exercise of its functions or any Commissioner may make in performance of his duties, and any application form, report or other communication dispatched to a Commission in connection with the exercise of its functions, and in the possession of a Commission shall be privileged in that its production may not be compelled in any legal proceedings unless the Chairperson certifies that such production is not against the public interest.

5. (1) Every person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person in any manner, influences or attempts to influence any decision of a Commission or the Chairperson or any member shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Nothing in this regulation shall be deemed to make unlawful the giving of a *bona fide* reference or testimonial to any applicant or candidate for any appointment in the public service by a person who, from his own knowledge, can speak as to the qualifications or character of the applicant or candidate, or the *bona fide* answering of any question put to any person by the Chairperson or a Commissioner.

6. Any person who, in connection with any application for employment or promotion in the public service or with the exercise by a Commission of its functions and duties, gives to a Commission or the Chairperson or any member or to any person or body of persons appointed to assist a Commission in the exercise of its functions or the discharge of its duties, any information which to his knowledge is false or misleading by reason of the falsity of, or the omission in, any material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding 2 years.

7. (1) No Chairperson or member, or the Secretary or any member of the staff of a Commission or any other person shall publish or disclose to any person, otherwise than in the exercise of his official functions, the contents of any document, communication or information which has come to his notice in the course of his duties, and any person who contravenes this regulation shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding one year.

(2) Where any person having possession of any information, which to his knowledge has been disclosed in contravention of this regulation, publishes or communicates to any other person, otherwise than for the purpose of any prosecution under these regulations, any such information, he shall commit an offence, and shall, on conviction, be liable to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding one year.

8. No prosecution for any offence under these regulations shall be instituted except by, or with the written consent of, the Director of Public Prosecutions.

SUPREME COURT (CONSTITUTIONAL RELIEF) RULES

GN 105 of 2000 – Section 17 (4) – 30 June 2000

1. These rules may be cited as the Supreme Court (Constitutional Relief) Rules.

2. (1) An application to the Supreme Court under section 17 (1) or 83 (1) of the Constitution shall be made by way of a plaint with summons, which shall state with precision—

(a) the provision of the Constitution which has been, is or is likely to be contravened; and

(b) the nature of the relief sought.

(2) Except with leave of the Supreme Court, on good cause shown, no application shall be lodged more than 3 months after the right of action arises.

(3) A copy of the plaint shall be served, not less than 8 clear days before the day on which the summons is returnable before the Court on—

(a) the defendant and any other party to the suit;

(b) the Attorney-General where he or the Government is not a party to the suit.

(4) Subject to paragraphs (2) and (3), the Supreme Court Rules 2000 shall apply to any application made under these rules.

[Rule 2 amended by Act 15 of 2000.]

3. – 4. —

PART III – CONSTITUTIONAL JURISPRUDENCE

A — CASES ON THE CONSTITUTION

CONTENTS

PART I – AMENDMENT OF CONSTITUTION

1. Principles of democracy – Reference to Electoral Supervisory Commission and to Electoral Commissioner – Relevance of reasonableness and good faith in relation to amendment of Constitution—The applicants averred that section 2 of the Constitution of Mauritius (Amendment) Act 1969, which amended section 57 of the Constitution was null and void because it was (i) against the spirit of the Constitution, and (ii) in contravention of sections 1, 41 (3) and 57 (2) of the Constitution, and that, consequently, Parliament stood dissolved since 22 August 1972.

HELD (i) by virtue of section 57 (2) of the Constitution, read together with section 8 (4) of the Mauritius Independence Order, 1968, and section 2 of the Constitution of Mauritius (Amendment) Act 1969, Parliament would continue in existence, unless sooner dissolved, for 5 years as from the first sitting of the Legislative Assembly, that is, from 31 July 1971;

(ii) when the Constitution itself permitted the alteration of section 57 which dealt with the prorogation and dissolution of Parliament, and laid down the procedure for such alteration the alteration when made could not be said to be contrary to the declaration contained in section 1 of the Constitution;

(iii) as the proposed Bill for the Act of Parliament to amend section 57 of the Constitution did not relate to the registration of electors for the election of members of the Assembly, or to the election of such members, it was not necessary to refer it to the Electoral Supervisory Commission and to the Electoral Commissioner under section 41 (3) of the Constitution;

(iv) whether or not Parliament had acted reasonably and in good faith when it had altered section 57 of the Constitution was a matter into which the Court would not enquire; the Court had to satisfy itself that the alteration had been made in accordance with the procedure laid down in the Constitution, and that it was not inconsistent with the Constitution. *Bérenger v Governor-General* (1973).

2. Constitution of Mauritius (Amendment) Act 1973 – Validity—The petitioners challenged the validity of the Constitution of Mauritius (Amendment) Act 1973, in so far as it made certain changes in the electoral system, on the grounds (i) that the Electoral Supervisory Commission had not been afforded sufficient time for considering and commenting upon the Bill for the Act as required by section 41 (3) of the Constitution; (ii) that the Act offended against the idea of democracy embodied in section 1 of the Constitution and conflicted with other provisions of the Constitution. They also contended that section 5 of the Act should be struck down as being discriminatory in its effect.

HELD dismissing the petition—

(i) the question for the Court was not what time should have been afforded to the Commission in any circumstances or whether the Commission could exercise its functions in the time allowed, but whether it had been as a fact possible for the Commission to perform those functions within the time at its disposal. In the

present instance the evidence established that the Commission had had sufficient time;

(ii) the power to amend the Constitution conferred upon Parliament by section 47 was subjected only to the requirements laid down in that section, that is to say, was conditioned upon the Bill being supported by a specified number of votes in the Legislative Assembly. Beyond that, no restriction was placed by the Constitution on the amplitude of Parliament's power to alter its provisions;

(iii) assuming that the provisions of the Act conflicted with other provisions of the Constitution, there would be no ground in the inconsistency for invalidating the amending provisions which, if clear and explicit, must be taken as amending any inconsistent existing provision, provided the latter provision was one which could be amended by the procedure required for its alteration (that is, one passed at the Assembly by the prescribed number of votes). *Lincoln v Governor-General* (1974).

3. Amendment of section 1 of Constitution – Democracy – Separation of powers—Defendant was charged with possession of heroin for the purpose of selling in breach of the Dangerous Drugs Act 2000 ("DDA"). The police objected to the respondent being released on bail on the ground that, pursuant to section 5 (3A) of the Constitution and section 32 of the DDA, the respondent could not be granted bail pending trial. The matter was referred to the Supreme Court pursuant to section 84 of the Constitution.

HELD (*Supreme Court*) section 5 (3A) of the Constitution, although it was compliant with section 47 (2), was in breach of section 1 of the Constitution, since the imperative prohibition imposed on the judiciary to refuse bail in the circumstances outlined therein amounted to the interference by the legislature into functions which were intrinsically within the domain of the judiciary. Furthermore, section 5 (3A) violated section 7 of the Constitution, in that it removed from the Court its adjudicative role in deciding whether bail was to be granted or not in certain circumstances. Section 32 of the DDA and section 5 (3A) of the Constitution, in so far as regards drug offences, declared void. *Police v Khoyratty* (2004 MR 137).

The State appealed to the Judicial Committee of the Privy Council.

HELD (*Judicial Committee*) the power to determine responsibility for a crime, and punishment for its commission, is a function which belongs exclusively to the Courts. Section 1 of the Constitution is not a mere preamble. It is a constitutional provision which could only be amended in the manner provided by section 47 (3). The right to bail cannot be abolished by an ordinary legislation or by a constitutional provision which does not comply with the requirement of deep entrenchment of section 1. The failure to comply with section 47 (3) rendered section 5 (3A) of the Constitution and section 32 of the Dangerous Drugs Act void. Appeal dismissed. Decision of Supreme Court on section 1 endorsed. *State v Khoyratty* (2006 MR 210).

PART II – CITIZENSHIP

1. Aliens

A. Property

4. Restrictions on ownership – Foreign institutions—The defendant contended that the Rabita-al-alam-al-Islami, being a foreign body not registered under any law in force in Mauritius, was not able to purchase immovable property in Mauritius in 1967, as it had purported to do by virtue of a notarial deed.

HELD on the first issue raised by the defendant, that the Order in Council of 15 January 1842 (Lane, Subsidiary Legislation Volume 1 page 42) which has since been repealed, governed individuals and not corporations, and that the ability of foreign bodies to acquire immovable property at the relevant time was governed by our civil law. *Rabita-Al-Alam-Al-Islami v Mahboob* (1977).

5. (i) A foreign body may acquire immovable property in Mauritius provided it has legal personality;

(ii) a body has legal personality if its objects are lawful and it is *pourvu d'une possibilité d'expression collective* and its existence is not prohibited by law;

(iii) section 3 (2) of the Registration of Associations Ordinance 1949 (now Act) did not apply as it purported to govern associations of persons and not institutions which have no members. *Rabita-Al-Alam-Al-Islami v Mahboob* (1977). [Reversed subnomine *Mahboob v Rabita-al-Alam-al-Islami* (1979).]

6. Unregistered societies – Legal personality – Power to purchase land—The Order in Council of 15 January 1842, which governed the acquisition of land in Mauritius by "aliens" included not only physical persons, but also bodies corporate.

Mauritian law draws a distinction between *sociétés*, the basis of which is profit-making, and "associations". Unregistered "associations" are not bodies corporate and cannot acquire land, unless they are given legal personality by Act of Parliament. *Mahboob v Rabita-Al-Alam-Al-Islami* (1979).

7. Acquisition of land and property in Mauritius—The plaintiff, a foreigner, made plans to build a hotel in Mauritius. The first defendant wanted to be the plaintiff's associate in the project, but the plaintiff alleged that the first defendant formed a company and misappropriated the plaintiff's rights in the project.

HELD (i) under the Non-Citizens (Property Restriction) Act, the plaintiff who is a non-citizen is not entitled to own land or property without the approval of the Minister of Internal Affairs and the acquisition of property by a non-resident is rendered void by section 5 of the Act;

(ii) —

(iii) articles 1108 and 1133 CC provide that one of the essential conditions for the validity of contracts and conventions is that there must be

a *cause licite dans l'obligation*. The cause is illicit if it is prohibited by an enactment;

(iv) the plaintiff, being a foreigner was not entitled to use a citizen of this country as a *prête nom* to obtain a development permit to run a hotel in Mauritius. *Weg v Patel and anor* (1991).

8. Right of ownership – Law applicable in the UK and in Mauritius—The plaintiffs claimed ownership of immovable property on the ground that their author had acquired it by prescription. It was contended that the latter was an alien until 1965 and, since he died in 1968, he could not have acquired the property.

HELD the *de cujus* was not entitled to acquire property in Mauritius so as to have been able to prescribe it by the time of his death. *Chung Fook Lung and ors v Mootooveeren* (1997).

B. Residence

9. Residence permit – Extension refused – Whether applicant entitled to remain in country—The applicant sought an order declaring that he was entitled to remain in Mauritius. The applicant claimed that no reason was given for the refusal to extend his residence permit and that he was plaintiff in 3 civil court cases.

HELD (i) there is a distinction between a case where a permit is cancelled for no valid reason and a case where an applicant seeks to renew or extend an expired permit. In the latter case, the applicant should put forward the reasons for the claim and in appropriate cases the Court will consider whether refusal is justified;

(ii) involvement in Court cases does not entitle the applicant to remain in the country as of right. *Pala v Jugnauth* (1985).

10. Extension of residence permit—The applicant, a foreigner, obtained work and residence permits to stay in Mauritius until November 1990 but the Passport and Immigration Office refused to extend the residence permit. The applicant sought an interim order restraining the respondent from proceeding with the requirement that the applicant should leave the country immediately. The applicant contended that he had acquired a legitimate expectation to stay in Mauritius.

HELD legitimate expectation applies only to circumstances where a permit is cancelled before its expiry, in which case an order to stay for the remaining period may be obtained after a hearing. In the case of renewal of an expired permit there is a continuing offence and the Court will only come to the rescue if the Minister responsible for issuing the permits has done an unlawful act. *Gorfinkel v Passport and Immigration Officer* (1991).

11. Residence acquired by marriage – Deprivation of residence—The applicant had acquired Mauritian residence by marriage. In July 1993 a provisional decree of divorce was declared in respect of the marriage. In September 1993 the applicant was informed that in the public interest and pursuant

to section 6 (1) of the Immigration Act he was to be deprived of his status of resident. In October 1993 the applicant was asked to leave the country.

The applicant sought an interim injunction prohibiting the respondent from (i) depriving the applicant of his status of resident and (ii) requiring the applicant to leave the country. The applicant contended that there was a breach of the rules of natural justice in that no reason for the deportation was given and no opportunity was afforded to the applicant to make representations on the matter prior to the deportation.

HELD section 6 (1) of the Immigration Act speaks of an absolute discretion in matters of deprivation of status of resident, but the discretion is reviewable. *Green v Prime Minister and Minister of Home Affairs* (1993).

2. British Nationality

[EDITORIAL NOTE: This Sub-Part has been included for historical purposes. The decisions may be relevant as the Mauritius Citizenship Act has been borrowed from English law.]

12. Loss of British nationality – Foreign naturalisation – Voluntary and formal act—The applicant, who was detained by the Military Authorities for failure to comply with an enlistment notice, contended that he was not amenable to the Defence (Military Service) Regulations, 1941, in as much as the signing by him in 1941 prior to the passing of those Regulations, of a certain undertaking in the French Island of Réunion, coupled with certain specific acts done by him during the years 1937, 1939 and 1940, constituted a voluntary and formal act within the meaning of section 13 of the British Nationality and Status of Aliens Act, 1914, whereby he had ceased to be a British subject and had become naturalised as a French national in Réunion.

HELD the undertaking coupled with the specific acts relied upon did not constitute a voluntary and formal act within the meaning of that section. The words "voluntary and formal act" must mean a voluntary act which formally renounces and abandons British nationality.

Semble that section 13 is restricted in its application to the case of a British subject who wishes to acquire another nationality which he did not already possess at his birth; and that section 14 applies to a natural-born British subject, who is also by birth the subject of another State, and who wants to abandon his British nationality in order to remain solely the subject of that other State. *P.E.A. de Simard de Pitray v O C Troops* (1942).

13. Nationality as affected by marriage—The respondent, a British subject born in Mauritius and the widow of a British subject, left for and settled in France in 1923 and there married a French national domiciled in Paris. Her second husband died in 1934.

HELD the respondent who, by reason of her marriage in 1928 had lost her British nationality, had regained it in 1933 as a result of the passing of the British Nationality and Status of Aliens Act, 1933, there being no evidence that, at the time of her second marriage in 1928, or at any other time, she had expressed the desire of acquiring the French nationality. *D'Arifat v Lesueur* (1949). (Obsolete)

3. Passports

14. Passports Act – Citizenship—The applicant, a Mauritian, who had acquired French citizenship sought a new Mauritian passport. She was asked to furnish further details in respect of her French citizenship, in view of the fact that she may have lost her Mauritian citizenship under section 15 of the Mauritius Citizenship Act. The applicant sought an order of mandamus against the respondent.

HELD the respondent was acting lawfully in requesting further particulars. The fact that an applicant for a passport produces a birth certificate evidencing birth in Mauritius does not shift on to the respondent the burden of proving loss of Mauritian citizenship. *Ransamy v Passport and Immigration Officer* (1988).

4. Registration and Renunciation

15. Deprivation of citizenship—The applicant who was outside Mauritius feared he had been declared *persona non grata* and would not be allowed to return to Mauritius. He sought an order directing the respondent to allow him to return to Mauritius.

The applicant, registered as a citizen of Mauritius, is protected from deprivation of his citizenship by the clear provisions of the Mauritius Citizenship Act which limitatively spells out the reasons which may be invoked and the procedure to be followed for depriving such a citizen of his status of citizen (see section 11 of the Act). *Rishi v Passport and Immigration Officer* (1990).

16. Dual nationality—The plaintiff was born outside Mauritius but acquired Mauritian citizenship by descent on 12 March 1968. The plaintiff was in Mauritius in January 1975 when he turned 21 years old. During that time the plaintiff did not renounce his British citizenship in accordance with section 15 of the Mauritius Citizenship Act. The plaintiff's subsequent renunciation of his British citizenship was not approved. The plaintiff contended that his constitutional rights had been contravened.

HELD there is nothing in the text of section 20 (3) of the Mauritius Citizenship Act to say that on becoming a citizen of Mauritius the plaintiff ceased to be a citizen of the United Kingdom. The term "or" in section 26 (d) does not stop Parliament from legislating in terms of section 26 (e). The position with regard to those who acquire dual nationality at birth is different from those who acquire citizenship by registration or naturalisation. In the former case the law requires that a certain step be taken after the citizen turns 21 years. There is no need for an elaborate process in such a situation. Section 26 of the Constitution does "discriminate" against some Mauritians. The provision is contained in the Constitution and there is nothing to prevent that. The presumption of citizenship raised by the issue of a Mauritian passport is rebuttable. *Orian v Prime Minister* (1991).

[EDITORIAL NOTE: The Mauritius Citizenship Act has since been amended.]

17. Child born out of wedlock – Mauritian father – Foreign mother—The applicant sought a judicial review of the respondent's decision to refuse to issue a certificate of Mauritian citizenship to his son who was born out of wedlock from a foreign mother.

HELD sections 23 and 27 (2) of the Constitution must be construed in such a way as not to frustrate the fundamental rights and freedoms of an individual which include the unity of the family as a group. Section 27 (2) should be read as adding to what has been provided in section 23 and not as excluding those provisions, so that a child born from the relations of a Mauritian father with a foreign mother does not lose his Mauritian citizenship. *Panjanadum v Prime Minister* (1995).

PART III – EMERGENCY LEGISLATION

[Not current.]

1. Nature

18. Liability of trader for acts of agent or clerk—A licensee or trader whose agent or clerk sells by retail an article of food at a price higher than the statutory price must be held responsible for the acts of that agent or clerk. *Long-Yan v R* (1919).

19. Sale at price higher than statutory price – Price fixed for article – Sale of mixture—The appellant sold a mixture of Madagascar and Burmah rice at a price higher than the statutory price for Burmah rice. He was prosecuted on a charge of having sold Burmah rice at a higher price than the statutory price.

HELD the conviction on the charge laid must be quashed. *Lan-Pang v R* (1920).

20. Sale at unreasonable profit—Conviction for selling potatoes bought at the rate of Re 0.42 ½ cents per kilo and sold at 70 cents per kilo.

HELD profit unreasonable but fine of 1,000 rupees reduced to 200 rupees. *Pougnet v Local Profiteering Committee* (1921).

21. Prosecution for selling Clin's Salicilate of Soda at 8.50 rupees which had cost 5.50 rupees.

HELD on appeal, the issue should be narrowed down to one of knowing whether the actual gross profit on the sale impugned was such a percentage as to constitute a profit which in view of all circumstances was unreasonable. *Mauritius Pharmacy v Local Profiteering Committee* (1921).

22. Meaning of article "in common use"—The question whether an article is one of "common use" can be raised by the Court trying a prosecution for profiteering even if not raised before the Committee. The Ordinance on profiteering differed in an important particular from its parent English Act: it leaves open the question of knowing whether an article is or is not of common use, while in England that is fixed by the Board of Trade. Therefore it is

for the Court, having regard to the percentage of profit and the circumstances of each case, to consider whether there has or has not been unreasonable profit. Conviction and a fine of 150 rupees for selling medicinal food maintained. *de Robillard v Local Profiteering Committee* (1921).

23. The words "in common use" in article 2 (i) of the Profiteering Ordinance No. 22 of 1920 do not convey any notion of "common" in the sense of "inferior". The proper test is whether there is a public demand for the class of articles without distinguishing between those that are of a better or an inferior quality. Yet any defence based upon the rarity or expensiveness or capricious or uncertain turnover of *articles de luxe* would be open on the merits of unreasonableness of profit. *Procureur Général v District Magistrate of Port Louis and Saradally* (1922).

24. Importation without licence—The appellant was prosecuted for importing 1,972 bags of Calcutta rice for the importation whereof no licence had been issued by the Food Controller. The appellant argued that, inasmuch as they held a licence for importing 17,160 bags from Calcutta, the fact that they had imported 1,972 bags in excess of that amount did not constitute an importation of rice without a licence, but a breach of one of the conditions of the licence under which they were to import 17,160 bags only within a specified period.

HELD the prosecution had been rightly entered under article 1 of GN 8 of 1940; so far as the 1,972 bags were concerned the appellant firm, having no licence at all, could not be held to have committed any breach of the conditions of their licence. There should be strict compliance from the provision of the law in order that the importation of rice may be lawful; the consent, express or tacit, of the Food Controller cannot exempt the importer from the obligation of procuring a licence under those articles. *Jeewanjee and Co v R* (1942).

25. Making false statement to obtain registration as householder – Unlawfully obtaining rationed food—When a party was charged on 2 counts: (i) on the first count, with having, for the purpose of obtaining registration as a registered householder, made a statement which he knew to be false in a material particular, and the Profiteering Court ruled that the object or the motive of the accused in making the false statement was not a constituent element of the offence, and passed a sentence of 3 months' imprisonment; held that this construction of the regulation was erroneous. The wording of the regulation plainly showed that the false statement must be made with a definite object in view, *viz*, obtaining registration. As the evidence on record clearly established that such could not have been the object the accused had in view, the conviction could not stand; (ii) on the second count, with unlawfully obtaining rationed food, and he was sentenced to undergo 3 months' imprisonment; the information was bad for uncertainty.

Per J G Espitalier Noel, J, and F Herchenroder, Ag J: Where the law requires a motive to be proved as an essential element of an offence, the prosecution must fail if it is not proved. On appeal when a conviction discloses no offence, or is for an offence other than that which was charged, or

when it is not certain whether the conviction was for the offence charged, the conviction cannot be upheld. The Reviewing Authority in Mauritius is not empowered to substitute a conviction for the offence charged in lieu of a conviction by the Profiteering Court for an offence other than the offence charged. The conviction on the first count must be quashed on the ground also that it is doubtful whether the Judge of the Profiteering Court meant to convict for the offence charged. The second count, as worded, did not disclose an offence under Regulation (1) (a) of the Defence (Food Rationing) Regulations, 1942, and the conviction on such count must be quashed on this ground also, albeit no objection to that count was taken in the Court below.

Per Le Conte, Ag C J: An accused party cannot, save in special cases provided for by statute, be found guilty of an offence of an entirely different character from that with which he stands charged. But he can be convicted of a cognate offence of the same character, but of a less aggravated nature, if the words of the information are wide enough to cover such offence. Each count of an information must be complete by itself so that after reading any one count the accused may know the exact nature of the charge brought against him without being compelled to turn to another count for enlightenment. *Dindoyal v Daruty de Grandpré* (1943).

26. Refusing to produce documents to Food Controller – Interpretation of Regulations—*Lavictoire v Jeewonjee and Co* (1943).

27. Finance Regulations – Drawing cheques to persons outside sterling area – Selling foreign currency—The appellant was convicted on 2 counts of drawing cheques in favour of persons outside the sterling area and 2 counts of selling foreign currency. After considering the evidence,

HELD the prosecution had clearly proved the counts of drawing cheques in favour of persons outside the sterling area. On the other counts, as to one there was no evidence of consideration from the alleged purchaser. As to the other, it was unsafe, in the absence of other evidence, to infer a sale from a pencil note in the margin of a cheque counterfoil. The appeal on these 2 counts was allowed. The sentences in the first 2 counts were not excessive. *Darné v R* (1948).

28. In a prosecution for manufacturing loaves otherwise than as provided by law a master is responsible for acts done by his servant. *Lochee v R* (1959).

2. State of Emergency

29. Reviewing Authority – Powers of amendment – Error as to date of offence charged—The 2 accused were charged before and convicted by the Profiteering Court for having on 30 March, 1941, committed breaches of article 22 of GN 73 of 1943. The evidence on record tended to show that the offences had been committed on 30 March 1943.

HELD the case fell within the purview of Regulation 13 (4) (a) of the Defence (Profiteering Court) Regulations, 1942; that the information charged

offences under an enactment which was not in force when the offences were alleged to have been committed, that the convictions were unreasonable, and, as the Reviewing Authority had no power to amend such convictions, they must be quashed. *Per* F Herchenroder, Ag J: The circumstances were such that the convictions were unreasonable and a substantial miscarriage of justice had been committed. *Per* Le Conte, Ag C J: Under Regulation 13 (4) (a) whenever a point of law has been wrongly decided by the Profiteering Court, it is only if a substantial miscarriage of justice has occurred that the conviction should be quashed. But no such condition is necessary when, as in the present case, the conviction is (a) unreasonable, and (b) cannot be supported by the evidence. *Chasle v Jalnac* (1943).

3. Validity

30. Transgression of human rights – Length of period of public emergency—The appellant had been convicted of having been found without lawful authority or reasonable excuse in possession of an offensive weapon in breach of the provisions of Regulations made under the Emergency Powers Order in Council, 1939. The arguments for the appellant were mainly directed against the continuing validity of the above Regulations as at the date of the offence.

HELD (i) Parliament is a sovereign body, and there are no fetters on its right to delegate legislative powers to any person or body;

(ii) the Regulations under which the appellant was convicted did not touch upon the question of personal liberty of the subject, and there had been no breach of the provisions of the Constitution concerning human rights; and

(iii) there was no limit fixed for the duration of the period of public emergency proclaimed by the Governor-General under section 19 (7) (b) of the Constitution. *Motee v R* (1969).

31. Legality of arrest and detention—The plaintiffs were, on 23 December 1971, arrested and detained under the provisions of the Emergency Powers (Arrest, Detention, Entry, Search and Prosecutions) Regulations, 1971. On 14 January 1972, the Emergency Powers (Arrest and Detention of Suspected Persons) Regulations, 1972, were published and the plaintiffs were notified that they were being detained under these regulations and were given the grounds of their detention. On 9 February 1972, their case was reviewed by the Tribunal appointed under section 18 (3) (c) of the Constitution.

The plaintiffs challenged the legality of their detention on the grounds that (1) they were in fact arrested in virtue of the powers conferred upon the Commissioner of Police by section 5 of the Constitution and the time limits fixed by that section for dealing with their case had not been complied with; and (2) their case was not reviewed within one month of their arrest on 23 December 1971.

HELD (i) the Commissioner of Police had chosen to act and did act under the Emergency Powers Regulations, and his action was accordingly governed

by the provisions of section 18 (3) of the Constitution; (ii) there was not one continuous detention but 2 periods of detention following one upon the other without break. The case had accordingly been reviewed by the Tribunal within the prescribed time limit, and their detention was legal. *Carré v Commissioner of Police* (1972).

32. *Mandamus* – Representation of the People Ordinance, 1958 – The Emergency Powers (Legislative Assembly) Regulations, 1972 – Constitution of Mauritius, sections 1, 35, 41 (3) – By-elections—The applicant had moved the Court for an order of *mandamus* with a view to obtaining an alteration of the date which had been fixed for a by-election. It was submitted that (i) the Emergency Powers (Legislative Assembly) Regulations, 1972, by which it was sought to postpone the by-election beyond the time limit fixed by section 41 (2) of the Representation of the People Ordinance, 1958, or (ii) the Representation of the People (Amendment) Act, 1972, by which the time limit was removed with retrospective effect, or both, were invalid.

HELD the Regulations were invalid, being in contravention of section 41 (3) of the Constitution, but the amending Act was valid as it was not against the letter and spirit of the Constitution. *Vallet v Ramgoolam* (1973).

33. Validity of Order under section 41 of the Representation of the People Ordinance, 1958, and of Regulations under section 3 of the Emergency Powers Ordinance, 1968, fixing dates for by-elections—The petitioner applied for a declaration that an Order made by the Governor-General under section 41 of the Representation of the People Ordinance, 1985, appointing dates for a by-election was invalid on the ground of unreasonableness and that Regulations made subsequently by the Governor-General under section 3 of the Emergency Powers Ordinance, 1968, whereby, among other things, certain dates were substituted for those fixed in that Order were invalid—

(i) because no state of emergency existed at the time;

(ii) assuming that such a state existed, the Ordinance did not otherwise empower the Governor-General to make the Regulations;

(iii) in any case, the dates fixed in the Regulations would unreasonably delay the holding of the by-election.

HELD (i) (a) in order to satisfy the requirement of the existence of a state of public emergency for the valid exercise of the Governor-General's power of making regulations under section 3 of the Emergency Powers Ordinance, 1968, it was sufficient that there was in force a Proclamation declaring that such a state of emergency existed; such a Proclamation once ratified by the Legislative Assembly as prescribed by section 19 (8) of the Constitution remained in force until revoked by the Governor-General or by a resolution of the Assembly; and

(b) assuming that the issue whether there existed in fact a state of emergency was justiciable, the petitioner had not substantiated his contention;

(ii) the Regulations which the Governor-General was empowered to make were neither such as should have a connection with fundamental rights and freedoms nor limited in their scope to amending, suspending or applying any law in force, as contended by the petitioner;

(iii) the Regulations were not invalid for unreasonableness;

(iv) the Order having been superseded by the Regulations, the question of its validity did not arise. *Mathoorasing v Governor-General* (1973).

PART IV – EXECUTIVE

1. Director of Public Prosecutions

34. Discretion of Director of Public Prosecutions—The prosecution is at liberty to choose the charge which should be preferred irrespective of the fact that the evidence adduced may disclose an offence of a more serious nature, provided that the charge is within the jurisdiction of the trial Court. *Sookna v R* (1976).

35. Section 301 PC—The omission of the former third paragraph of section 301 of the Penal Code Ordinance from section 301 of the Criminal Code, could only have effect if it came within the powers conferred under section 5 of the Revision of Laws Act upon the Law Revision Unit established under section 3 of the Act.

Upon a reference by the District Magistrate to the Supreme Court under section 84 of the Constitution, it was held that the powers of the Director of Public Prosecutions under section 72 of the Constitution were in conflict with the provisions of the former third paragraph of section 301 of the Penal Code Ordinance and the conflict had to be removed under the provisions of section 2 of the Constitution. It was thus within the powers of the Law Revision Unit under section 5 of the Revision of Laws Act to amend the section in the manner in which it has now been incorporated in section 301 of the Criminal Code. *Police v Ruhomally* (1983).

36. Powers of Magistrate – Powers of Director of Public Prosecutions under Constitution section 72 and Public Service Commission Regulations 1967 regulation 32—The respondent was charged with molesting a public officer by using vulgar language, in breach of section 4 of the Public Officers' Protection Act. The Magistrate dismissed the charge on the basis that the matter should have been dealt with at a departmental level.

HELD the Magistrate misconceived the powers and duties vested in him by virtue of the oath of office. His role was to adjudicate upon an offence known to the law which the Director of Public Prosecutions had decided to lodge before the Court. By ruling that the case could best be dealt with at a departmental level and not before a Court of law, the Magistrate arrogated to himself the functions of the Director of Public Prosecutions conferred on the latter under section 72 of the Constitution. *DPP v Dauhoo* (1988).

37. Dangerous Drugs Act 1986 sections 28 (8) and 38 (4)—The appellants were convicted of importing heroin and being traffickers of drugs and appealed to the Judicial Committee of the Privy Council. The Judicial Committee remitted to the Supreme Court the issue of the constitutionality of section 38 (4) of the Dangerous Drugs Act 1986 in view of section 28 (8) of the Dangerous Drugs Act 1986, and section 72 (3) of the Constitution.

HELD the appellants were charged with an offence against sections 28 (1) (c) and 38 of the Dangerous Drugs Act not against section 28

simpliciter. Section 28 (8) cannot be extended to say that it enables the Director of Public Prosecutions to direct that a person charged under section 28 (1) (b) or (c) and section 38, may at the Director of Public Prosecutions' discretion be charged before a District Court. Before the Director of Public Prosecutions may institute proceedings before any Court in accordance with section 72 (3) of the Constitution, the Court must have jurisdiction to hear the case. *Muktar Ali and anor v R* (1991).

38. Discretion—The applicant sought leave to appeal against conviction to the Privy Council. He alleged, *inter alia*, that it was unconstitutional for the DPP to choose the trial Court under the Courts Act, section 112, and that the appellate Court which heard his case was not impartial because one of its Judges held office at the executive's pleasure.

Section 112 of the Courts Acts sets out the offences that fall within the criminal jurisdiction of the Intermediate Court (which includes any offence that may be tried before a District Magistrate) and lays down that such jurisdiction shall only be exercised on a reference from the Director of Public Prosecutions. But that section adds nothing to section 72 of the Constitution which gives the Director the widest discretion to prosecute an offender before any Court. Their Lordships, in their judgment, met the point Counsel made in *Muktar Ali v R* (Privy Council Appeals Nos. 4 and 5 of 1989) by saying "a discretion in a prosecuting authority to choose the Court before which to bring an individual charged with a particular offence is not objectionable if the selection of the punishment to be inflicted on conviction remains at the discretion of the sentencing Court". *Auchraje v State* (1992).

39. DPP as a party in private prosecution – Section 72 of Constitution—The question arose, in appeals to the municipality against the dismissal of informations lodged against two traders, as to whether the DPP should have been made party to the appeals.

HELD the DPP need not be joined as a party to the appeal and notice of appeal need not be served on her within the statutory period provided in section 93(3) of the District and Intermediate Courts (Criminal Jurisdiction) Act. Notice of appeal may however, be given to the DPP at any time before the hearing of the appeal so that she can intervene either to enlighten the Court or to exercise her powers under section 72 (3) (c) and (7) of the Constitution. In particular, she can, in the case of an acquittal, discontinue the appeal proceedings at any time before judgment is delivered (section 72 (3) (c) and (7) of the Constitution). *Municipality of Bassin/Rose Hill v Sik Yuen Supermarket* (2001).

40. Power to DPP to appeal against acquittal—The appellants had been acquitted by the District Magistrate on a charge of publishing false news. On appeal by the DPP, the Supreme Court had reversed the decision and convicted the appellants. Appellants obtained special leave to appeal to the Judicial Committee of the Privy Council.

HELD the DPP has the power to appeal against an acquittal by a lower court and the Supreme Court has the power, on such an appeal, to set aside the decision of the Magistrate and record a conviction. However, the District Magistrate had been right to hold that there was no sufficient evidence to justify a conviction. *Sénèque and anor v DPP* (2002).

41. Private prosecution – Immunity of DPP—The applicant lodged a private prosecution against the respondent for the offence of conspiracy. The first respondent was the DPP at the time when the alleged offence was committed. The matter was referred by the Magistrate to the Supreme Court pursuant to section 84 of the Constitution. The applicant contended that section 72 of the Constitution did not confer any immunity on the DPP.

HELD no prosecution lies against a DPP or an ex DPP in respect of an act in the lawful discharge of his duties having regard to the constitutional powers of the DPP to institute and discontinue criminal proceedings and the protection afforded to him in that connection. Such a person could not be subjected to private prosecution in respect of such a decision either whilst being in office or at a later stage, after leaving such office. *Hurnam v Chui Yew Cheong* (2003).

42. *Nolle Prosequi* – Judicial review of discontinuance by DPP of private prosecution – Section 72 of Constitution—The applicant made several attempts to lodge a private prosecution against a Minister but they were discontinued by *nolle prosequi* by the DPP without giving reasons. An application for leave to apply for judicial review of the DPP's decision was set aside. Appellant obtained special leave to appeal from the decision of the Supreme Court to the Judicial Committee.

HELD the DPP cannot rely on the immunity enjoyed by the English Attorney General when exercising the prerogative power to enter the *nolle prosequi.* There was nothing to displace the ordinary assumption that the DPP as a public officer exercising statutory functions is amenable to judicial review on specific grounds. The decisions of the Supreme Court were set aside and the Supreme Court was invited to reconsider the appellant's applications in the light of this judgment and any evidence there may be, including any reasons the DPP may choose to give. It is for the DPP to decide whether reasons should be given and, if so, how full they should be. *Mohit v Director of Public Prosecutions* (2006).

2. Executive Offices

43. Jurisdiction of Supreme Court to inquire whether the Governor-General has complied with section 96 (2) of Constitution—The petitioner sought to challenge the validity of the appointment of the Ombudsman by the Governor-General on the ground that the Governor-General had omitted to consult the leaders of parties in the Legislative Assembly as required by section 96 (2) of the Constitution.

HELD the Court was debarred by section 64 (3) of the Constitution from considering and pronouncing on the question raised by the petition. *Leckning v Governor-General* (1975).

44. Appointment and conditions of service of public officer—In 1967 the applicant and the second respondent entered into an agreement which sought to require the second respondent to consult the applicant before making decisions affecting the interests of Government officers. Subsequently

the second respondent sought to create new posts in a Ministry. The applicant objected and later informed the first respondent that an industrial dispute existed due to the failure of the second respondent to consult the applicant about the newly created posts. The first respondent rejected the report of a dispute, and the applicant appealed to the CSAT which revoked the rejection. The first respondent then rejected the dispute again on the basis that no dispute could originate from the creation of posts in the public service. The applicant applied to the Supreme Court for an order quashing the first respondent's decision.

HELD section 74 of the Constitution has vested in the Governor-General the power to establish public service posts. The Executive may not restrict the exercise of its constitutional powers and any agreement inconsistent with the Constitution would be void. *Federation of Civil Service Unions v Prime Minister* (1987).

45. Executive – Immunity from suit—The applicant sought leave to apply for a judicial review of the decision of the second respondent (the Disciplined Forces Service Commission) to make a representation to the first respondent that the question of the removal of the applicant from the office of Commissioner of Police for alleged misbehaviour ought to be investigated and also the decisions of the first respondent to set up a Tribunal for that purpose and to suspend the applicant. The first prayer was granted but it was held that the first respondent should be put out of cause. *Dayal v President of the Republic* (1998).

46. Executive – Immunity from suit – Declaration—The plaintiff sought a declaration that the refusal of the President of the Republic to provide him with a copy of the report of a Tribunal set up under section 93 of the Constitution was in breach of sections 3,8,9 and 10 of the Constitution. The President had earlier been put out of cause on the ground of immunity. The defendant claimed the plaint disclosed no cause of action against him.

HELD the refusal to furnish a copy of the Tribunal's report was in effect a decision taken by the President of the Republic, who was "the proper contradictor" in relation to the plaintiff. The Court would not grant a declaration as a means of getting round the immunity of the President of the Republic from all civil proceedings. *Dayal v Attorney-General* (2000).

47. Executive – Immunity from suit—The plaintiff sued the defendant for defamation. Defendant, at the time of the alleged wrongful act, was the Prime Minister, but had since then been appointed President of the Republic. Defendant's Counsel moved that proceedings against him be stayed in view of the immunity vested upon him by section 30A of the Constitution.

HELD pursuant to section 30A (2) of the Constitution, any civil or criminal proceedings arising from the performance of the President's official duties or otherwise should be stayed until the end of his term in office. *Ramgoolam v Jugnauth* (2006).

48. Commission on the Prerogative of Mercy – Advice to the President—By virtue of sections 118 and 119 of the Constitution the Supreme Court has

jurisdiction to review the advice tendered to the President by the Commission on the Prerogative of Mercy so as to enquire whether it has performed its functions according to the Constitution or any other law. *Poongavanam v Commission on the Prerogative of Mercy* (1999).

3. Termination of Employment

49. Labour Act section 37A (1) – Payment of compensation – Currency— The plaintiff was appointed to a diplomatic post, but subsequently had his employment terminated. The plaintiff brought an action claiming *inter alia* arrears of salary in respect of days of leave due to him. A question was whether this could be claimed by the plaintiff in view of section 92 (1A) of the Constitution. Also at issue was whether any money owing to the plaintiff should be paid in Mauritius or United States currency.

HELD (i) section 92 (1A) of the Constitution relates to compensation for loss of office in respect of future benefits that the employee may have received. It does not affect the acquired or accrued rights of an employee;

(ii) an employee who through no fault of his own has not taken leave due to him is entitled to a day's wage or salary for each day's leave not taken. *New Mauritius Hotels Ltd v Benoit* (1982) and *Deep River Beau Champ Ltd v Felix* (1985) followed;

(iii) the Court may give judgment in a foreign currency but may not order a Mauritian national to pay monetary sums in foreign currency. *Ramphul v Government of Mauritius* (1987).

50. Section 113 of Constitution – Termination of employment after second general election after appointment—Plaintiff was appointed Director of the Industrial and Vocational Training Board for an initial period of two years and was subsequently appointed Director in a permanent capacity in 1991, with new conditions of employment. General elections were held subsequently in 1991 and 1995. Plaintiff was informed in April 1996 that his employment had been terminated under section 113 (4) of the Constitution and in accordance with section 37A of the Labour Act. Plaintiff argued that the termination of his employment was unjustified because section 113 (4) of the Constitution did not apply in his case. The issue was whether section 113 (4)of the Constitution applies to the termination of Plaintiff's employment and, if so, whether the conditions of employment have been affected by section 113 (4).

HELD section 113 (4) of the Constitution does apply to the termination of Plaintiff's employment which took place after the second general election after his appointment. This provision was enacted to allow a new Government to terminate the employment of officers in important functions whom the Government considered to have been political appointees of the previous regime. The plain meaning of section 113 (4) of the Constitution is that the only compensation for loss of office following a termination of employment is provided for in section 37A of the Labour Act. The intention of section 37A of the Labour Act was to limit the payment of compensation for loss of

office following termination under section 113 (4) of the Constitution. *Munbodh v Industrial and Vocational Training Board* (2005).

PART V – HUMAN RIGHTS AND FREEDOMS

1. Deprivation of Property

51. The Imports (Deposits) Regulations, 1977 – Repugnancy to section 8 of the Constitution—A plaintiff who claims redress against an alleged violation of section 8 of the Constitution of Mauritius must first show in terms of subsection (1) that the subject matter of his plaint is property or an interest or right over property and that the property has been compulsorily taken possession of or that the interest or right has been compulsorily acquired, within the meaning of those expressions in the subsection. When the plaintiff has discharged his burden, the onus is on the defendant to show that the taking of possession or acquisition of the plaintiff's property was necessary for one of the purposes set out in paragraph (a), was justified as required by paragraph (b), and that the law in virtue of which the taking of possession or acquisition was effected made provision for the payment of compensation and access to the Supreme Court as laid down in paragraph (c).

The plaintiff challenged the constitutional validity of the Imports (Deposits) Regulations, 1977, by virtue of which every importer of certain goods is required to deposit 50% of cif value of the goods with a bank and no interest shall be paid on the deposit.

HELD (i) "property" in section 8 (1) of the Constitution includes money;

(ii) where the taking of money amounts to a forced loan, the compensation for the money taken is the interest payable thereon;

(iii) where the taking of money does not amount to a forced loan, it would seem that no interest is due if provision is made for the refund of the money;

(iv) the requirement of the deposit under the Regulations did not amount to a forced loan, or to a compulsory taking of possession or acquisition within the meaning of section 8 (1) of the Constitution. *Hawaldar v Government of Mauritius* (1978).

52. Compulsory acquisition or use—The Court, following *Hawaldar v Government of Mauritius* (1978).

HELD section 3 of the Constitution did not create any right independently of, or greater than, that contained in section 8. Consequently the plaintiffs must fail because, even if they could show that the defendant's acts or omissions caused them to lose money, they were unable to establish that any property of theirs had been compulsorily acquired or used by the defendant or by any other person. *Reufac v Minister of Agriculture and Natural Resources and the Environment* (1980).

53. Regulatory power of the State—A plaint which avers that X has engineered a scheme which results in the taking over by Z of a substantial part

of the plaintiff's business does, on the assumption that all the facts averred are true, disclose a cause of action, even if no physical assets are appropriated. *Société United Docks v Government of Mauritius* (1981).

54. Separation of powers – Usurpation of judicial power—The plaintiff sold an immovable to an alien in circumstances which made the sale null and void. The Supreme Court held that the plaintiff was the legal owner of the immovable. Subsequently Parliament passed an Act which deemed that the sale was valid and that the alien had a valid title to the immovable.

It is a fundamental disposition of the Constitution that there should be a separation of powers between the Legislature, the Executive and the Judiciary. Parliament has no more right to pronounce judgments than the Supreme Court has a right to make laws. The enactment was a usurpation of judicial power, and must be struck down. In spite of the Act, the plaintiff remained the legal owner of the immovable.

HELD the Act amounted to a deprivation of property in breach of section 3 of the Constitution, and must be struck down. *Mahboob v Government of Mauritius* (1982).

55. Constitutionality of tax law – Parliament – Power to make laws – Executive and Parliament – Law as colourable device – Breach of contract—In an action questioning the constitutionality of the Campement Sites Tax Act,

HELD (i) in interpreting the Constitution, it is best to consider its own specific provisions rather than seek guidance from other differently drafted Constitutions;

(ii) the concept of a tax and the general right of protection from deprivation of property proclaimed in section 3 of the Constitution are mutually exclusive;

(iii) the power of Parliament to impose a tax is not limited by the provisions of section 8 governing the conditions for the compulsory acquisition of property, except to the extent that the measures for the enforcement of the tax, as distinct from its imposition, are shown not to be reasonably justifiable in a democratic society; and in this perspective, taxation measures and policies are matters of political philosophy and judgment and not matters for judicial review and decision;

(iv) whether or not a taxing statute is a colourable device designed to circumvent a constitutional prohibition raises a question not of *bona fides* or *mala fides* but of legislative competence;

(v) although the imposition of a tax is not subject to judicial control, the Courts are competent to determine whether the purported tax is a tax proper and not, for example, a forced loan without compensation;

(vi) to regard the tax in issue as a breach of contractual obligations by the Executive towards campement site lessees would be to regard the Executive and Parliament as one; and the Executive could not contractually or otherwise fetter the law-making powers of Parliament;

(vii) the Constitution provides for equality before the Courts, the equal protection of the law and the non-discriminatory character of laws on

specified grounds and, in this regard, the Act in question did not violate the Constitution. *Union of Campement Sites Owners and Lessees v Government of Mauritius* (1984).

56. Whether Public Service Commission may impose fine—The appellant was fined under regulation 41 of the Public Service Commission Regulations 1967 for misconduct. His application to the Supreme Court for an order of *certiorari* to quash the decision was dismissed. The appellant appealed to the Privy Council. The issue was whether the Commission had the power to impose a fine.

HELD the Commission's powers are derived from the Constitution. Section 8 (1) and 8 (4) of the Constitution make it clear that there is no power to fine unless a law exists which gives that power, and before a fine can be enforced the breach of that law has to be established in the Courts. Imposition of a fine by the Public Service Commission is *ultra vires* the Constitution. *Norton v PSC* (1985).

57. Tax on fishing and shooting leases – Whether constitutional – Shooting and Fishing Leases Act – Constitution sections 3 and 8 – Referral of matters concerning the Constitution to the Supreme Court – Constitution section 84—The plaintiff brought claims against the defendant for non-payment of taxes imposed under the Shooting and Fishing Leases Act on shooting and fishing leases. The tax was challenged by the respondents on the basis that it was unconstitutional in view of sections 3 and 8 of the Constitution.

HELD a tax is not a deprivation as envisaged by section 8 of the Constitution, but is an exemption from the section, so a tax cannot be held to be unconstitutional on the basis of section 8. The Supreme Court does however, have jurisdiction to pronounce on the constitutionality of a tax law by determining whether the particular law is a tax law or not.

A lower Court is not bound under section 84 of the Constitution to refer a matter to the Supreme Court on the ground that it concerns the interpretation of the Constitution. The lower Court should deal with the matter itself if the issue has already been decided. *Accountant-General v Baie Du Cap Estates* (1988).

58. Nature of rights in shares—The plaintiffs were various Mauritian companies. The issue in the case was whether certain provisions of the Companies Act 1984 had deprived the plaintiffs of property in breach of sections 3 and 8 of the Constitution.

The Supreme Court took the view that the right to vote and the right to appoint directors conferred by the memorandum and articles of a company were property or rights or interests in property. They also took the view that the provisions of the Act of 1984, which prevent a subsidiary from voting at meetings of its holding company, constituted a deprivation of property or rights and interests in property.

HELD on appeal to the Privy Council, reversing the view of the Supreme Court,

(i) the Companies Act 1984 insists that voting rights of shares in a company shall not be vested in the directors of the company but shall be attached proportionately to the shares which confer on the shareholders interests in the equity of the company. Minority shareholders were not deprived of property when control ceased to be exercisable by them;

(ii) the expression "property" in a Constitution includes property of every description. Nevertheless the expression "property" cannot be extended to the powers of some shareholders to exercise a disproportionate influence over the management and control of the company. *Government of Mauritius v Union Flacq Sugar Estates Co Ltd, Government of Mauritius v Medine Shares Holding Co Ltd, Black River Investments Co Ltd and Flacq United Estate Co Ltd* (1992) [Privy Council Appeals Nos. 35 and 36 of 1990].

59. Registration Duty Act section 19 – Land (Duties and Taxes) Act section 28 – Constitution sections 3 and 8 – Violation—In this case it was contended that section 19 of the Registration Duty Act and section 28 of the Land (Duties and Taxes) Act violated sections 3 and 8 of the Constitution.

HELD both sections violate section 3 and 8 of the Constitution. They are at variance with the limitative grounds on which land may be compulsorily acquired, and do not contain the necessary provision for access to the Court.

Section 19 of the Registration Duty Act requires the purchaser to be aware that the State's right of pre-emption is a resolutory condition of the purchase. This legal fiction is a colourable device designed to circumvent provisions of the Constitution. *Paul v Registrar-General* (1989).

60. Finance Act 1990—The plaintiff contracted to purchase an immovable property under condition precedent in June 1990, ownership to pass on payment of the balance of the purchase price being effected in June 1991. The Government meanwhile changed its policy on the payment of registration duty to recover duty on deeds which stipulated that the property would pass on the fulfilment of a hypothetical condition. Counsel for the plaintiff argued that where an individual enters into a transaction in the knowledge of the liability to pay registration duty on a certain date and makes financial arrangements in consequence, then the Executive will deprive the individual of property if it procures legislation that brings forward the date of payment.

HELD such a proposition is unacceptable, having regard to the inapplicability of sections 3 and 8 (i) of the Constitution to tax legislation other than colourable legislation, and section 8 (4) (a) (i) of the Constitution which empowers the Legislature to adopt measures in satisfaction of taxes, rates and dues. *Robenco Ltd v Government of Mauritius* (1990).

61. Seizure—In a case where a vehicle suspected of having been embezzled was seized by the Police,

HELD section 8 (1) of the Constitution protects the right to property but, a derogation from the right is provided in cases of investigation, trial or inquiry by subsection (4) (a) (vii). The Police Act gives power to the Police to

seize and detain an article which has been used to commit an offence or which has been obtained by means of an offence (section 14 (1) (a) and section 15 (2)). Section 15 (1) of that Act lays down that the article should be restored to the person from whom it was taken if it is found that it was not obtained by means of an offence or used in the commission of an offence. *Tangaree v Government of Mauritius* (1991).

62. Lease between landlords and *métayers* – Limitation on contracted freedom imposed by statute—The question to be determined was whether by restricting the freedom of contract of landlords in respect of leases with *métayers* in the manner envisaged under section 5A of the Sugar Industry Efficiency (Amendment) Act 1993, the plaintiff had been deprived of property.

HELD considering that there were innumerable instances of laws which regulated the use to which property may be put, and that the sugar industry, having regard to its importance for the country, had had to be organised to achieve efficiency, with equity and fairness for all partners, even if this entailed the statutory regulation of its operations by limiting and controlling individual contractual freedom, held that the impugned section was not unconstitutional. *La Compagnie Sucrière de Bel Ombre Ltée v Government of Mauritius* (1994).

63. Refusal to renew a licence to run a stone crushing plant—The plaintiff claimed constitutional relief on the ground that, by refusing to renew his licence to run a stone crushing plant, the defendant had deprived him of property. The defendant pleaded *in limine litis* that *ex facie* the pleadings there was no issue of deprivation. The objection was upheld. *Ramdhony v Municipal Council of Vacoas-Phoenix* (1995).

64. Deprivation of property – Coercive legislation – Stock Exchange Act 1988—In a previous suit the plaintiff had claimed that the provisions of the Stock Exchange Act 1988, which provided that only stock broking companies would deal in certain securities, were in breach of his right to freedom of association. His plaint was dismissed but the Court observed that a person who is only permitted to exercise a trade or profession by associating with others against his will might claim to have been deprived of property.

That obviously prompted the plaintiff to enter the present action to claim damages for deprivation of property.

HELD the provisions of the Act purported to regulate only a small part of the profession of broker. *Ramburn v Government of Mauritius* (1997).

65. Deprivation of property – Failure to renew inscription of a charge – Acquired right—The appellant's inscription of a charge in respect of a loan had not been renewed in time in accordance with the Finance Act 1990.

HELD the inscription had lapsed and lost its priority and the Act had not interfered with the appellant's acquired rights. *Development Bank of Mauritius Ltd v Flore* (1998).

66. ***Retrait successoral*** **– Constitutionality**—The repealed provisions of the Civil Code, which used to enable an heir to oust a stranger who had purchased undivided rights by refunding the purchase price with interest and costs, did not offend sections 3 (c) and 8 of the Constitution. *Burgus v Jeewon* (1999).

67. Right of husband to dispose of wife's property—Amendments made to Code Civil Mauricien by Act No. 26 of 1980 enabled a husband to dispose of property from the legal community of goods without the wife's consent. Respondents challenged the constitutionality of those provisions, claiming that they were in breach of the International Covenant on Civil and Political Rights and of the Convention on the Elimination of All Forms of Discrimination against Women and that they were discriminatory to married women.

HELD International instruments cannot be of assistance if they are not incorporated into Mauricien law. The questioned provisions were not discriminatory towards married women, nor were they in breach of section 8 of the Constitution. The provisions do not permit a husband to deprive the wife of her share in the property of the community. They merely authorise the husband to administer and dispose of the community property, acting on his own, but he remains accountable to his wife for the share belonging to the latter. If a husband diverts the whole of the community property upon a sale, he would be liable to his wife under the general law for "*faute*" pursuant to article 1382 or 1383 of the Civil Code. *Pulluck v Ramphul* (2005).

2. Discrimination

68. Place of origin – Power of Parliament to differentiate—To differentiate is not to discriminate, if the classification is based on an intelligible principle having a reasonable relation to the object which Parliament seeks to attain. In view of the geographical and administrative differences between Rodrigues and the Island of Mauritius, Parliament may validly enact that cases tried in Mauritius by 2 Magistrates should be tried in Rodrigues by a single Magistrate. *Police v Rose* (1976).

69. The plaintiff, who was charged with murder raised objection to being tried by a jury of men only, on the ground that those provisions, by excluding women from jury service, violated sections 3 and 16 of the Constitution the combined effect of which was to forbid discrimination by reason of sex.

HELD dismissing the plaintiff's action, the omission of sex from the grounds of discrimination in section 16 of the Constitution appeared to be intentional; the implied guarantee against discrimination proclaimed in section 3 related expressly to the enjoyment of each of the rights and freedoms set out in paragraphs (a), (b) and (c) of that section; the guarantee in section 3 had, consequently, no separate existence; but a measure which in itself conformed to the requirements of the particular section of the Constitution affording protection to the right or freedom concerned may nevertheless infringe that section, when read in conjunction with section 3, on the ground that it was discriminatory; section 16, on other hand, applied to all enactments whether they affected right or freedom protected by the Constitution.

The question to be decided was whether the plaintiff's complaint related actually to a breach of one of his fundamental rights or freedoms; the plaintiff, as a party charged with a criminal offence, could not in this instance complain that because he belonged to the male sex he was not being given the protection of his right as an accused party under section 10 of the Constitution. His action must for that reason fail; but even assuming that the prohibition against discriminatory laws in section 16 included also those which discriminated on the ground of sex, the provisions of the enactments which were under attack in this action were not, having regard to the local conditions, discriminatory within the meaning of "discriminatory" as used in section 16. *Jaulim v DPP* (1976).

70. Division of community property – Discrimination on basis of sex—The plaintiff brought an action for division of community property following the dissolution of her marriage. The plaintiff failed to accept her share in the community within the time set by article 1463 CC (repealed by Act 26 of 1980). The issue referred to the appellate Court was whether the requirements to accept in article 1463 CC which applied to women only, was contrary to the Constitution.

HELD article 1463 CC discriminated against women and violated a wife's right to protection from deprivation of property without compensation in breach of the provisions of the Constitution. *Babajee v Appadoo* (1990).

71. Jury Act – Failure to comply with Act – Unconstitutionality of provisions—The accused were charged with manslaughter. At the trial Counsel contended that (i) the provisions of the Jury Act relating to preparation of the jury book were not complied with because the Commissioner of Income Tax and the Commissioner of Police had not sent the Registrar the lists required under the Act; (ii) section 2 of the Act was unconstitutional because it required jurors to be chosen from the Island of Mauritius effectively discriminating against jurors from other islands in the State of Mauritius; (iii) section 19 (1) was unconstitutional in that it gave arbitrary powers to the Chief Justice; (iv) section 24 (1) (d) was unconstitutional because it discriminated against men.

HELD (i) the preparation by the Registrar of jury lists using whatever lists he had access to at the time is not by itself a ground for saying that the chosen panel deprived the accused of a fair trial. The book as prepared gives an opportunity for a fair cross-section of society to be chosen; (ii) the power given to the Chief Justice does not take away or override the power of the Registrar, and is not arbitrary; (iii) under section 24 (1) (d) the Judge has a discretion whether to grant an exemption on ground of special hardship or incapacity. This does not discriminate against men who also may be granted exemptions from jury service for limited reasons. *R v Boyjoo* (1991).

72. Jury Act – Exclusion of persons on grounds of social conditions – Exclusion of women—The issue was whether the appellant had received a fair trial before an independent and impartial Court when the Jury Act at the time of the trial (that is, before the 1990 amendment) excluded persons of

various social conditions, and women. In addition it was argued that the jury list did not contain an adequate cross-section of society.

HELD it would be impossible to find more than a few Mauritian males who did not satisfy the requirements of section 2 (a), (c) and (d) of the Jury Act. The emancipation of women in Mauritius is a recent phenomenon. Local conditions must be borne in mind as must the fact that jurors must be kept together for long periods. Although the State has adopted a passive attitude and allowed citizens to decide whether or not to come forward for jury service, that does not deprive the appellant of a fair trial. *Peerbocus v R* (1991).

73. Work permit – Spouses of Mauritian citizens – Differentiation – Employment (Non-citizens) (Restriction) Exemptions Regulations 1970—The plaintiffs alleged that the Employment (Non-citizens) (Restriction) Exemptions Regulations 1970 were discriminatory by reason of sex and breached the Constitution. The Regulations exempted the wife of a Mauritian citizen from obtaining a work permit before undertaking paid employment, but did not similarly provide for the husband of a Mauritian citizen.

HELD the differentiation in the Employment (Non-citizens) (Restriction) Exemptions Regulations 1970 is not a discrimination based on sex which flouts the fundamental rights of the citizen to protection of the law under section 3 of the Constitution. The differentiation is made not because a Mauritian woman enjoys fewer rights under the law, but because her husband is a foreign national who has not been granted privileges given to a foreign female spouse of a Mauritian citizen. *Guyot v Government of Mauritius* (1991).

74. Denominational schools – Selection of staff—In 1989, regulations were made amending the Education Regulations 1957. The purport of the amended regulations 32 and 52 was to require secondary schools in order to qualify for grants, not to discriminate on the grounds of race or religion. The plaintiffs, in recruiting staff, had always ensured that the candidates would be sympathetic to and compatible with the beliefs of the Roman Catholic Church. The plaintiffs contended that the Regulations were inconsistent (i) with the decision of *Government Teachers Union and anor v Roman Catholic Education Authority and Administrative Secretary* (1987), (ii) with sections 11 and 14 of the Constitution, and (iii) with various international instruments.

HELD section 16 of the Constitution cannot be interpreted to mean that a person acting in a private capacity is entitled to practise discrimination. The plaintiff is perfectly entitled to preserve the specificity of its schools and to foster its message by the dismissal of persons advocating unacceptable practices and the use of criteria additional to academic ones to select suitable persons. *Roman Catholic Diocese of Port Louis v Minister of Education* (1991).

75. Inclusion of oriental languages in examination syllabus – Interpretation of Constitution—The parts of the Constitution which embody fundamental rights should be interpreted in the light of their history, their sources and,

where applicable, pronouncements on similar provisions similar by other national Courts or international institutions. Human rights have become a global and universal concept. The principle of equality and equal protection of the law is applicable not merely to legislation but also to executive action. The decision of the authorities to include an oriental language in the programme at less than one year from the CPE examination is clearly *ultra vires*. A differentiation casting a handicap on a large number of pupils who have not studied an oriental language, which was not a compulsory subject under the 6 year programme, does not stand the test of equal treatment for all pupils. (Supreme Court) *Pointu v Minister of Education and Science* (1995).

76. Discrimination – Equality of treatment—The plaintiff (now respondent) had, by way of an action entered under section 17 of the Constitution, contested the validity of certain Regulations dealing with the subjects to be offered by candidates sitting for the Certificate of Primary Education Examinations. The Supreme Court struck down the regulations. The defendant appealed to the Judicial Committee of the Privy Council.

HELD sections 3 and 16, even if construed with section 1, do not apply to inequalities of treatment on grounds falling outside those enumerated. Such inequalities are not subject to review. The question of whether they are justifiable is one which the Constitution has entrusted to Parliament or, subject to the usual principles of judicial review, to the Minister or other public body upon whom Parliament has conferred decision-making authority. The application for constitutional redress was dismissed. (Judicial Committee) *Matadeen v Pointu* (1998).

77. Discrimination – admission to schools—The father of a Hindu girl had successfully challenged before the Supreme Court the constitutionality of the allocation by Roman Catholic colleges of their places in such a manner as to achieve a 50 per cent intake of Roman Catholic pupils overall. Appellants appealed to the Judicial Committee.

HELD Where apparently discriminatory treatment is shown, it is for the alleged discriminator to justify it as having a legitimate aim and as having a reasonable relationship of proportionality between the means employed and the aim sought to be realized. There was no justification of the admissions policy which was apparently discriminatory on grounds of creed. The appellants' policy would not have been in breach of section 16 (2) of the Constitution if the Catholic colleges had remained entirely self-financing. *Bishop of Roman Catholic Diocese of Port Louis v Tengur* (2004).

78. Discrimination – Constitutionality of inequality of treatment—Plaintiff contended that section 68A of the Road Traffic Act is unconstitutional since it treats the drivers of privately owned vehicles differently from those who drive State-owned vehicles. The latter are not subjected to fines for non-compliance with the provisions of section 68J. Plaintiff's attack was based on section 16 (3) of the Constitution generally, and not on any of the specific grounds listed there. His Counsel argued that section 16 (1) proscribes any enactment which is discriminatory in its effect, whether minor or not.

HELD sections 3 and 16 of the Constitution, even if construed with section 1, do not apply to inequalities of treatment on grounds falling outside the grounds listed in those sections. *Tsang Man Kin v State* (2006).

3. Fair Hearing

A. Absence of Counsel

79. Case taken in absence of Counsel—On the day fixed for the trial, Counsel was ill but the information to that effect conveyed by letter reached the Magistrate after the case had been heard and adjourned for judgment. The Magistrate proceeded to judgment on a later day and did not give Counsel an opportunity to cross-examine witnesses for the prosecution and, if deemed necessary, to call additional evidence.

HELD the decision of the Magistrate to proceed to judgment amounted in the circumstances to an infringement of the Constitution relating to fundamental rights of the individual. *Duval v R* (1967).

80. Fair trial – Refusal of trial Court to grant postponement at request of Counsel for an accused party—The appellant was prosecuted on a charge of unlawful possession of stolen property. After the case had been called *pro forma* on 3 occasions and the appellant had pleaded to the information, the case was adjourned to 7 May 1968. On that day, the appellant produced a letter from Counsel informing the Court that he had just been retained and praying for a postponement as he was engaged elsewhere and had not had time to study the case. The Court refused the postponement and after hearing the evidence convicted the appellant who appealed. The Court held that the trial Magistrate had not made an injudicious use of his discretion. *Gooranah v R* (1968).

81. Laches on part of accused party—The appellant sought the postponement of his case on the day it came for trial for the purpose of retaining Counsel on the ground that he was under the impression that the case was that day coming *pro forma* and he had therefore neither retained Counsel nor summoned his witness and the Magistrates refused his request.

HELD the Magistrates' refusal to grant the postponement was reasonable as the accused had had ample opportunity to retain Counsel and summon his witness; his allegation that he believed the case was merely coming *pro forma* was a pretence to delay proceedings. *Chan Kwong Miow v R* (1968).

82. Withdrawal of Counsel – Accused unrepresented at trial—An accused who, by his own fault, had deprived himself of the assistance of Counsel, was not justified in asking the appellate Court to quash his conviction on the ground that "he was prejudiced by the fact that he was not represented by Counsel". *Balloo v R* (1969).

83. Counsel engaged before Assizes in *in forma pauperis* case—The Magistrate refused the postponement of the hearing applied for by Counsel engaged in the case who had been appointed *in forma pauperis* to appear in another case coming before the Assizes on the same date. The appellants being *inops consilii* were convicted and sentenced to imprisonment.

HELD the refusal to grant a postponement in the circumstances was a wrong exercise of the discretion of the Magistrate and had caused prejudice to the appellants. The criticism of Counsel's conduct by the Magistrate was unjustified. *Periag v R* (1974).

84. Accused's right to be defended by Counsel of his choice—An information was lodged against the appellant and 4 other accused parties. Two of them admitted the charge. The appellant and the other 2 pleaded "Not Guilty".

A letter addressed to the Magistrate by a Counsel for the appellant and a co-accused was filed on record. The case was fixed for trial on July 4. On that date Counsel for the appellant was not present but another Counsel appeared and stated that he was replacing his friend for the appellant and his co-accused. The appellant and his co-accused stated that they did not wish replacing Counsel to appear for them. The latter was allowed to withdraw and the case ordered to proceed.

HELD dismissing his appeal, upon a review of the relevant authorities dealing with an accused's right to be represented, there was no ground for saying that the Magistrate was wrong to proceed with the accused's trial in the circumstances. *Ragoobeer v R* (1974).

85. Counsel allowed to withdraw—On 6 March 1974, an information was filed against the appellant charging him with larceny and possession of stolen property. He was arrested at 11 am, was brought to Court at 1 pm, where he had been interviewed by his Counsel at 1.10 pm. Counsel moved for a postponement of the hearing on the ground that it was only at 2 pm that he had taken cognisance of the information and that he was unable to conduct his client's defence. The Court refused to grant a postponement, allowed Counsel to withdraw from the case and proceeded to hear the principal witness for the prosecution who was not cross-examined by the appellant. The case was then adjourned to 9 August, and after hearing further witnesses the Magistrate convicted the appellant of larceny.

HELD the appellant had not been granted sufficient time and facilities for the preparation of his defence and there had consequently been a breach of the fundamental rights of an accused person. *Lamarques v R* (1974).

86. Right to Counsel—When a criminal case was called *pro forma*, the accused produced a letter from Counsel, suggesting dates for trial. The Magistrate refused to postpone the hearing, heard the case in the absence of Counsel, and convicted the accused.

HELD when a case is called *pro forma*, there is no duty on the accused to have Counsel or witnesses in attendance. By trying the case in the absence of Counsel, the Magistrate deprived the accused of his constitutional rights. The conviction was quashed. *Lallchand v R* (1975).

87. Right to Counsel – Assets of convicted criminals – Application for forfeiture—Applicant and her son were convicted of attempting to procure heroin and were found to be traffickers. The court ordered that they should not dispose of their assets nor make any withdrawal from any bank account until the Supreme Court would have made an order for the forfeiture of their possessions. The DPP applied for the forfeiture of the applicant's assets. As a result, the applicant and her son made an application for the variation of the order made under section 39 (1) of the Dangerous Drugs Act 1986, in order

to obtain funds from an account with the co-respondent which would enable them to resist the DPP's forfeiture application.

HELD The applicant having already been convicted of a serious criminal offence, is not in the same position as someone charged with a criminal offence. Accordingly, the protection afforded by section 10 (2) of the Constitution does not avail the applicant who will be given a fair hearing as required by section 10 (8) of the Constitution. The applicant was free to apply for legal aid for the purposes of the proceedings which have been brought provided she satisfied the requirements of section 4 of the Legal Aid Act. *Mohammadally v The Director of Public Prosecutions* (2006).

88. Time to prepare defence—The appellant was brought to Court and first informed of the charge on 22 April. The Magistrate then fixed the case for trial to 30 April, and remanded the appellant to gaol. On 30 April, the appellant produced a letter from Counsel moving for a postponement. The Magistrate refused, tried the case, and convicted the appellant.

HELD as the appellant had been given only 8 days to prepare his defence and retain Counsel while he was in gaol, to refuse the postponement was to deny him his constitutional rights. The conviction was quashed. Observations on some factors which should be considered in granting or refusing postponements. *François v R* (1975).

89. Duties and discretion of Counsel at hearing—A Magistrate granted a postponement to an accused party to allow him to retain Counsel. The accused failed to do so, and the case was fixed for trial. On the day of trial, the accused produced a letter from Counsel moving for a postponement on the ground that he was engaged at the Assizes. The Magistrate refused to postpone, and tried the case.

HELD Counsel had impertinently assumed that the Court was bound to defer to his convenience, and the Magistrate was right to refuse the postponement. *Chuckooree v R* (1981).

90. Duty of client to ensure Counsel's presence—On 5 May 1980, the appellant appeared and produced a letter from Counsel, and the case was fixed to 14 July for trial. On 8 July, Counsel wrote to move for a change of date, and the trial was fixed to 18 August. On 18 August, neither the appellant nor his Counsel appeared, but as the Magistrate was absent, the clerk adjourned the case to 21 August, and caused the police to warn the appellant. On 21 August the appellant appeared, and the Magistrate fixed the case to 10 October for trial. On that date, the appellant appeared without his Counsel and moved for a postponement, alleging a misunderstanding. The Magistrate refused.

HELD (i) as the Magistrate was granting a favour to Counsel in changing the date from 14 July to 18 August, it was for Counsel to ascertain the new trial date, and the Magistrate had no duty to write to inform him of the new date; (ii) on 21 August the appellant was given 50 days to inform his Counsel that the case would be heard on 10 October. He was trying to set up his own default to obtain another postponement, and the Magistrate had been right to refuse the postponement. *Jheelan v R* (1981).

91. Right of accused party to be represented by Counsel—Circumstances in which it was wrong to have refused a postponement to an accused party whose Counsel had been allowed to withdraw from the case on the very day of the trial. *Ameer v R* (1981).

92. Counsel's duty to follow up on letters addressed to lower Courts – Magistrates' duty to ensure that they take cognizance of letters addressed to the Court—The Court, while quashing a conviction on the ground that the appellants had, through no fault of theirs, been deprived of the assistance of Counsel, gave directions regarding the need for Counsel to personally follow up on letters sent to Magistrates for having cases fixed, and urged Magistrates to make sure that such letters were brought to their attention. *Jhingai v R* (1983).

93. No fault of client – New trial—The Court reversed the Magistrate's judgment and ordered a new trial, as it was through no fault of the appellant that his Counsel was absent on the trial date. *Foondun v Pirbacosse* (1984).

94. Withdrawal of Counsel—The appellant was absent on the day of trial when his Counsel who had already warned him of his proposed withdrawal, unless properly instructed, was allowed by the Court to withdraw. The case was postponed because of the appellant's absence and the trial resumed a few months later. After conviction, he complained that he had been deprived of a fair trial in that the trial Court had been wrong to allow Counsel to withdraw without seeking an explanation from the appellant and had also failed to inform the appellant of the withdrawal.

HELD dismissing the complaints, the appellant had been warned in time of his Counsel's proposed withdrawal; when his trial resumed, he was fully aware that he was no longer assisted by Counsel; constitutional rights of representation to secure a fair trial require *inter alia* a minimum of initiative on the part of accused parties wishing to avail themselves of those rights and that *ex post facto* complaints of breaches of those rights can turn out to be abusive, particularly where there has been no miscarriage of justice. *Allaghen v R* (1984).

95. Court's duty—Where Counsel is absent on the day of trial without any explanation being offered and the Court has allowed some reasonable time to elapse to cover unforeseen mishaps, the trial may proceed. Counsel may, on good ground, move, before judgment, that the case be reopened but there is no duty on the Court to offer the accused a new trial or the opportunity to retain other Counsel. *Codabux v R* (1984).

96. Refusal of postponement on day of trial – Counsel having withdrawn—After several postponements of the case for various reasons, Counsel retained by the appellant was given leave by the Court to withdraw on the ground that his client did not wish to follow his advice. The appellant managed to secure the services of another Counsel within the one hour granted by the Court for the purpose. The new Counsel sought a postponement of the case to study the bulky record before assuming the defence of his client. The request was refused, the case was proceeded with, the appellant being unrepresented, he was eventually convicted. On appeal the Court held that

the appellant had been deprived of his constitutional right of being represented by Counsel. *Hosany v R* (1984).

97. Application for new trial – Time limits for application—The appellant had failed to attend the trial of a Court case in which he was a defendant. His Counsel was allowed to withdraw from the case because he had not heard from his client for 5 months. Judgment was given against the defendant. Over 2 months later the defendant unsuccessfully applied for a new trial. He appealed on the ground that he had not been able to place his defence on record because his Counsel had withdrawn from the case.

HELD the appellant was unable to record his defence because he had failed to attend the trial and because the withdrawal of his Counsel was caused by the appellant's failure to give instructions. *Mewa v Vythilingum* (1985).

98. Unrepresented appellant—It was the responsibility of the appellant and of his Counsel to ensure that on the day of trial the appellant was properly represented. Since the appellant was unrepresented in the particular circumstances he had placed or found himself, the Court explained to him all his rights so as to enable him to defend himself and benefit from a fair hearing. *Bissoonee v R* (1986).

99. Law practitioners – Conduct—The constitutional right of a defendant in a criminal trial to Counsel of his choice must be viewed along with the accused's right (also enshrined in the Constitution) to a fair trial within a reasonable time, which it is the Court's duty to ensure. A party to a case should not be unduly penalised where it appears that he is not to be blamed for his lawyer's laches. One sometimes tends to forget the plight of the unfortunate witnesses. It is the Court that subpoenas them, so it has a compelling duty to put them to the least possible inconvenience. *Pillay v Boisram* (1986).

100. Withdrawal of Counsel – Miscarriage of justice—The appellant was convicted of larceny and appealed on the ground *inter alia* that there was a miscarriage of justice because the Court allowed the appellant's Counsel to withdraw in the absence of the appellant.

HELD where an accused's Counsel is absent on the trial day and the accused does not move for a postponement but elects to conduct his own defence, the accused cannot complain that he has been deprived of the constitutional right to be defended by Counsel. *Ochotoya v R* (1988).

101. Court fixtures – Representation by Counsel – Constitution section 10—It is for the Court to decide when a case is to be fixed for trial and although it has always been the practice to take into account the availability of Counsel engaged in the case, Courts cannot exercise their discretion subject to Counsel's requirements. The Constitution guarantees to any litigant the right to be represented by Counsel, provided however he retains a Counsel who is willing and free to appear for him on the day fixed by the Court. *Rayapen v Vydelingum* (1988).

102. Presumption that accused aware of right to defend—There is a presumption that an accused party is aware of his right to defend himself in person or by Counsel, in the absence of evidence to the contrary. However, that presumption can be rebutted by an accused party himself. When the case was called *pro forma*, the appellant did not behave in such a manner or say anything which would indicate her ignorance of her rights. *Hypolite v R* (1988).

103. Right of accused to be represented by Counsel – Constitution section 10 (2)—The letter of Counsel made it clear that Counsel was labouring under a misunderstanding when he wrote that the case was coming *pro forma*. It was the appellant, his client, who gave him the wrong information.

At first sight, therefore, it was the appellant's fault if Counsel was not present on the day of trial and he had only himself to blame for that since the duty of ensuring the presence of Counsel on the day fixed for trial rests on the accused.

There was no evidence on record that the Police has warned the appellant that the case was coming on the day fixed for trial and the record did not show whether the Magistrate sought any explanation from the appellant before informing him of his decision to refuse any postponement.

The appellant was thus deprived of the right to be defended by Counsel in circumstances where the Supreme Court, which can only be guided by the record of the lower Court, cannot say whether the appellant was, as in the case of *Dabeedeen*, wholly responsible for the absence of his Counsel. *Juste v R* (1989).

104. Appellant without Counsel—In a trial before the Intermediate Court, the respondent had tendered in evidence a document signed by the appellant acknowledging a sum owed to the respondent. The appellant who had appeared in his own defence, due to the absence of Counsel at the trial, had directed certain questions to the respondent concerning this document. The respondent raised a number of technical objections to these questions which were sustained. The appellant sought an adjournment, so that he could obtain the assistance of Counsel, which was refused. The Court found for the respondent and the appellant appealed.

HELD the questions of the appellant were relevant. As a result the objections taken and upheld resulted in the trial not having been fair. *Claite v Orian* (1990).

105. Retention of lawyer – Failure to instruct—The appellant was charged with 3 counts namely possessing, consuming and supplying heroin. The case

was adjourned after the appellant expressed his desire for the services of a lawyer. The appellant did not instruct his lawyer who withdrew on the day of the trial. The appellant, claiming lack of knowledge of the date of the case, sought a further adjournment to allow him to retain another lawyer. The Court refused. The appellant appealed on the grounds that (i) he should have been allowed to retain another lawyer; (ii) the prosecution had not proven, by expert witness that the substance supplied was heroin.

HELD the appellant was informed of the date of his trial. His failure to act does not require the Court to adjourn the case. *Iqbal v State* (1992).

106. Fair trial – Right to Counsel during enquiry—The trial Judge had referred to the Supreme Court the question whether a suspect has a constitutional right to be informed that he is entitled to have access to Counsel. Held that such is the case. *State v Coowar* (1997).

107. The Court is bound not to admit in evidence statements, albeit voluntary, obtained in breach of a constitutional right. *State v Coowar* (1998).

108. Fair trial – Accused undefended – Court's duty—The Court explained the duty that lies on a Magistrate to explain to unrepresented defendants what their rights at the trial are, but observed that a Magistrate could not be expected to act as an adviser to the accused at every stage of the proceedings. *Sunassee v State* (1998).

109. Right of person in detention to be informed of his right to consult a lawyer – Effect of breach—Previous decisions of the Court to the effect that this was an absolute right, breach of which automatically entailed the exclusion of a confession, were incorrect. Not every such breach would bring about that result. *Wadud v State* (1999).

110. Duty of accused to take steps to retain Counsel—The Court of Appeal found no fault with the trial Judge's refusal to grant the appellant a postponement of her case when, on the day of the hearing, Counsel was allowed to withdraw after explaining that the appellant had dispensed with his services 4 days earlier. *Mohammadally v State* (2000).

111. New trial – Counsel to depone as witness – Withdrawal as Counsel—Appellant's Counsel was allowed to withdraw on the day fixed for the hearing of the appellant's prayer for a new trial of proceedings, so that he could depone as a witness. Appellant's motion for a postponement to be able to retrain another Counsel was refused and his prayer for a new trial was rejected.

HELD The appellant was not himself guilty of laches. The professional fault of the appellant's Counsel when he chose to wait until the day of the hearing to withdraw for the reasons given may have been reflected unfairly on the appellant and, consequent to Counsel's motion being acceded to, the appellant should have been given an opportunity to retain another Counsel in the very particular circumstances of this present case. *Ramen v Ghoorun* (2000).

B. Adjournment

112. Right of accused party to be given time and facilities for the preparation of his defence—A party convicted of larceny challenged his conviction on the main ground that he had not been informed of his right (a) to ask for a postponement of his trial to prepare his defence and (b) to cross-examine the prosecutor.

HELD (i) it is up to an accused party to invoke his rights under the Constitution and not the duty of the trial Court to ascertain whether he requires time to prepare his defence and that there had been no infringement of section 10 (2) (c) of the Constitution and of section 68 (1) of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance, (now the District and Intermediate Courts (Criminal Jurisdiction) Act); and

(ii) a Magistrate is not bound to tell the accused that he may cross-examine the prosecutor, who is not properly speaking a witness in the case. *Bégué v R* (1973).

113. Absence of witness duly summoned by the defence – Duty of Court to act judicially—On 5 July the hearing of an information was postponed for continuation to 12 July. A witness who had been duly summoned by the accused to give evidence on the 5th was, for no apparent reason, not in attendance when called to depone on the 12th. A motion by the defence for a postponement of the case to allow that witness to be heard was refused. On appeal, the Court found that the accused had in the circumstances been unjustly denied their right to have evidence heard on their behalf and quashed their conviction. *Mohit v R* (1980).

114. Refusal of postponement—The Court refused a written request for postponement by Counsel who was sick and heard the appellant's case in the absence of his Counsel. The Appellate Court had no hesitation to quash the appellant's conviction on the ground that he had been deprived of his constitutional right to be represented by Counsel. *Peroumal v R* (1983).

115. Refusal of postponement – Withdrawal of Counsel—On the date of trial, Appellant's Counsel moved to withdraw from the case and Appellant moved for a postponement to retain the services of another Counsel. The Magistrate refused the postponement and the trial continued with him unrepresented. On appeal, the Appellant complained that he had been denied his rights to adequate time and facilities for the preparation of his defence, and to defend himself by Counsel of his choice, in breach of section 10 (2) (c) and (d) of the Constitution.

HELD Appellant's rights under section 10 (2) (c) and (d) of the Constitution had been breached. The Magistrate should not have allowed Counsel to withdraw without first ensuring that the appellant had been given prior notice of Counsel's intention and was agreeable thereto. As the Magistrate was minded not to postpone the proceedings, he ought to have refused the motion to withdraw if he was of the view that it would result in a postponement. Having allowed Counsel to withdraw, the Magistrate ought to have granted the appellant a postponement to prepare his case. *Arlando v State* (2004).

116. Refusal of Magistrate to postpone case on the day of trial—Counsel X engaged to represent the appellant in a criminal case withdrew from the case on the day it came for hearing for "want of instructions" and because the appellant had failed to see or communicate with him since the time the case came *pro forma*. A letter produced by the appellant on that same day from Counsel Y who was to all intents and purposes under the wrong impression that the case was being called *pro forma* and who therefore suggested that the case be fixed for trial on another day was disregarded by the Magistrate.

HELD the Magistrate was right to proceed with the hearing and that in the particular circumstances the appellant was fully responsible for the predicament in which he found himself. *Chakooree v R* (1984).

117. Constitution section 10 – Fair trial – Witness unable to attend Court – Refusal of postponement of case—The appellant had entered an action against the respondent and summoned a witness to appear in the case. The witness indicated that he could not appear at the required time and the appellant sought a postponement of the case. The Magistrate upheld the respondent's objection to the postponement and found in favour of the respondent. The appellant appealed on the ground that there had been a denial of justice.

HELD the Court has a duty to ensure that witnesses needed by parties in a case attend Court to give their evidence. *Sawdagur v Sawdagur* (1988).

118. *Voir dire* – Hearing of evidence—The accused were charged with manslaughter. After all the evidence was heard in the *voir dire* it transpired that Counsel for accused No. 1 had also intervened for accused No. 2 at the stage of the police enquiry. Counsel for accused No. 1 withdrew. The case was adjourned and at the next sitting Counsel for accused No. 2 sought to have the indictment against accused No. 2 quashed. The Court rejected Counsel's claim that the accused would be denied a fair trial because evidence had been heard on the *voir dire*. *R v Boyjoo* (1991).

C. Delay

119. Interpretation of "charged" and "fair hearing within a reasonable time"—The accused was arrested on June 23, 1969, in connection with an offence of illicit distillation detected by the Police on the same day. The case was fixed to 24 June 1970, for the determination of a preliminary point to be raised by his Counsel. On 24 June, after hearing a police officer who gave evidence as to the delay in bringing the case to Court, the accused's Counsel submitted that the prosecution of his client was time-barred by virtue of section 10 (1) of the Constitution as he had not been afforded a fair hearing within a reasonable time. The Court referred the matter to the Supreme Court.

HELD (i) the word "charged" meant "arraigned before a Court of law by which the accused is to be tried";

(ii) it seemed, however, that undue delay in the institution of proceedings against an accused party may be a factor, viewed in the context of

the participation circumstances of each case, which a Court of trial was entitled to take into account when considering whether the delay had not had for effect to prevent the accused from having a fair trial.

(iii) section 10 (1) of the Constitution does not provide that an information must be preferred within a reasonable delay; it provides that a person charged with a criminal offence must be afforded a fair hearing within a reasonable time;

(iv) delay in the prosecution of offences, even when unreasonable, is not, by itself, repugnant to the concept of "fair hearing" in the context of the Constitution; such delay, by itself, will not make the hearing unfair; the hearing must be fair, having regard to the delay. *Police v Labat* (1970).

120. Delay in prosecuting—The offence took place in 1984. The information against the 2 appellants was lodged 3 years later in 1987. The trial which started in February 1987, ended in October 1988 when judgment was delivered. With the result that witnesses who were called had to depone to an event which took place 3 years earlier in a fairly simple and straight forward matter. In view of section 10 (2) (b) of the Constitution this is certainly an unsatisfactory and disturbing state of affairs which must be remedied. *Joomun v R* (1989).

121. Constitution section 10 – Delay in hearing—The appellant was arraigned in October 1987 and after 11 postponements covering nearly 16 months the hearing started on 23 February 1989. There is no doubt that an unusually long time lapsed between the arraignment and the hearing. Yet it is evident that the postponements were due to the difficulty of the prosecution in tracing out the key witness who had left Rodrigues for some time.

The postponements were, except on the last occasion when he failed to appear in Court, not caused by the fault of the appellant. There was not, because of the time which lapsed between the day of the arraignment and that of the hearing, a breach of section 10 (1) of the Constitution.

There was a plausible reason why the case had to be postponed. The Court cannot lose sight of the fact that the trial took place in Rodrigues, where the geographical, judicial and administrative structures are different from those in Mauritius. *R v Rose* (1976).

122. The point at issue was raised and analysed in the case of *R v Labat* (1970). In that last case, the Court, after alluding to 2 American cases having a bearing on the matter, the following excerpts –". . . the right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice . . .". "Whether delay in completing a prosecution . . . amounts to an unconstitutional deprivation of rights depends upon circumstances . . . The delay must not be purposeful or oppressive". "The essential ingredient is orderly expedition and not mere speed". *Albert v R* (1989).

123. Right to trial within reasonable time—The appellant was convicted of forgery before the Intermediate Court. The offences had occurred late 1981

to early 1982 but no information was laid against him until August 1987. It was not until July 1989 that the case was heard by which time several key witnesses had died. Following conviction, the appellant appealed, alleging, *inter alia*, that the delay in proceedings meant that he had not had a fair trial under section 10 of the Constitution. The majority of the Court found that there had not been a breach of section 10 of the Constitution. *Lutchmeeparsad v State* (1992).

124. Stay of proceedings – Delay between commission of crime and prosecution—In 1991 the appellant, who had just returned to Mauritius after an 8 year absence, was arrested and charged in relation to a crime allegedly committed in 1983. The case was heard in 1992 and the appellant sought a stay of proceedings on the ground that he had not received a fair trial since he had not been tried within a reasonable time. The trial Court found that the appellant had left the country and was therefore partly responsible for the delay. The appellant was convicted, and appealed.

HELD in relation to conduct which will be at issue in the trial the Judge must consider the prosecution's case as part of the factual background against which the alleged delay has to be considered. *Dahall v State* (1993).

125. Dismissal of action for want of prosecution—The plaintiff was injured in a road accident which had occurred 22 years earlier. In 1984 the plaintiff commenced an action to recover damages from the defendants. The defendants sought dismissal of the case on the ground that one of the defendants and nearly all the eyewitnesses had died, and the police records could no longer be traced.

HELD section 10 (8) of the Constitution imposes a duty on the Court to protect parties against prejudice resulting from delay. The Court will not tolerate a lengthier delay under section 10 (8) than would be tolerated under section 10 (1) in respect of criminal proceedings. The Court should, having regard to the consideration set down for criminal matters, determine whether the defendant can show on the balance of probabilities that he will not get a fair trial. *Bundhoo v Bhugoo* (1993).

126. Abuse of process – *Nolle prosequi* – Principles—The accused were prosecuted before the Intermediate Court for importing heroin. They pleaded not guilty. A *nolle prosequi* was filed by the DPP. The accused contended that the present proceedings were oppressive.

The Court has an inherent power to protect its process from abuse. This power must include a power to safeguard an accused person from oppression or prejudice. The Court will refuse to allow an indictment to go for trial where particular criminal proceedings constitute an abuse of the process. *State v Hussain Shaik* (1994).

127. Fair trial – Length of time since the date of the accident—A first suit by the plaintiff to claim damages for injuries sustained in a road accident in 1971 was, in 1977, struck out at his request. A second statement of claim was lodged in 1984.

HELD the circumstances were such that no fair trial could ensue; the defendants could be prejudiced in the conduct of their cases. *Bundhoo v Bhugoo* (1995).

128. Purposive approach—The appellant was convicted in 1992 of offences committed in 1985. On appeal it was contended that he had not had a fair trial.

HELD (*Supreme Court*) a purposive approach must be adopted in construing a constitutional provision. An unreasonable delay may affect the ability of an individual to present a full and fair defence to a charge. *Darmalingum v State* (1997).

129. Fair trial – Delay – *Nolle prosequi* – Fresh case—The appellant was arrested on 12 May 1989 and he was, later in the year, prosecuted along with another person for drug offences. That other person had a separate trial and was convicted. He appealed, whereupon a *nolle prosequi* was entered quoad the appellant in 1992. The other person's appeal was dismissed in 1994 and fresh proceedings were started against the appellant in 1996.

HELD in the circumstances of the case, the 2 years' delay for the institution of the fresh proceedings, was not in itself of such a nature as to deny the appellant of the benefit of a fair trial. The delay did not, in fact, result in any consequential prejudice to the appellant and did not or could not outweigh the interest of society in bringing the appellant to justice. *Gheenah v State* (1998).

130. Delay – right to trial within a reasonable time – Appellate proceedings—The appellant was arrested in 1985 and convicted by the Intermediate Court in May 1993. His appeal against conviction was dismissed by the Supreme Court in July 1998. On appeal to the Judicial Committee, their Lordships heard Counsel only on the issue of delay.

HELD (*Judicial Committee*) the protection afforded by section 10 of the Constitution also applied to appellate proceedings and the Supreme Court had no excuse for not disposing of the appeal promptly. The fact that a delay of almost 7 years had taken place between the time of the arrest of the appellant and his conviction should have heightened the sense of urgency. The greater part of the delay in the appeal proceedings is entirely unexplained. Appellant had the shadow of proceedings hanging over him for about 15 years. There had manifestly been a flagrant breach of section 10 (1) of the Constitution. Conviction quashed. *Darmalingum v State* (2000).

131. Right to a fair trial within a reasonable time—There had been a lapse of 12 years between the date on which the offence was reported and the date on which the appellant was convicted and sentenced. The prosecution submitted that the delay was largely due to the fault of the appellant and, in the circumstances, he could not take advantage of it to claim a breach of his constitutional rights.

HELD section 10 (1) of the Constitution gives a defendant a right to a fair hearing within a reasonable time by an independent and impartial court established by law. These rights are separate and distinct. If a criminal case is not heard and completed within reasonable time, that will of itself constitute a breach of section 10 (1) whether or not the defendant had been prejudiced

by the delay and however reprehensible his conduct may have been. An appropriate remedy should be afforded for such a breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all. The matters complained of did not give rise to sufficient prejudice to appellant to justify a conclusion that the trial was unfair, and the conviction should not be set aside. The prison sentence was set aside and replaced with a fine of 10,000 rupees. *Boolell v State* (2006).

D. Hearing in camera

132. Right to public trial—The appellant was charged with rape. Two Counsel withdrew from the case, with the permission of the Magistrates. Consequently, the appellant was not represented by Counsel at his trial. The trial was held in camera, and the appellant convicted.

The right to a trial in public is one of the fundamental safeguards which every democratic society affords to its citizens. This sacred principle is expressly recognised by the Constitution which however permits possible derogations in specific cases. Section 161A of the Courts Act which is a derogation from section 10 (9) of the Constitution must therefore be interpreted restrictively. The Magistrates did not consider it necessary to say why the case had to be heard in camera. Their power to do so is limited and the discretion conferred upon them, which may be subject to review, must be exercised judiciously. *Andony v State* (1992).

133. Right to public trial—Appellant was charged with rape. On appeal, he challenged the decision of the trial court to have allowed the complainant, in terms of section 161A of the Courts Act, to depose in camera , even though he was present, arguing that this was in breach of section 10 (9) of the Constitution, which requires court proceedings to be held in public as a general rule.

HELD the general rule set down in 10 (9) of the Constitution is qualified by the words "except with the agreement of all parties". It has become an accepted practice for trial courts to favourably allow requests to hear victims of sexual offences in camera. Section 161A of the Courts Act and section 10 of the Constitution permit the Court, on its own initiative and in cases akin to the present one, to hear a complainant "in camera" even where no motion is made by the prosecution. *Veerasawmy v State* (2005).

134. Commission of Enquiry – Hearing in camera – Terms of reference—The applicant sought an order declaring that the terms of reference of a Commission of Enquiry were too wide and that it had no right to sit in camera. *Dayal v President of the Republic* (1998).

135. Fair trial – Criminal proceedings – Hearing in camera—The appellant was convicted of the offence of insult. It was alleged that he had used vulgar language towards a female colleague. At the trial the latter's request that the proceedings be held in camera was granted by the Magistrate "in the interests of justice" in spite of the appellant's objection. The appellate Court quashed the conviction. *Maroam v State* (1998).

E. Interpretation

136. Limitation of actions – Prescription—The plaintiff was injured in a car accident in July 1959. He applied for and obtained legal aid in October 1960. The statement of claim was, however, filed only in 1968. The case came for hearing on 2 December 1970. After the plaintiff's evidence had been heard and his case closed, the proceedings were adjourned and a motion was filed by the defendant asking the Court to dismiss the plaintiff's action for want of prosecution on the ground that he had been guilty of inordinate and inexcusable delay, both in the exercise of the inherent jurisdiction of the High Court of Justice in England and in the exercise of its duty and power under section 10 (8) of the Constitution to afford a fair hearing to parties in civil proceedings.

HELD refusing the motion, (i) the rule of practice formulated and developed by the Courts in England, should be applied subject to the qualification that delay is a relevant consideration only when it has occurred after the issue of the originating process and in breach of some time limit fixed by Rules of Court or by an order of the Court; (ii) the principles underlying the requirements of a "fair hearing" in section 10 (8) of the Constitution are the same as those regulating prescription in the common law. The time limits fixed by that law with respect to the limitation of actions are, consequently, not inconsistent with the Constitution, and must be given effect to. The prescriptive period fixed by law had not run out in the present case and the plaintiff's action was still competent. *Hossen v Dhunny* (1972).

137. Appeal – Time limits—The appellant consistently failed to appear for the trial of his case and on 22 April 1986 judgment was delivered against him. On 27 January 1987 a new trial was granted at which time the earlier judgment had not been executed. Several months later the Magistrate ordered that the judgment delivered on 22 April 1986 be executed. Twelve days later the appellant appeared and appealed against the order. The respondent objected contending that the appeal was out of time.

HELD the appellant had been denied his right to a fair trial under section 10 of the Constitution. *Reddi v Reddi* (1987).

138. Impartial tribunal—The appellant was convicted of cultivating gandia and appealed on the ground that he had not received a fair trial. It transpired that during the trial the Magistrates who had convicted the appellant became aware that the appellant had previous convictions, and one of the Magistrates had heard the appellant's bail application.

HELD under section 10 (1) of the Constitution a person charged is entitled to be tried by an impartial tribunal. Whether there is bias is a question of degree based on the public perception of the administration of justice in the case. *François v State* (1993).

139. Magistrate hearing a criminal case having previously dealt with an application for bail—At a certain stage of the proceedings, the Magistrates scheduled to start the trial, challenged themselves as they had earlier dealt with an application for bail by another accused.

HELD the Court has never said that a Magistrate can never sit to hear the trial of a person charged with an offence if he or she has dealt with an application for bail by that person. Since an accused party is entitled, according to section 10 (1) of the Bail Act, to ask for bail owing to his continued detention or remand, it follows that, by invoking section 5 of the Constitution, for example, such a person may, strictly speaking, make an application for bail every time the case is postponed because he is not being afforded a trial within a reasonable time. If there was a strict rule applicable in the matter, an ingenious lawyer could thus try to go through the list of Magistrates with a series of bail applications. *Seegoolam v State* (1994).

140. Different Judge having adjudicated on a plea *in limine litis* — The case was first scheduled before a Judge who had, after consideration, rejected a plea *in limine litis* to the effect that the statement of claim disclosed no cause of action and was time-barred. The matter was later scheduled for continuation before a different Judge and the question arose whether he could do so.

HELD where there is an inextricable link between the decision on a plea *in limine litis* and the decision to be arrived at on the merits, the same Judge should, where possible, hear the case on the merits to its conclusion. *Mutty v Bhugbuth* (1994).

141. Perception of fair trial – Magistrate refusing change of plea and hearing case — The plaintiff made an application under section 17 (1) of the Constitution to stop the hearing of a criminal case by defendant No. 1(the trial Magistrate) on the basis that the continued hearing by her would deprive him of his right to a fair trial by an impartial court. Defendant No. 1 had earlier refused tha plaintiff an opportunity to change his plea to not guilty. The plaintiff had subsequently pleaded not guilty after the information was amended.

HELD a fair minded and informed observer may genuinely feel that there will be a real danger of bias if the trial Magistrate continued hearing the case. A new trial of the plaintiff's case was ordered before a different Bench of the Intermediate Court. *Tannoo v Teelock* (2)(2005).

142. Pre-trial publicity – Length of time — Counsel questioned the propriety of empanelling a jury in view of the pre-trial publicity which, it was submitted, had created such a risk of prejudice against the accused that no individual juror could be fairly and safely empanelled.

Whilst the instances of pre-trial publicity were many and of a seriously prejudicial type, those happened 18 months ago. Experience has shown that the human recollection is short and the drama of a trial almost always has the effect of excluding from recollection that which went before.

A newspaper article can prejudice a fair trial only if jurors see it, believe it, remember it, and act on it in preference to the evidence they receive in Court, despite a judicial direction to the contrary. *State v Bacha* (1996).

143. Case heard by Acting Magistrate holding substantial appointment in the Attorney-General's Office — The person who tried the appellant had been seconded as an Acting Magistrate to the Judicial Department from the Attorney-General's office which, it was contended, was part of the Executive.

HELD the test applicable in determining whether a trial Magistrate is objectively impartial and independent is to consider whether the judicial officer offers guarantees sufficient to exclude any legitimate doubt in this respect. *Chundunsing v State* (1997).

F. Witnesses' depositions

144. Suit between different parties—The evidence of parties to suits of a similar nature, then pending before the Court, was admitted *cum nota*, in an action which was foreign to those parties. *Quéland v Frichot* (1863).

145. Admission of oral evidence – Not equivalent to prejudgment of case—A Magistrate who admits oral evidence cannot be said necessarily to prejudge thereby the merits of the case. *Ex Parte Carim* (1894).

146. Evidence heard by two disagreeing Judges – Whether to be reheard by full Bench—When the 2 Judges who tried a divorce suit could not agree as to the credibility of the witnesses.

HELD it was not competent for the third Judge called into the case to decide the same merely on the notes of the evidence taken by the Registrar; the witnesses should be heard anew before the 3 Judges. *Canet v Canet* (1894); *Colin v Hurdowar* (1939).

147. Rehearing witness where two Judges disagree—There is no legal obligation to rehear evidence taken before 2 disagreeing Judges for the benefit of the third Judge added, but the Court will be willing to allow rehearing of one or more witnesses at the request of either party or of the Ministère Public. This applies to divorce suits as well as to any other action. *d'Unienville v d'Unienville* (1905).

148. Authority to continue case—A case was started before a Magistrate, and subsequently authority was given to a second Magistrate to continue it. Eventually, the first Magistrate continued the case with the knowledge and consent of the appellant and his Counsel.

HELD (i) no prejudice had been caused to the appellant;

(ii) even after the authority given to the second Magistrate the first Magistrate had retained concurrent jurisdiction to continue the case. *Le Breton v Iframac Limited* (1979).

149. Evidence heard by only one of two Magistrates—At a trial before the Intermediate Court, 2 Magistrates heard the case and judgment was finally delivered by the Court composed of 2 Magistrates one of whom had not heard the evidence or submission of Counsel.

On appeal it was contended that the appellant had not been granted a "fair hearing" within the meaning of section 10 (8) of the Constitution.

HELD in the context "fair hearing" means a fair trial according to the provisions of the law which empowered a Magistrate to be replaced by another. *Audibert v Raghoonundun* (1980).

[EDITORIAL NOTE: Reversed in *Sip Heng Wong Ng v R* (1985).]

150. Fair trial—The appellants were convicted of property offences. Their appeals to the Supreme Court were dismissed and they then appealed to the Privy Council.

The issue was whether the appellants had received a fair trial as provided for by section 10 (1) of the Constitution in view of the fact that one of the Magistrates who convicted the appellants had heard neither the evidence nor any of the appellants' submissions.

HELD (i) in a criminal trial, either before a jury or before Magistrates, it is a basic requirement of justice that those delivering the verdict must have heard all the evidence;

(ii) where in a trial the accused pleads not guilty, and a Magistrate has to be replaced after part of the evidence has been heard, the trial must be recommenced and the evidence recalled to enable all the Magistrates to hear the accused's evidence and submissions. *Sip Heng Wong Ng v R* (1985).

151. Differently constituted Court – Evidence—The appellant was convicted of offences by the Intermediate Court and appealed *inter alia* on the ground that the Magistrate who convicted him had not heard all the evidence.

HELD in a criminal trial the evidence of material witnesses and formal witnesses (if evidence is contested) must all be heard by the Magistrate. *Curpen v R* (1987).

152. Differently constituted Court – Trial—The appellant was convicted by the District Court on 2 counts, and appealed on the ground that the Magistrate who delivered the judgment had not heard all the evidence. The respondent submitted that on one count the judgment should not be quashed following the principle in *Curpen v R* (1987) that where the only relevant part of the evidence in a case heard before a differently constituted Court was given by formal witnesses and not seriously disputed the decision of the convicting Court need not be quashed.

HELD the Magistrate who delivered the judgment had not heard material evidence. *Samputh v R* (1987).

153. Differently constituted Courts – Justice not seen to be done—The *ratio decidendi* of *Sip Heng Wong Ng and Ng Ping Man v R* (1985) is that those called upon to return a verdict in a criminal case have "the duty cast upon them to assess and determine the reliability and veracity of witnesses who give oral evidence, and it is upon this assessment that their verdict will ultimately depend".

Here 3 differently constituted Courts of 2 learned Magistrates each heard a portion of evidence of witnesses whose testimony was stiffly contested. Whether or not justice was done in the present case, it was certainly not seen to be done. *Greedhur v R* (1987).

154. No opportunity for opposite party to cross-examine—The appellant was convicted in the trial Court for possession of stolen property. He had not been given an opportunity to cross-examine a Police witness.

HELD the trial was in breach of section 10 (2) (e) of the Constitution. An essential element of a fair trial was missing since the appellant was not given

the opportunity of cross-examining a prosecution witness. *Appadoo v R* (1988).

155. Evidence *de bene esse* — During a divorce hearing the petitioner had his evidence taken *de bene esse* before the Master and Registrar of the Court. The trial Judge granted a provisional divorce. The wife appealed.

HELD the hearing was in breach of section 10 (8) of the Constitution. In order to have a fair trial the Judge must hear the parties giving evidence.

Evidence may be taken *de bene esse* before the Master and the Registrar in an undefended divorce suit. *Boodhoo v Boodhoo* (1988).

156. Constitution section 10 – Change of Judges – New trial – Waiver — The appellant's case was heard before one Judge but another Judge delivered the judgment. The appellant was offered a new trial prior to judgment, but declined the offer. The appellant appealed on the ground that he had not received a fair trial. The issues were (i) whether the appellant could claim that he had been denied a fair trial when he had rejected a new trial and (ii) whether the appellant had waived his right to a fair hearing.

HELD the appellant's rejection of a new trial was based on an error of law in respect of the true meaning of section 10 of the Constitution, and was consequently invalid. An essential condition of waiver is that the grantor must be fully informed as to the grantor's rights. The appellant was not fully informed since he was labouring under an error of law. *Ramkalawon v Private Secondary Schools Authority* (1988).

157. Right to cross-examine witness — The appellant who was *inops consilii* on the day of the trial was, according to the record, not informed of his right to cross-examine the first witness and there is nothing to suggest that he was given an opportunity to exercise his right. On the face of the record, it is clear that the appellant was denied this constitutional right through no fault of his. *Appa v R* (1988).

158. Ratio in *Sip Heng Wong Ng and Ng Ping Man v R* — The provisions of section 10 (1) and (8) of the Constitution were such that the same principle applies to civil and criminal cases, and even in a civil suit the parties, or their legal advisers could not waive the right to a fair trial by agreeing that a Magistrate who had not heard all the evidence should deliver judgment.

However, a strict adherence to a total ban on a Magistrate continuing a hearing will, in the local context, cause much inconvenience, not least to the litigants running the risk of being penalised by justice delayed. This was not done for the notion of a fair trial to yield to administrative convenience but to say that, having regard to all the circumstances, it could be reasonable to hold that, in determining on appeal whether a trial had been fair, one should consider what was the part of the evidence which had not been heard by the Magistrate who delivered judgment. *Ramchurn v Lamour* (1988).

159. Right of accused to interpreter—Section 10 (2) (f) of the Constitution provides that every person who is charged with a criminal offence shall be entitled to have without payment the assistance of an interpreter if he cannot understand the language used at his trial. Although the principle of a fair trial underlies all systems of law Mauritius should, in such a matter, be guided not so much by principles of the English common law, as exemplified in, for example, *R v Lee Kun* [1916] 1 KB 337, as by judicial interpretation given to provisions in the Constitutions of other countries which are similar to that of Mauritius.

It follows that the appellant cannot claim that there has been, on this issue, a miscarriage of justice which would warrant a quashing of his conviction. *Kunnath v R* (1990).

160. Statement ruled admissible by differently constituted Bench to that delivering judgment—Unless the word "hearing" in section 85 (1) is to be construed as hearing of questions of fact to the exclusion of questions of law, it is not possible to accept the proposition that, notwithstanding the judgment of the Judicial Committee of the Privy Council in *Ng Wong v R* [1987] 1 WLR 1356, that of the Privy Council in *Curpen v R* in (1990), the case of the appellant could be split into 2 different hearings judged by a differently constituted Bench. *Meghu v State* (1993).

161. Motion for separate trial – After ruling, case continued before a different Bench—The Court reviewed the several decisions of the Court and of the Judicial Committee on the principle that the Court which adjudicates on a case should hear all the evidence.

HELD as the first bench had only adjudicated on the motion of the appellant for a separate trial without hearing evidence he had had a fair hearing. *Makound v State* (1997).

162. Ability of accused to understand proceedings – Need for interpreter—The appellant was convicted of importation of heroin while being a trafficker. The proceedings were conducted in English and, at the end of the trial, the appellant, an uneducated person from India, stated that he had not understood what the witnesses had said. His appeal was dismissed on the ground that there had been no miscarriage of justice. *Kunnath v State* (1998).

163. Witnesses' depositions—On his trial for embezzlement before the District Court, the appellant who was not assisted by Counsel, had asked for communication of the statements given to the Police by the prosecution witnesses. The Magistrate had turned down the request.

HELD there had been no breach of the applicant's constitutional right to a fair trial under section 10 of the Constitution. Statements by witnesses for the prosecution are not usually communicated to the defence in trials before the District Courts (as opposed to before the Intermediate Court). However, in appropriate cases before a District Court, the DPP would allow the defence access to original statements upon good reasons being shown. Merely asking for communication of those statements, as was done by the appellant, would not constitute "good reasons". Appellant also had to demonstrate

that the trial would otherwise be unfair or that the conduct of the defence would be impeded if the statements were not made available. *Nirsimloo v State* (2000).

164. Right of accused to know precisely offence charged with—Appellant had been found guilty of carrying on a betting activity without licence in breach of the Gaming Act. On appeal, one of the grounds was that the information did not disclose an offence known in law. It was contended that section 61 of the Act did not include any reference to an activity as "bookmaker operating outside the stand" and that the information was also defective in law since it failed to aver a betting activity "other than in relation to a sweepstake or lottery".

HELD an averment framed in the negative form may constitute an essential element of the offence. In deciding if it is, one must look at the substance and not at the form of the enactment. Importance must be attached to the constitutional safeguards for a fair hearing embodied in section 10 (2) of the Constitution, i.e., the presumption of innocence and the right to be informed in detail of the nature of the offence. The words "other than in relation to a sweepstake or lottery" formed a constitutive component of the offence and had to be expressly set out in the information in order to create a complete criminal offence known to law and also in order to enable the appellant to know with precision the offence with which he stood charged. Failure to aver this essential element was fatal to the case. *Lobogun v State* (2006).

165. Right to fair hearing – Adducing additional evidence on appeal—Appellant claimed that he had been denied a fair hearing of his appeal and sought redress under sections 1 and 3 of the Constitution on the ground that he had been denied the protection of the law. He argued that his Counsel had been prevented from introducing new evidence on appeal.

HELD where an appellant sought to enter additional evidence on appeal, it had to be shown that such evidence was relevant to the issue which was before the trial Court and that, if steps had been taken to lead the evidence at that stage, it would have been admissible. The appellate court also had to be satisfied that the additional evidence should be taken into account at the stage of the appeal. In this case, the new evidence sought to be adduced on appeal had been available at the time of the trial and appellant's Counsel had not been able to explain why it had not been introduced at that time. *Dosoruth v State* (2004).

166. Right to fair hearing – adducing additional evidence on appeal—Appellant was found guilty of making use of a forged document under sections 112 and 121 of the Criminal Code. On appeal, his Counsel made a preliminary request to adduce additional evidence. The question for determination was whether Appellant had the right to adduce fresh evidence on appeal and, if so, under what conditions.

HELD section 96 (1) of the District and Intermediate Courts (Criminal Jurisdiction) Act, which purports to prohibit the Supreme Court from receiving

fresh evidence on appeal is inconsistent with the generality of the power conferred by section 82 of the Constitution and the provisions of the Constitution which ensure equal protection of the law and equal rights to a fair trial. The proper test is whether it is in the interests of justice to receive fresh evidence and the availability of the evidence at the trial stage, considered in light of the existence or not of a reasonable explanation for not adducing it, is only a consideration, albeit an important one, to be weighed in the balance. The fresh evidence, if adduced at the trial, could have influenced the court's decision. The matter was remitted back to the District Court for a fresh hearing, thus entitling the Appellant to adduce the additional evidence. *Jhoolun v State* (2005).

167. Constitutional redress for breach of right to fair hearing—The plaintiff, by way of plaint with summons, sought constitutional relief under section 17 of the Constitution. He claimed that the trial was not fair because the defendant was allowed to adduce the evidence of a late police officer. The defendant raised a plea in limine for the plaint to be set aside because it had been entered outside the 3 months time limit without good cause.

HELD an action based on alleged infringement of constitutional rights must be acted upon within 3 months. However, the rule is not an inflexible one and an action lodged after the prescribed period will not be foreclosed where good cause for the delay can be shown and leave of the Supreme Court is obtained. The "good cause" must relate to the time limit which has not been adhered to and not to the alleged merit of the application. *De Boucherville v DPP* (2002).

4. Freedom of assembly and association

168. Constitutionality of section 9 (1) and (3) of the Public Order Act—The accused and several other persons were prosecuted before the District Court of Grand Port for having, contrary to section 9 (3) of the Public Order Act, 1970 (now Public Gatherings Act), taken part in the promotion of a public gathering in contravention of a prohibition order made by the Commissioner of Police under section 9 (1) of the Act.

The trial Court referred the matter to the Supreme Court for a decision on the questions—

(a) are sections 9 (1) and 9 (3) of the Public Order Act, 1970, under which the accused are prosecuted *ultra vires* the Constitution? and

(b) was the decision of the Commissioner of Police to prohibit the meeting to be held by the accused arbitrary and *ultra vires* the Constitution?

HELD (i) if the section had given to the Commissioner of Police an unfettered discretion to control the right of assembly it would have been unconstitutional but such was not the case as his discretion was a limited one;

(ii) question (b) depended primarily on a question of fact which it was for the trial Court to decide. *Police v Moorba* (1971).

169. Exercise of profession – Stock Exchange Acts 1987 and 1988—The plaintiff worked individually as a stockbroker appointed in accordance with the Stock Exchange Act 1987. Section 23 (3) of the Stock Exchange Act 1988 prohibited stockbrokers from dealing in securities unless employed or acting as a director of a stockbroking firm. The plaintiff claimed redress under the Constitution. The issue was whether section 23 (3) of the Stock Exchange Act 1988 was a permissible derogation from section 13 (1) of the Constitution in the interests of public order.

HELD section 23 (3) of the Stock Exchange Act 1988 is not in the interests of defence, public safety, public order, or public morality, or public health. It is however, not coercive. It lists conditions that must be complied with to deal in securities. *Ramburn v Stock Exchange Commission* (1990).

170. Right to peaceful demonstration—The right to hold a peaceful demonstration to raise the consciousness of one's countrymen is a fundamental right which, however, cannot be exercised at any place, any time or for any length of time. In the particular circumstances, a sit-in can take place only on the offside pavement opposite Rogers House between the bridge and Dr Ferrière Street, from 1.00 pm to 2.30 pm only, and the demonstrators should not exceed 50 people who should sit-in peacefully and in an orderly fashion. *Michel v Commissioner of Police* (1992).

171. Derogations – Communication of decision to prohibit meeting—The applicants desired to hold political meetings and seminars over a 2 day period to coincide with the Francophonie Summit. The meetings would culminate in a protest meeting. The applicants notified the Commissioner of Police of their intention to hold the meeting, but he prohibited the holding of the meeting pursuant to section 4 (3) of the Public Gatherings Act, on the ground that the safety of the dignitaries attending the summit could not be guaranteed if the protest meeting took place. The applicant sought a review of the Commissioner's decision.

HELD section 13 (1) of the Constitution guarantees the right of assembly subject to the derogations listed in section 13 (2). Upon receipt of notice of an intended meeting the Commissioner of Police must proceed on the basis that the meeting will go ahead subject to any conditions which may be imposed. The Commissioner of Police may prohibit the gathering where there are reasonable grounds to believe that the imposition of conditions will not prevent public disorder, damage to property or disruption to the community. *Bizlall and anor v Commissioner of Police* (1993).

172. Derogations – Grounds for prohibiting public gathering—The Commissioner of Police (respondent) had prohibited the holding of a peaceful march by the applicants, on the ground that the Police Force would be fully taken up with policing the AGOA Conference. The applicant sought the quashing of the respondent's decision.

HELD the respondent had acted *ultra vires* and his decision to prohibit the march was in violation of the Public Gatherings Act and of the spirit of

sections 12 and 13 of the Constitution. He could only prohibit a gathering where it was not possible to impose appropriate conditions on its being held. *General Workers' Federation v Commissioner of Police* (2003).

5. Freedom of expression

173. Incitement to violence or disorder – Presumption of constitutionality— On the hearing of the appeal by way of case stated against dismissal on a charge of sedition, the question arose whether, in view of the judgment of this Court in *Rex v Millien* (1949) the law creating the offence was inconsistent with the Constitution, and therefore void, because it violated the fundamental right to freedom of expression protected by section 12 of the Constitution.

HELD (i) if it were to give to section 283 of the PC the meaning given to it by the Judges who decided *Millien*'s case, it must come to the conclusion that the section was beyond the permissible limits of restrictions which the Legislature was empowered to impose under section 12 of the Constitution;

(ii) section 283 PC was capable of 2 interpretations: one given to it in *Millien*'s case, and the other given to it in *Levieux and anor v Rex* (1911);

(iii) incitement to disorder was an essential ingredient of the offence of sedition under the law of Mauritius;

(iv) when a provision of law was capable of 2 interpretations, one of which made it constitutional, and the other unconstitutional, the interpretation that made it constitutional must be preferred;

(v) the gist of the offence of sedition was "incitement to disorder or tendency or likelihood of public disorder or the reasonable apprehension thereof";

(vi) although motive could not by itself constitute an excuse for attempting to arouse feelings of ill-will and hostility, it must be considered to determine the question whether the accused party had the seditious intent. *DPP v Masson and anor* (1972).

174. The Emergency Powers (Control of Gatherings) Regulations, 1971, regulation 3 (a) – Orders made by the Commissioner of Police— The plaintiff sought a declaration from the Court that the defendant was wrong to have interfered with his rights of expression and assembly guaranteed by the Constitution and an order restraining the defendant from interfering with those rights in future. *Duval v Commissioner of Police* (1974).

175. Scandalising the Court – International and European Conventions— Scandalising a Court has always been and will continue to be regarded in principle as not falling within the legitimate exercise of freedom of expression. There is no doubt that the application in practice of this principle to the present case, given the gravity of the contempt alleged, would not be beyond the limits proportionate to the object envisaged for the protection which the Court should enjoy. *DPP v Boodhoo* (1992).

176. Right to receive broadcasts – Statute limiting such rights—The applicant imported a parabolic television antenna but the customs authorities refused to deliver it to him on the ground that he needed an import licence to be obtained from the then Telecommunications Authority.

HELD as there was an apparent conflict between the Schedule to the Telecommunications Act and the body thereof, it should be resolved in favour of the citizen, the more so as a statute which purports to curtail the constitutional right of freedom of expression should, like a penal law, be construed strictly. *Rogers v Comptroller of Customs* (1994).

177. Broadcasting – Monopoly – Duties of Telecommunications Authority—The plaintiff, which had been informed by the then Telecommunications Authority, that its application for a broadcasting licence would not be granted until new legislation was enacted, claimed that its constitutional rights were being infringed.

HELD (i) section 12 of the Constitution entitles any person to impart information through broadcasting subject to some measure of control by the State; (ii) the monopoly of the MBC in matters of broadcasting is repugnant to the Constitution; (iii) the Authority is empowered to grant a licence. *London Satellite Systems Ltd v State* (1997).

6. Freedom of movement

178. Exercise of right of appeal to Privy Council – Application to leave the country—The applicant had been granted leave to appeal to the Privy Council from a decision of the Court of Appeal (i) upholding the conviction of the applicant for offences of possession of opium and attempting to bribe a public officer and (ii) upholding sentences of 5 years' penal servitude and 6 months' imprisonment with hard labour. One of the conditions of the leave to appeal to the Privy Council was that the applicant should not, pending his appeal, leave the country without an order of the Judge in Chambers. He applied to the Judge in Chambers for such an order on the ground that his absence from the country was necessary to enable him to continue conducting his business and to retain and brief Counsel and solicitor in the UK.

HELD the interests of public order in ensuring that a sentence lawfully passed should be served in the event of an appeal not succeeding had primacy over the right to freedom of movement which includes the right to leave the country; the particular grounds put forward by the applicant did not justify the making of an order allowing him to leave the country. *Coorbanally v R* (1981).

179. Passport Regulations – Objection to departure—The applicant who was under police enquiry sought an order setting aside a police objection to his departure to the United Kingdom on business. The applicant contended that his freedom of movement guaranteed under section 15 (1) of the Constitution could only be restricted where that restriction was made pursuant to a law and alternatively that he should be allowed to leave Mauritius on furnishing security for his return.

HELD (i) the power exercised under regulation 14 (b) of the Passport Regulations gives the police the power to withhold passports and the Police

Act section 9 gives the police the power in these circumstances to object to the departure within the requirement of section 15 of the Constitution;

(ii) if the action of the police was, while permissible, not reasonably justifiable in a democratic society or an abusive or unreasonable use of their power, the Court could order alternative measures. *Dookhy v Passport and Immigration Officer* (1987).

180. Private prosecution – Refusal of permission to leave Mauritius—The applicant was a Mauritian citizen married to a Swiss citizen. After holidaying in Mauritius, the applicant was prevented from leaving by a private prosecution against her for larceny. The applicant sought an order to have the objection to her leaving Mauritius set aside.

HELD once a prosecution, public or private, is pending before the Court, nobody should do anything to hinder the due process of law, subject to the power of the Director of Public Prosecutions to discontinue the proceedings. In this case the DPP chose not to intervene.

If the application was granted the applicant may never return to Mauritius. The Court should not substitute itself for the role of the DPP and indirectly discontinue the proceedings. *Mingard v Commissioner of Police* (1988).

181. Issue of passport – Sentence for criminal offence—The applicant had, on conviction for an offence, been discharged on condition that he should be of good behaviour for a period of 3 years, failing which he would undergo a term of imprisonment. On his application for a passport, it was contended that the sentence of the Court had not been satisfied. *Mattarooa v Chief Passport and Immigration Officer* (1998).

7. Freedom of religion

182. Constitution – freedom of thought and religion—The applicant sought an interlocutory injunction to prohibit the respondents from using loudspeakers during their prayer meetings.

HELD the right of the citizen to freedom of thought and of religion, including his right to manifest and propagate his religion or belief in worship, teaching, practice, and observance, is no doubt a fundamental one duly protected by the Constitution. That fundamental right, however, has to be exercised in a civilised society in such a way as not to cause inconvenience to others.

People have the undisputed right to pray but in so doing they should not cause inconvenience to those who have also an undisputed right not to pray. *Aumeer v l'Assemblée de Dieu-Mission Salut*. (1988).

183. Right to Muslim personal law—The plaintiffs claimed a constitutional right to be governed solely by Muslim personal law with regard to marriage, divorce and devolution of property. The plaintiffs relied on the grounds that (i) it was understood from the Constitutional Conference of 1965 that the

proposed code of Muslim personal law would be excluded from the guarantee against discrimination, and (ii) sections 3 and 11 of the Constitution guaranteed religious freedom and therefore entitled the plaintiffs to the benefit of Muslim personal law. The plaintiffs also sought a declaration that the Civil Status (Amendment) Act 1987 was unconstitutional.

HELD a footnote to the reports of the Constitutional Conference is of no legal value compared to the express provisions of the Constitution. Neither section 3 nor section 11 can be relied upon as authority for the proposition that the enactment of personal laws is essential for the enjoyment of religious freedom. The Civil Status (Amendment) Act 1987 is not unconstitutional. *Bhewa v Government of Mauritius* (1990).

184. Annual Government religious subsidy—The Government of Mauritius made an annual grant to various religious bodies. The Sanatan Dharma formed a Federation which received a share of the religious subsidy on behalf of their members. Subsequently the plaintiffs broke away from the Federation and formed their own Federation and sought to have some of the religious subsidy paid to their new Federation.

HELD there is no legal constraint to the plaintiffs dissociating themselves from the defendant, and under sections 3 (b) and 13 of the Constitution the plaintiffs may associate or dissociate freely. There is no law forcing the plaintiffs to be members of the defendant Federation and they may regroup and receive their share of the religious subsidy through the new Federation. *Shamboonath Sewalaye v Mauritius Sanatan Dharma Temples Federation* (1991).

8. Inhuman treatment

185. Emergency Powers (Arrest and Detention of Suspected Persons) Regulations 1972—The Court held that solitary confinement and the physical and mental discomfort caused by such confinement, did not constitute torture or inhuman treatment within the meaning of section 7 (1) of the Constitution of Mauritius. *Virahsawmy v Commissioner of Police* (1972).

186. Death penalty – Constitutionality—The appellant was convicted of drug trafficking and sentenced to death. The appellant appealed contending that the death penalty violated the Constitution since it was mandatory, and was unreasonable and disproportionate to the offence.

HELD while section 4 (1) of the Constitution permits Parliament to provide for the death penalty, even on a mandatory basis, it is always open to the Courts, no doubt pursuant to other constitutional provisions regarding inhuman punishment, to determine that any form of punishment is unconstitutional in certain cases.

To hold that, notwithstanding the clear terms of section 4 of the Constitution, a mandatory death penalty, if it had not been struck down on other grounds, is unconstitutional because it amounts to inhuman punishment would be tantamount to usurping the functions of Parliament, which is the only body entitled to debate the pros and cons of the principle of a death sentence. *Amasimbi v State* (1992).

187. Disproportionate nature of mandatory death penalty for drug offences—It was contended that, because the sentence would necessarily be overwhelmingly disproportionate in certain cases, it was tantamount to degrading or inhuman punishment.

HELD following *Ong Ah Chuan v Public Prosecutor* [1981] AC 649, it is for the legislator to determine the appropriate punishment provided the dissimilarity in circumstances for which a different penalty is applicable bears a reasonable relation to the social object of the law. The convictions were however quashed on the ground that the trial Judge had clearly misdirected herself on the issue of possession of the drugs. *Shaik v State* (1994).

188. Inhuman treatment – Proportionally – Minimum penalty—The appellant was charged with the offence of failing to pay tax contrary to sections 55 (c) and 60 (3) (a) of the Value Added Tax Act ("the Act"). Pursuant to section 60 (3) (a) of the Act, the fine that could be imposed by the Court was one of 200,000 rupees' or treble the amount of tax involved, whichever was the higher. The appellant pleaded guilty to the charge and the Magistrate found he had no alternative other than to sentence him to pay a fine of 200,000 rupees. One of the grounds of appeal was that the penalty was imposed under a law which violated the principle of proportionality in relation to the sentencing power of a Court of law, and was therefore in breach of sections 3, 5 and 7 of the Constitution.

HELD section 7 of the Constitution incorporates in it the principle of proportionality of the sentence provided by law with the seriousness of the offence. Section 60 (3) (a) (ii) of the Act which provides for a sentence of "treble the amount of tax involved" cannot be said to infringe the proportionality of sentence principle. Section 60 (3) (a) (i) of the Act, in so far as it provides for a minimum sentence of 200,000 rupees' fine, is in breach of section 7 of the Constitution. The fine imposed by the trial Court was substituted by a fine of 106,800 rupees representing three times the value of the tax pursuant to section 60 (3) (a) (ii) of the Act. *Pandoo v State* (2006).

189. Inhuman treatment – Proportionality – Minimum penalty—The first appellant was convicted and sentenced to 45 years' penal servitude for murder (by virtue of section 222 (1) of the Criminal Code); the other appellants were convicted and sentenced to serve a term of 45 years' penal servitude for diverse drug dealing offences qua trafficker (by virtue of section 41 (3) of the Dangerous Drugs Act 2000). All seven appellants challenged the constitutionality of the mandatory sentence imposed by the trial Court, and in particular argued that it: (i) was in breach of the principle of separation of powers, and (ii) amounted to inhuman or degrading punishment or treatment in violation of section 7 of the Constitution.

HELD: (i) a mandatory sentence does not per se and necessarily infringe the principle of separation of powers;

(ii) the issue of mandatory sentences in Mauritius raises the question of proportionality rather than one of separation of powers;

(iii) a law which denies an accused party the opportunity to seek to avoid the imposition of a substantial term of imprisonment which he may not deserve, would be incompatible with the concept of a fair hearing enshrined in section 10 of the Constitution. A substantial sentence of penal servitude cannot be imposed without giving the accused an adequate opportunity to show why such sentence should not be mitigated in the light of the detailed facts and circumstances surrounding the commission of the particular offence or after taking into consideration the personal history and circumstances of the offender or where the imposition of the sentence might be wholly disproportionate to the accused's degree of criminal culpability;

(iv) section 222 (1) of the Criminal Code and section 41 (3) of the Dangerous Drugs Act 2000 (as they read prior to the amendment effected by Act No. 6 of 2007) contravened section 7 (1) of the Constitution in as much as the indiscriminate mandatory imposition of a term of 45 years' penal servitude in all cases contravened the principle of proportionality and amounted to "inhuman or degrading punishment or other such treatment" contrary to section 7 (1) of the Constitution;

(v) the relevant sections should be read down in such a way that, upon conviction, an offender would be liable to a prison sentence in the discretion of the Court but which would carry a maximum of 45 years;

(vi) the appeal was allowed in so far as the imposition of the mandatory prison sentence of 45 years was concerned. In lieu of the mandatory sentence the trial Court should have discretion to pass a maximum sentence of 45 years' penal servitude. *Philibert v State* (2007).

9. Presumption of innocence

190. Burden of proof – Presumption of guilt or innocence—The District Magistrate dismissed an information charging the respondents with unlawful removal of trees from State land because one of the elements of the offence had not been established by the prosecution. The Director of Public Prosecutions appealed by case stated, invoking section 44 of the Forest, Mountain and River Reserves Ordinance (now Act), which lays down that the information on oath of any Forest or Police officer shall be deemed to be *prima facie* evidence of guilt.

HELD the section invoked was repugnant to section 10 (2) of the Constitution, which provides for the protection of a fundamental human right, that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty. The appeal was dismissed. *DPP v Labavarde* (1965).

191. Statutory presumptions – Interpretation of statutes—If section 32 (2) of the Electricity Ordinance (now Act) was intended to provide that, unless a consumer of electricity proves that he has been privy to any of the acts mentioned in paragraph (a) or (b) of the subsection he must be taken to be responsible for any one or more of the facts specified in paragraphs (i), (ii) and (iii) of the subsection which actually constitute offences under subsection (1) of the section in the absence of proof of lawful excuse or authority, and this, whether there is in fact evidence or not of the existence of any such facts, would be inconsistent with subsections (2) (a) and (11) (a) of section 10 of the Constitution. The subsection can, however, and should in order to save it from repugnancy to the Constitution, be read as requiring the prosecution to prove in the first instance the commission of the relevant fact specified in paragraphs (i), (ii) and (iii) of the subsection. *Police v Moorbannoo* (1972).

192. Unlawful possession of wood—The appellant was prosecuted, under section 5 (2) of the Forest, Mountain and River Reserves Ordinance (now Act) which enacts that "any person who . . . is found in possession of any wood and shall not satisfactorily account for such possession" . . . shall be guilty of an offence.

It was contended on his behalf that the enactment was unconstitutional as offending against the presumption of innocence laid down in section 10 (2) (a) of the Constitution.

HELD (i) by Garrioch, SPJ: It is fairly possible to read the impugned enactment as requiring the prosecution to allege and prove in the first instance that the wood found in the possession of the accused party has been obtained in contravention of the provisions of the law before any question of justification will arise;

(ii) by Rault, J: The enactment does not merely require the accused to prove particular facts: it places upon him the burden of proving a general, unconditional innocence, without even first calling upon the prosecution to prove any suspicious or sinister circumstances. It is therefore contrary to the Constitution, and must be struck down. *Velle Vindron v R* (1973).

193. Rogue and vagabond—Section 28 (3) of the Penal Code (Supplementary) Ordinance (now Criminal Code (Supplementary) Act), in so far as it enacts that a person shall be deemed to be a rogue and vagabond who is found within any land without giving a satisfactory explanation for his presence there, is repugnant to subsections (2) (a) and (11) (a) of section 10 of the Constitution and void to that extent. *Police v Fra* (1975).

194. Unlawful possession of offensive weapon—Section 29A of the Penal Code (Supplementary) Ordinance, which makes it an offence for a person to have with him in a public place an offensive weapon without lawful authority or reasonable cause, is not repugnant to section 10 (2) (a) of the Constitution of Mauritius. *Police v Leonide* (1976).

195. Use of private car as taxi – Presumption—The appellant, owner of a car licensed as a private car, took passengers in his car at a hotel and drove away. The Magistrate relying on the presumption created by section 188 (1) (a) of the Road Traffic Ordinance (now Act), found him guilty of

having used his private car as a taxi. It was contended, on appeal, that the presumption relied upon by the Magistrate offended against section 10 (2) (a) of the Constitution of Mauritius, which provides that every person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.

HELD section 188 (1) of the Road Traffic Ordinance (now Act) does not contravene section 10 (2) (a) of the Constitution. *Parmessur v R* (1979).

196. Excisable goods—Section 32 of the Excise Act, 1974, in so far as it provides that a person found in possession of any excisable goods (i.e. including, for example, a box of matches) commits an offence unless he can satisfactorily account for his possession, is void as being in contravention of section 10 of the Constitution of Mauritius. *Police v Seechurn* (1980).

197. Sexual intercourse with female under 16—The appellant was convicted of having sexual intercourse with a female under the age of 16 years. On appeal the appellant contended that the offence provided for by section 249 (4) of the Criminal Code was unconstitutional.

HELD there is nothing which prevents the National Assembly under section 45 (1) of the Constitution from criminalising various forms of sexual abuse and of making it an offence, in particular, to have sexual intercourse with even a consenting female under the age of 16 instead of 12, as was the case before 24 July 1990. *Simadree v State* (1993).

198. Publishing false news—On a prosecution under section 299 (b) of the Criminal Code, the State must prove the *mens rea* of the accused. The section, in addition, provides for a statutory defence which does not, however, render the provision unconstitutional. *Police v Gordon Gentil* (1998).

199. Fair trial – Dangerous Drugs Act – Magistrate hearing case after signing search warrant—At the trial of the appellants before the Intermediate Court, it was submitted that one of the Magistrates, who had signed the warrant authorising the search of the appellants' premises pursuant to section 44 of the Dangerous Drugs Act 1986, should not hear the case. The trial proceeded and, on their conviction, they appealed on a number of grounds including the one referred to above.

Counsel submitted that justice must be seen to be done and that there was a danger of bias on the part of the Magistrate. He argued that before signing the search warrant, the Magistrate had to be satisfied that an offence had been committed. He however found no cause for concern in the case of a Magistrate issuing a search warrant under section 30 of the District and Intermediate Courts (Criminal Jurisdiction) Act.

HELD after scrutinising both Acts, there was no cause to make any differentiation. In both cases, the Magistrate before issuing a search warrant must be satisfied upon an information on oath that there is "reasonable ground for suspecting" that an offence had been committed. *Jeewooth v State* (1998).

200. Presumption of innocence – Section 188 of Road Traffic Act—The presumption created by section 188 of the Road Traffic Act to the effect that a conveyance of persons in a motor vehicle is for reward, in the absence of any evidence of sinister or suspicious conduct by the accused, cannot be relied upon as this would offend the constitutional presumption of innocence. *DPP v Kohealle* (1999).

10. Protection of the Law

201. Statutory powers – Exercise – Quasi-judicial powers – Opportunity to be heard—The appellant was removed by a decision of the Board of Waqf Commissioners from his office of co-*mutawalli* of the Hajee Amode Atchia (Major Atchia) Waqf-ul-Aulad. He appealed from the decision of the Board to the District Court of Port Louis which dismissed the appeal. On appeal to the Supreme Court on the ground *inter alia*, that he had not had a fair trial at the hands of the Board by reason of the procedure followed by them.

HELD dismissing the appeal, a power conferred by statute to remove a person from his office or employment for lawful cause is implicitly subject to the condition that such power shall be exercisable only after a due hearing, or after an opportunity of being heard has been given to the person proposed to be removed, and upon a careful review of all the facts and circumstances, it did not appear that the appellant had not been given an opportunity of being heard and defending himself. *Atchia v Board of Waqf Commissioners* (1954).

202. Opportunity to party to be heard – Executive action—At the expiry of a lease of agricultural land, the lessor, after obtaining the consent of the Controller of Supplies, notified the tenant that he had to vacate the land. Objection was taken by the tenant that the notification was of no effect as the Controller had given his consent on an *ex parte* application made by the lessor without hearing objections from the tenant.

HELD the unqualified discretionary power vested in the Controller was of an executive nature and he was therefore not bound to call for objections before taking a decision. *Choorun and Co v Karrim* (1959).

203. Right of appeal under section 82 (2) of the Constitution – Effect on section 3 (3) of Landlord and Tenant (Control) Ordinance, 1960 (now Act)—A point was raised *proprio motu* by the Court concerning the effect of section 82 (2) of the Constitution of Mauritius, which entitles a person to appeal as of right from any final decision of a subordinate Court in civil proceedings, on section 3 (3) of the Landlord and Tenant (Control) Ordinance, 1960 (now Act).

HELD (i) section 3 (3) of the Ordinance is repugnant to section 82 (2) of the Constitution in so far as it purports to limit the general right of appeal given by the Constitution and is inoperative, to that extent only, by virtue of section 2 of the Constitution;

(ii) the proviso to section 3 (3) which provides for a right of appeal by way of case stated is severable from its enacting part and is not affected by the avoidance of that part and was still operative. *Ng Yelim v Chinese Chamber of Commerce* (1970).

204. Public Officers Protection Ordinance (now Act) – Section 4—The impugned section, which requires a litigant to follow a certain procedure and enter his action within a fixed time limit, on pain of nullity, is not repugnant to section 3 or 10 of the Constitution, and the question whether the specified time limit is reasonable cannot arise. *Jeekahrajee v Registrar of Cooperatives* (1978).

205. Review of decision of Director of Public Prosecutions – Public Officers' Protection Act—The plaintiff claimed damages against the Director of Public Prosecutions for malicious prosecution. The case was referred to the Court of Civil Appeal for decision on a number of preliminary objections made by the defendant. The issues were (i) whether it is open to sue the Director of Public Prosecutions; (ii) whether a plaintiff can ask the Court to determine whether the Director of Public Prosecutions has acted in breach of the Constitution or any other law; and (iii) whether the Public Officers' Protection Act violates section 3 of the Constitution.

HELD (i) section 119 of the Constitution must be interpreted to mean that the word "person" where it first and last occurs includes the Director of Public Prosecutions so that it must be possible for any person to direct an action against the defendant in order to vindicate any of his or her constitutional rights;

(ii) the Director of Public Prosecutions' decision is an administrative decision and can be reviewed by the Courts. It falls broadly into 2 categories:- (a) the Courts will not interfere with the decision of the Director of Public Prosecutions to file a *nolle prosequi*; (b) where the Director of Public Prosecutions decides to prosecute, the matter automatically falls under the control of the Courts by virtue of sections 10, 76 and 82 of the Constitution;

(iii) the Public Officers' Protection Act merely prescribes a limitation period and cannot be struck down on the ground that it infringes the citizen's fundamental right to the protection of the law. *Lagesse v DPP* (1990).

206. Deportation – Order executed prior to hearing and without knowledge of Court—The second applicant, who was 8 months pregnant, had applied to the Court to challenge a decision ordering her deportation. On 14 July 1993 the case was adjourned until 16 July 1993 and the Court ordered that it be kept informed of any developments occurring between 14 and 16 July. The case was heard at 9 am on 16 July but shortly afterwards it was discovered that the second applicant had been deported by the authorities the previous evening.

The issue was whether the matter should be referred to the Director of Public Prosecutions to consider contempt proceedings.

HELD the Court, which was not informed of the decision to carry out the deportation of the applicant, has been deprived of its jurisdiction by a deliberate act of the Executive. *Jogee v Government of Mauritius* (1993).

207. Debtor prevented from leaving Mauritius—The applicant sought to prevent a foreigner from leaving Mauritius on the ground that he owed him a debt to the applicant.

The bodily restraint which the applicant is seeking to exert unless a bank guarantee is furnished is manifestly unduly harsh and oppressive and goes against section 5 of the Constitution which guarantees the right to personal liberty and freedom. There is no evidence to show that the foreigner has been or should be deprived of the protection of such right to his personal liberty. *Jeau Export Ltd v Felino* (*SA*) *and Bertrand* (1993).

208. Section 38 (2) (c) of the Dangerous Drugs Act 1986—Sec-tion 38 (2) (c) of the Dangerous Drugs Act 1986 which enables a Court to convict a person where, having regard to all the circumstances of the case against him, it can reasonably be inferred that he was engaged in trafficking in drugs did not violate the rule as to the burden of proof beyond reasonable doubt.

Although the Constitution requires that according to the principle of legality a law must define with precision the act which constitutes an offence, "it is artificial to set limits on an activity which is infinitely variable". A distinction must be drawn between aggravating circumstances which form part of the facts which constitute the offence charged, e.g. trafficking, and those which are independent of those facts, e.g. previous convictions. *Sabapathee v State* (1999).

209. Protection of the law – Minimum penalty—The appellant appealed against a sentence of 12 months' imprisonment and a fine of Rs 10,000 which was the minimum that could be imposed by the trial court under section 24 (1) (a) of the Firearms Act. One of his grounds of appeal was that section 24 (1) (a) of the Act is repugnant to section 3 of the Constitution.

HELD Parliament was empowered to impose a fixed minimum penalty for an offence as opposed to selecting a penalty for a particular case. Section 24 (1) (a) of the Firearms Act is not compatible with section 3 of the Constitution, given that the National Assembly was free to impose a minimum sentence in respect of the offences with which the appellant was charged, having regard to the public interest involved in the control of firearms and ammunition. *Labonne v State* (2000).

210. Non-retroactivity of criminal activities – Interpretation of section 10 (4) of the Constitution—Plaintiff sought to declare *ultra vires* legislation which denied entitlement to remission of one third of sentence to all those convicted of drug offences before amending legislation passed in 1994 came into effect. He also sought to declare that the period he spent on remand pending the trial and determination of the appeal should be counted as served sentence and that he be released forthwith from prison.

HELD the Dangerous Drugs (Amendment) Act 1994 and the Child Protection Act 1994 were in breach of section 10 (4) of the Constitution to the extent that they purport to extend the application of the new provisions to those imprisoned for offences committed prior to the coming into force of that provision. The one and only factor to be taken into account by the prison authorities should be the date of the commission of the offence, so that the plaintiff was entitled to benefit from the provision of section 50 of the Reform Institutions Act giving him remission of one third of his sentence. However, the period of time spent on remand by him cannot be considered as served sentence. *Samynaden v Commissioner of Prisons* (2005).

211. Meaning of "imprisonment for life"—The applicant committed murder in 1984 and was convicted and sentenced to death in 1985. Before he was executed, the death penalty was abolished. Section 2 (3) of the Abolition of Death Penalty Act 1995 provides that, "where any person has been sentenced to death, and the sentence has not been executed, the person shall be deemed to have been sentenced to penal servitude for life". Section 11 (2) of the Criminal Code, as amended in 1984, provided that the maximum term which could be imposed was 20 years. The figure was amended from "20" to "30" in 1985 and the amendment became operative on 16 March 1986. In February 1986, the respondents pronounced that the applicant's term of imprisonment was 30 years. Applicant sought a declaration that his term of imprisonment, in fact, ought to be 20 years.

HELD in 1984 the maximum sentence of penal servitude which could have been imposed in a case where no terms had been specified was 20 years. However, in applicant's case, the term which had been imposed was "for life". This word must be given its ordinary dictionary meaning so that penal servitude for life means that the penalty is "for life". *De Boucherville v Commissioner of Prisons* (2006).

212. Meaning of "imprisonment for life" – Abolition of death penalty – Offence of manslaughter—In February 1986, the respondent was convicted of manslaughter for an offence committed in June 1983. He was sentenced to penal servitude tor life. At that time the maximum term for which punishment could be imposed, where the term had not been specified in the law, was 20 years. This provision was amended in March 1986 to read 30 years, instead of 20. In 2002, the respondent had applied for an order to declare that his sentence of "penal servitude for life" should be for 20 years and the Court had granted the application. In the light of the decision in *De Boucherville* (2006), the State applied to have Jeetun's 2002 order stayed and his term of penal servitude changed from 20 years to "penal servitude for life".

HELD the Jeetun order had neither been recalled nor been the object of a new trial or appeal and could not now be stayed, in the light of the principle of finality in legal proceedings. Moreover, a litigant could not be deprived of the benefit of a judgment which he has lawfully obtained. The decision on the life sentence of De Boucherville could only apply prospectively, assuming it was correct in its interpretation of the law regarding the sentence imposed for manslaughter. The enactments which abolished death penalty and which provided for maximum terms of penal servitude had, by failing to deal with the lesser offence of manslaughter, created an anomaly. It could not have been the intention of the legislature to punish those convicted of manslaughter in the same way as those convicted of murder. The application was set aside and the order to stay the order granted in Jeetun in 2002 was discharged. *State of Mauritius v Jeetun* (2006).

11. Right to liberty

213. Separation of powers – Bail – principles—The applicant was arrested after he was suspected of being in possession of heroin. He was denied bail

on the basis of section 46 (2) of the Dangerous Drugs Act 1986 and sought a declaration that section 46 (2) of the Act violated sections 3 and 5 of the Constitution. The respondents submitted, *inter alia*, that section 5 of the Constitution did not give the suspect the right to be at large and that the Court should not question the wisdom of the Legislature. It was also in issue whether an application seeking redress for a violation of Chapter II of the Constitution should be made by the complainant or could be made by other persons on behalf of the complainant.

HELD section 5 of the Constitution indicates that the suspect remaining at large is the rule; his detention on the ground of suspicion is the exception, and he must be tried within a reasonable time or released. It is for the Court to determine what is a reasonable time. It is not in accordance with the letter and spirit of the Constitution to legislate to allow the Executive to overstep the Judiciary's role in ensuring the citizen the protection afforded by the law. Within the framework of the Constitution, Parliament's right to pass laws remains unfettered and a law which passes the test of constitutionality could not be questioned. The Court's power to control the Executive in accordance with its constitutional role also remains unfettered. Section 46 (2) of the Dangerous Drugs Act 1986 is void. *Noordally v Attorney-General* (1986).

214. Bail – Principles—The applicant who was a Barrister was arrested and granted bail by the District Magistrate, subject to conditions. The DPP applied to the Supreme Court for an order setting aside the Magistrate's order for release. The Supreme Court set aside the Magistrate's order and refused the applicant bail. The applicant obtained special leave to appeal.

HELD the nature of the offence, the penalty applicable thereto and the seriousness of the offence must not be viewed in isolation but in conjunction with any relevant risk. The Magistrate had rightly addressed the wider question whether it was necessary to refuse bail, given the seriousness of the offence, to serve one of the ends for which detention before trial is permissible, concluding that it was not. The Supreme Court erred in treating the seriousness of the offence as a conclusive reason for refusing bail. This approach is inconsistent with the Bail Act 1999. *Hurnam v State* (2005).

215. Bail – Principles—The applicant's bail application had been refused by the District Magistrate. The latter had posed the question whether there were conditions which could have been imposed to reduce the risk of absconding, but had failed to state what those conditions were and why such conditions would not have been sufficient to make the risks negligible. The Supreme Court remitted the matter back on 2 occasions to the District Magistrate to carry out this "omitted exercise". When the Magistrate reconsidered the matter, he again declined to grant bail. As a result the applicant applied for bail review before the Supreme Court.

HELD the right of the applicant to a fair hearing with a reasonable time as guaranteed by section 10 of the Constitution would assume its full significance and the fundamental right of a detainee to be released where he is

not tried within a reasonable time is enshrined in section 5 (3) of the Constitution must be given a purposive effect. Since, by the time of the bail review a charge had already been lodged against the applicant before the Supreme Court, the Court ordered that if he was not afforded a hearing of the charge by the end of the next court term, he should be released on bail under certain conditions which were listed in the judgment. *Islam v Senior District Magistrate, Grand Port District Court (3)* (2006).

216. Civil proceedings – Medical examination – Right of person to protection of body – Constitution Chapter II—The applicant was injured in a road accident, and agreed to undergo a medical examination to prove his injuries, on the condition that the examination occurred in the presence of his treating doctor. The respondents alleged that this would lack objectivity.

Article 11 of the Code Civil Mauricien provides that *on ne peut renoncer à la jouissance de ses droits civils et de ses libertés fondamentales*. Chapter II of the Constitution which deals with the protection of fundamental rights and freedoms of the individual *inter alia* provides for the right of the individual to protection for the privacy of his home and other property (including his body) and also for the protection of his right to personal liberty. There is no case where the protection of fundamental rights and freedoms of the individual can be more sacrosanct than where the protection relates to the body of the individual.

In a civil case, it will be inappropriate to compel a person to submit himself to a medical examination, in any circumstances which do not meet his will. *Payet v Seagull Insurance Co Ltd* (1990).

217. Detention on remand after conviction—Section 5 (1) (a) of the Constitution permits the legislator to provide, as in section 94 (3) and (4) of the District and Intermediate Courts (Criminal Jurisdiction) Act, that a person convicted of an offence may lawfully be remanded in custody pending the determination of his appeal. *Victor v State* (2000).

218. Imprisonment for debt—The appellant sought to apply for judicial review of the decision of a District Magistrate who had sentenced her to imprisonment on her failure to appear in answer to a summons after unsatisfied judgment ("SAUJ"), as provided under section 30 of the District and Intermediate Courts (Civil Jurisdiction) Act. The crucial question which the Court had to consider was whether the procedure of SAUJ in civil cases, or such part of it, in so far as it permits the court to order the imprisonment of a defendant for a civil debt is contrary to any of the provisions of the Constitution.

HELD Article 11 of the ICCPR provides that "no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation". The procedure of SAUJ is compliant with Article 11 of the ICCPR. An examination of a debtor on a SAUJ procedure has for purpose to discover his assets so that the judgment given in favour of a creditor can be executed. Where the debtor, having been duly summoned, fails to attend, the court may order the imprisonment of the debtor unless the debt is paid in the meantime. Where

the debtor attends and where the examination shows that the debtor has no assets , a term of imprisonment can be imposed only where it is proven that the debtor has either incurred his debt by fraud or that he has disposed of his property to defraud his creditors. This is far from the situation of Article 11 of the ICCPR where no one is to be imprisoned "merely on the ground of inability to pay his debt". *Toolsy v District Magistrate of Pamplemousses* (2002).

PART VI – LEGISLATURE

1. Elections

A. Ballot papers

219. Validity – In general – Uncertain or irregular markings by voter—The provisions of the Legislative Council Ordinance, 1948 (now the Representation of the People Act), which relate to the marking of ballot papers by electors should be interpreted liberally and effect should be given to an elector's vote whenever he has indicated sufficiently clearly his intention to vote and the particular candidate for whom he had intended to vote. The relevant provision of the law, in this regard, is directory and not mandatory. At an election a number of electors had indicated their votes by figures, or figures and crosses, (such figures being those allotted to the candidates on the ballot papers).

HELD in the absence of any evidence to show that the electors concerned had used figures in pursuance of some preconcerted arrangement, the figures could not lead to identification and the ballot papers should therefore be allowed as valid. The Court rejected a number of ballot papers by reason of the presence thereon of writings, marks, and other irregularities which either caused uncertainty or could lead to the identification of the voters. *Rivalland v Chaperon* (1953).

220. Questions to voters – Tendered ballot paper—The duty cast upon the presiding officer by section 34 of the Legislative Council Ordinance, 1948 (now the Representation of the People Act), as to requiring an elector who applies for a tendered ballot paper to answer the statutory questions prescribed by section 30 of the Ordinance is not an absolute but a discretionary one. It is not a condition precedent to the issue to an elector of a tendered ballot paper that he should first be asked to answer those statutory questions; but an elector may be refused a tendered ballot paper if, when asked those questions by a presiding officer in the exercise of his discretion, he refuses to answer them, or does not answer them satisfactorily. *Rivalland v Chadien* (1954).

221. Tendered ballot paper – Not returned to presiding officer—*Rivalland v Chadien* (1954).

222. Validity of votes – Secrecy of the ballot – Votes expressed on verso of ballot paper invalid—At a Parliamentary election certain votes were expressed otherwise than by a cross namely by a stroke on the ballot paper or

by a cross on the dividing line separating 2 candidates' names with one of the names boldly underlined. In a third case the crosses were found to have been made on the reverse side of the ballot paper which, due to the transparency of the paper or to the heavy impression, allowed the symbols of the candidates to appear on the verso and over the similar symbols of which the crosses had been made.

HELD in the first 2 instances, the votes as expressed were validly cast whereas in the third case, the vote was invalid as not having been marked on the face of the ballot paper. *Bappoo v Bhugaloo* (1978).

223. Allegation of wrong acceptance or rejection of ballot papers – Demand of particulars – Inability to answer particulars sought – Recount pending—Upon an application by petitioners for particulars about allegations of wrongful acceptance or rejection of ballot papers the respondents were unable to reply unless they were granted a recount and had an opportunity of verifying the allegations.

HELD the allegations had no basis unless particularised should be struck out as the respondents could not plead thereto. *Berenger v Virahsawmy* (1984).

B. Deposit

224. Local government and parliamentary elections – Whether electoral requirement for candidate to pay deposit unconstitutional – Meaning of "democratic State"—The plaintiffs challenged the validity of the Legislative Assembly and Municipal Election Regulations under sections 1, 3, 8 and 33 of the Constitution. These Regulations required prospective candidates in parliamentary and local government elections to pay a deposit that was forfeited if the candidates failed to obtain a certain percentage of the votes cast.

HELD (i) sections 3 and 8 of the Constitution concern compulsory deprivation of property. Candidates are not forced to enter the political fray. "Democratic State" in section 1 of the Constitution means the State is to be administered in accordance with democratic principles found in other provisions of the Constitution. There are no further provisions in the Constitution for a democratic system of local government. The requirements of the Municipal Elections Regulations cannot be declared unconstitutional by virtue of section 1 alone;

(ii) section 33 makes specific provision for qualifications of candidates for parliamentary election and the democratic principles by which they are to be controlled. While the requirement of a deposit is not unconstitutional *per se*, the size of the deposit prescribed by the Legislative Assembly Elections (Amendment) Regulations 1989 imposes an unconstitutional property qualification on candidates. *UDM v Governor-General and ors* (1990).

C. Election petition

225. How to be tried—Election petitions have to be tried under the local Ordinance No. 6 of 1889, section 46, which has been approved by the Crown, and not under article 24 of the Letters Patent, ie they are to be tried

before 2 Judges of the Supreme Court, or before three, if the Court should so determine. *Rohan v Bouchet* (1896).

[Editorial Note: Reproduced for historical interest.]

226. Parties – Respondents – When returning officer to be made party to proceedings—Upon an election petition challenging the election of 3 candidates who had been returned for an electoral district,

HELD (i) the proper respondents to the petition were the persons who had been returned for an electoral district.

(ii) as the petition and the particulars supplied contained nothing which amounted to a complaint against the returning officer concerned so as to make him a respondent to the petition, the petitioners were not bound to make him a party to the proceedings. *Rivalland v Chaperon* (1953).

227. Recount – Grounds – Onus of proof – Presumption—On an election petition presented by the first 3 unsuccessful candidates against the return of the last 3 successful candidates at an election for the electoral district of Plaines Wilhems and Black River.

HELD the petitioners upon whom the onus of proof lay had not discharged that onus to the extent of satisfying the Court that there were good grounds for believing that the returning officer had made so many mistakes in the counting of the votes that a recount would place any of the petitioners in a majority of votes over the first 2 respondents, and either of the second and third petitioners in a majority of votes over the third respondent.

However, as between the third respondent and the first petitioner (the first unsuccessful candidate) the difference of only 4 votes coupled with all the circumstances of the case, notably the Court's findings of fact in regard to the conditions under which the counting of votes was conducted, was sufficient to displace the presumption of accuracy attaching to the figures disclosed by the returning officer in respect of those 2 candidates and to give rise to a presumption that 4 mistakes may have been made in the computation of the votes polled by them. *Rivalland v Chaperon* (1953).

228. Procedure for hearing—*Rajan v Dahal* (1959).

229. Nomination of candidate – Questioning by election petition—On an election petition to declare a legislative council election null and void and claiming the seat of the sitting member on the ground that he was disqualified from being elected because his name and surname were wrongly described in the nomination paper.

HELD the validity of a nomination paper can be questioned on an election petition although not objected to at the time of nomination or accepted as valid by the returning officer. *Paruit v Ramsamy* (1959).

230. Amendment to petition – Particulars – Amendment—One of the headings of the election petition averred generally that certain ballot papers were wrongly rejected on the ground of uncertainty and then specified those

which were meant for scrutiny. On an application for amendment of the petition so as to remove the restriction on the scope of the enquiry, and to extend such enquiry to other ballot papers rejected on the same ground.

HELD the amendment proposed did not seek to introduce a fresh charge after the expiry of the statutory delay, and since there was a definite heading which could cover the additional cases, the amendment was receivable. *Rajan v Dahal* (1959).

231. Scrutiny – Rejected ballot papers – Whether rejection must have been objected to at the count—On an election petition claiming the seat of a sitting member one of the headings contained an averment that the returning officer wrongly rejected certain ballot papers on the ground of uncertainty and that such rejection had been objected to. The petitioners sought the scrutiny of these ballot papers and also others rejected on the same ground where the rejection was not objected to. Objection was taken on the ground that there was no appeal from a decision of a returning officer rejecting a ballot paper unless such rejection was objected to at the count, and that the cases to be scrutinised were limited by the averment under that heading.

HELD (i) the right to question by election petition the decision of the returning officer under regulation 40 of the Legislative Council Elections Regulations, 1958, with respect to the validity of a ballot paper rejected for uncertainty was not subject to a condition;

(ii) the averment in the petition as it stood limited the scope of the enquiry prayed for to the class of cases specified therein. *Rajan v Dahal* (1959).

232. Votes given to disqualified candidate—On an election petition to declare a legislative council election null and void and claiming the seat of the sitting member on the ground that he was disqualified from being elected because his name and surname were wrongly described in the nomination paper.

HELD the requirements of regulation 7 (3) of the Legislative Council Elections Regulations, 1958, are mandatory as regards the proper surname and other names of a candidate, the respondent's nomination paper not complying with these requirements was invalid and his election therefore null and void. As the disqualification of the respondent was not apparent from his nomination paper, and it was alleged that the electors who voted for him knew of it, the respondent's seat could not be claimed and there should be a fresh election. *Paruit v Ramsamy* (1959).

233. Election petition—The petitioners who had filed an election petition against the respondents had failed to effect service on the respondents 8 clear days before the sitting of the Court at which the petition was made returnable in accordance with the provisions of Rule 100 of the Rules of the Supreme Court.

HELD Rule 100 RSC was not mandatory. *Perrine v Foogooa* (1967).

234. Right of intervention in election petition—The right of a candidate to be declared a corrective member of Parliament may depend upon what candidates are elected in another constituency. Where the rights of a candidate to be in Parliament depended upon whether A or B was duly elected in another constituency he was allowed to intervene in an electoral petition lodged by A to declare B's election null. *Jagatsingh v Bappoo* (1977).

235 Necessity for factually precise pleadings—Electoral petitions were lodged after the general election in 1990. The petitions alleged irregularities surrounding the election including (i) failure by the Electoral Supervisory Commission to supervise the election; (ii) failure by the respondents to comply with section 34 (1) (a) and (c) of the Constitution; (iii) incidents of unfair advantage and favouritism and (iv) incidents of bribery, undue influence and unlawful practice. The respondents sought to have parts of the petitions struck out.

HELD persons presenting an electoral petition must be certain as to the averments they make and can prove and which they can reasonably expect the respondents to rebut as promptly as possible. The petitioners, especially by using words such as "and/or" and *inter alia* in the petitions have shown that they have not been able to produce, within the required time limit any precise facts against the respondents or any other persons. Under sections 45 (1) (a) (ii) and 48 of the Representation of the People Act a petitioner may seek to have an election avoided. That does not however preclude an opponent from seeking to have parts of the petition struck out if they are factually imprecise, disclose no cause of action, or require the respondent to ask for particulars which raise averments which the petitioner did not bring forward within the required time limit. *Gutheea v Dulloo* (1991).

236. Electoral petitions – Amendments—Electoral petitions are not like any other civil action. They are matters of great public interest and not merely of private individual interest. Unlike the much longer periods prescribed for civil actions of various kinds involving merely private interests, the periods within which election petitions may be entered are relatively limited. That period is 21 days for the kind of petition that is now before the Court. There are good reasons for this.

The principles governing amendments to electoral petitions are plain. These amendments are allowable when made within 21 days in petitions. However, when that time has expired, no amendments are possible if the purpose is to introduce fresh causes of action or charges. In the same way no amendments are possible where the purpose is to introduce an issue, especially one involving grave inegality, not otherwise properly disclosed by reason of the fact that the original averments were so vague or defective in material respects as could not properly be remedied by the mere supply of particulars. Mauritius law is similar to English Law in this regard (*vide* 15 *Halsbury's Laws of England*, 4th edition, "Elections". *Bonnelame v Cure* (1991).

237. Jurisdiction of Court—The plaintiff sought a declaration that the 1991 general election was null and void. The plaintiff submitted that under section 45 of the Representation of the People Ordinance 1958 (now Act) elections could be challenged on the basis of "bribery, treating, undue influence, illegal practice, irregularity, or any reason whatsoever" but that in the 1982 revised edition of the laws the word "whatsoever" was deleted from the relevant section. The plaintiff contended therefore that the word "reason" had to be read in the light of the preceding words, and this unduly limited the right of people to question elections.

HELD under section 37 (5) of the Constitution Parliament has made provision for challenging the validity of the election of a member of the Assembly. The Court may enquire whether undue fetters have been placed on persons wanting to question the validity of the election of a member. The word "reason" in section 45 of the Representation of the People Act is meaningless unless read as "any other reason". The Law Revision Unit did not have power to change the substance of an enactment. An election may be questioned on the basis of any irregularity whatsoever. *Kodabaccus v Electoral Commissioner* (1992).

D. Electoral Supervisory Commission

238. Membership—By virtue of the Municipal Council of Port Louis (Suspension) Order, 1974, the Municipal Council of Port Louis was suspended and was replaced by a Commission, 2 of the appointed members of which were also members of the Electoral Supervisory Commission created by section 38 of the Constitution of Mauritius.

In an action for a declaration that those members were no longer qualified to be members of the Electoral Supervisory Commission.

HELD by their appointment on the Commission instituted to replace the Municipal Council of Port Louis, those 2 members had become members of a local authority and, as such, were disqualified under section 38 (3) of the Constitution to be members of the Electoral Supervisory Commission. *Jeetah v Electoral Supervisory Commission* (1975).

239. Registration of political party – Variation of name of political party on registration—The Electoral Supervisory Commission had varied the name under which a political party had applied for registration. The decision of the Commission was upheld on the ground that—

(i) where applications are made for the registration of parties bearing the same or similar names, the primary duty of the Commission is to ensure that registration under the names applied for is not likely to cause confusion in the mind of the electorate;

(ii) while the Commission was right to register one of the parties under the name by which it had generally been known over the years, it had rightly varied part of the name of one other political party so as to avoid confusion in the mind of the electorate by reason of the similarity in the names or initials of the parties and so long as it was possible in some measure to preserve the ideological image to which that party laid claim by the use of its name;

(iii) the fact that there had been no objection by another political party to the registration under the name applied for was not a relevant consideration. *Social Democratic Party v Electoral Supervisory Commission and anor* (1982).

240. Registration of political parties – Appeal from decision of Electoral Supervisory Commission – Statutory Interpretation—Where the Electoral Supervisory Commission (ESC) had declined to register a political party on the ground that its application for registration had been made, not by its "President, Chairperson or secretary" as prescribed by regulation 7 (2) of the Legislative Assembly Elections Regulations 1968, but by its leader.

HELD (i) paragraphs 2 (1) and (4) of Schedule 1 to the Constitution had conferred a right on political parties to be registered for purposes of an election to the Legislative Assembly and had empowered the making of Regulations to determine the kind of information or evidence to be furnished by persons making an application for the registration of a party, including information or evidence of their authority to make the application. But that these constitutional provisions had not imposed any restrictions on the class of persons who could act for their respective parties in making an application;

(ii) too rigid an interpretation of regulation 7 (2) would result in unduly restricting the class of persons a political party could lawfully authorise to make an application for registration and regulation 7 (2) must consequently be regarded as being directory and not mandatory;

(iii) the ESC should, given that the application had been made by the leader of the party who had been duly authorised for the purpose by the party, register the party. *Union Democratique Mauricienne v Electoral Supervisory Commission* (1982).

E. Inspection of papers

241. Representation of the People Ordinance, 1958 (now Act) – Legislative Assembly Regulations 1968—The petitioners claimed to have the election of the first respondent declared void by the Court. The respondents having asked for particulars concerning certain of the grounds set out in the petition, the petitioners moved the Judge in Chambers for, among other things, an order allowing them to inspect certain rejected ballot papers. The respondent objected. The Judge referred the matter to Court.

HELD it followed from the relevant provisions of the law and from English decisions interpreting cognate English legislation that in the matter of inspection the Court should be governed by 2 interactive principles; (i) it was both in the private and public interest that the correct result of an election should be ascertained; (ii) strict secrecy should be ensured as to the person or persons for whom an elector has voted.

To give effect to the first, no undue obstruction should be placed in the way of a *bona fide* litigant, who questions the return of a candidate, in the preparation and conduct of his case. To give effect to the second, strong grounds should be established by the applicant for inspection and ensure that

the secrecy of the voting should not be exposed to the risk of being violated except in a truly deserving case. *Ghurburrun v Jugnauth* (1977).

F. Intimidation

242. Failure of returning officer to adjourn the poll—On an election petition to declare an election null and void and to order a fresh election, the grounds relied upon were (i) failure of the returning officer to adjourn the poll after certain disturbances and (ii) general intimidation which resulted in the election not being a free one.

HELD (i) the Court had power to invalidate elections on the ground, *inter alia*, of undue influence, which clearly included intimidation;

(ii) (a) the evidence showed that there would have been no justification for an adjournment of the poll by the returning officer, and

(b) the petitioners had failed to establish that there were reasonable grounds to believe that the election was not a free one and that the result was not in accordance with the will of the majority. *Perrine v Foogooa* (1967).

G. Irregularity

243. Personation—A vote may be struck off on the ground of personation on the evidence of the person whose vote it purported to be that he had not voted. *Rivalland v Chadien* (1954).

244. Irregularities at elections—*Rault v Returning Officer for the Electoral Area of Stanley* (1959); *Paruit v Ramsamy* (1959).

245. Corrupt and illegal practices of agent – How far binding on candidate—On an election petition to declare a Legislative Council election void on the ground, *inter alia*, that the elected member was liable for corrupt treating committed by his agents,

HELD the unauthorised illegal acts of a candidate's agent does not entail the liability of that candidate. *Mamoojee v Walter* (1964).

246. Want of qualification or disqualification of candidate not elected – Ground for invalidation of elected candidate—The respondent was elected with a majority of 22 votes over the candidate who polled the next highest number of votes. Two other candidates, however, who had polled together 53 votes were found to have been disqualified for want of literacy as required by section 23 (d) of the Mauritius (Constitution) Order in Council, 1958.

HELD the election had taken place in breach of the law and that in view of the number of votes polled by the disqualified candidates being superior to the majority of votes obtained by the respondent the result of the election might have been affected and the election was accordingly null and void. *Moignac v Leal* (1964).

247. Effect on result of election – Burden of proof—*Mootoosamy v Ah-Chuen* (1964); *Moignac v Leal* (1964).

H. Nomination of candidates

248. Qualifications or disqualifications for nomination – Whether distinct from qualifications or disqualifications for election—A person disqualified for election is also disqualified for nomination. The nomination is for this purpose an essential part of the election, and if there are no competitors, it itself constitutes the election. *Moignac v Leal* (1954).

249. Essentials of valid nomination – Subscription of nomination paper—By section 44 (1) of the Representation of the People Ordinance, 1958 (now Act), elections to the Legislative Council are to be conducted in accordance with the regulations set out in the Second Schedule to the Ordinance. Regulation 7 (3) of these regulations, which deals with the manner in which candidates shall be nominated, provides that the nomination paper shall be in a prescribed form on which there is a space reserved for the insertion of the numbers assigned to the candidate's nominators in the register of electors. The applicant, who, at the general election to be held on the 9 March 1958, was a candidate for election as member of the Legislative Council for the electoral area of Stanley, used the prescribed form for his nomination paper, but inserted therein wrong electoral numbers in respect of his nominators. The returning officer for the electoral area of Stanley held that his nomination paper was invalid and rejected it. The applicant moved the Supreme Court for an order directing the returning officer to insert his name on the list of candidates for the electoral area of Stanley.

HELD the decision of the returning officer was correct and the effect of the mistake could not be remedied under sections 35 and 48 of the Representation of the People Ordinance, 1958 (now Act). *Rault v Returning Officer for the Electoral Area of Stanley* (1959).

250. Insertion of proper surname and other names of candidate—On an election petition to declare a Legislative Council election null and void and claiming the seat of the sitting member on the ground that he was disqualified from being elected because his name and surname were wrongly described in the nomination paper.

HELD the requirements of regulation 7 (3) of the Legislative Council Elections Regulations 1958, are mandatory as regards the proper surname and other names of a candidate, the respondent's nomination paper not complying with these requirements was invalid and his election therefore null and void. *Paruit v Ramsamy* (1959).

251. On an election petition to declare the return of the respondent as an elected member of the Legislative Council void on the ground that his nomination paper did not satisfy the requirements of the law for the reason that he had subscribed it in the surname and names of Ah-Chuen, Jean Etienne Moi-Lin while according to his act of birth his correct surname and name were Ah-Chuen, Moi-Lin.

HELD a mistake in the name or surname of a candidate in his nomination paper or the use of a name of surname by which a candidate claims to be commonly known but which is different from that appearing on his birth certificate cannot invalidate his nomination paper unless his identity is thereby so obscured as materially to impair the achievement of the object of the regulation governing the nomination of candidates. *Mootoosamy v Ah-Chuen* (1964).

252. Checking of **closing time for reception of nomination papers**—There is no requirement in the electoral law that there should be an official clock at the polling station for the purpose of checking the opening and closing time for the reception of nomination papers.

Where the decision of the returning officer to reject a nomination paper on the ground that it has been presented after closing time is challenged before the Court, all the Court has to be satisfied about is that the returning officer had a proper and reliable way of checking the time for the purposes of receiving the nomination papers. *Roheeman v Returning Officer of the Constituency of Vacoas-Floreal* (1976).

253. Elections – Nomination of candidates – Declaration relating to community—The applicant, by motion, questioned the correctness of the declaration made by the respondents who were candidates at the general election, in respect of the community to which they belonged. Preliminary objections were raised on behalf of some respondents.

HELD there was no need to join the Returning Officers in the suit, the more so as the Electoral Commissioner was a party. As the law stands, candidates have to make a declaration as to community in their nomination papers but cannot make a false declaration. Wrong assertions as to communities in nomination papers may defeat the purpose spelt out in the Constitution and distort the exercise of allocation of best loser seats*. Carrimkhan v Lew Chin and ors* (2000).

254. Failure of prospective candidate to state his community on nomination paper—11 candidates' nomination papers were declared invalid and rejected by Returning Officers as they had failed to make a declaration on their forms as to which communities they belonged to. Following an application made to Couirt, the Judge, in *Narrain and others v The Electoral Commissioner and others* (2005) SCJ 159, ordered that the nomination papers be accepted. The plaintiff alleged that this decision both violated and altered the Constitution as it rendered paragraph 5 on the First Schedule to the Constitution inoperative. The plaintiff also argued that, should candidates be allowed to stand for elections without designating their community, the allocation of the eight additional seats would be difficult should any of the candidates obtain sufficient number of votes to secure seats.

HELD it is mandatory for a prospective general election candidate to declare and indicate in writing which community he belongs to. If a prospective candidate does not appear from his way of life to belong to the Hindu, Muslim or Sino-Mauritian community, he will be deemed to belong to the General Population. The sanction imposed on a candidate who does not declare

his community is the invalidation of his nomination paper by the Returning Officer. The declaration is at the heart of the best loser system enshrined in the First Schedule as the allocation of the eight additional seats is to ensure a fair and adequate representation of the four communities. *Electoral Supervisory Commission v Honourable Attorney-General* (2005).

I. Qualifications

I. Candidates

255. Office of emolument under the State – Census Superintendent – Permanent and temporary offices—The office of Census Superintendent is an office of emolument and the holder cannot be returned as an elected member of the Council of Government. The Letters Patent do not make any distinction between permanent and temporary offices. A person who has applied for a post and who has been appointed to it, must be held to have accepted the appointment until the contrary be proved, or unless the law provides a specific mode of acceptance. *Hitié v Naz* (1891).

256. Medical attendant appointed to sugar estate under Labour Law—The appointment of a medical attendant to a sugar estate under the Labour Law is not an office of emolument, within the meaning of the Letters Patent of 1885, article 10. *Rohan v Bouchet* (1896).

257. Sworn Land Surveyor—An "office of emolument under the Crown" is an office the holder of which is in the service of the State. A Sworn Land Surveyor is not a holder of an office of emolument under the Crown and is not, as such, incapacited for a seat in the Legislative Council of Mauritius. *Roblet v Gébert* (1906).

258. Contract with Government—On an election petition to declare a Legislative Council election null and void and claiming the seat of the sitting member for the reason that he was a party to a contract with the Government of Mauritius for and on account of the public service and had failed, within one month of the election day, to publish a notice setting out the nature of such contract and his interest in it as prescribed by section 24 (c) (i) of the Mauritius (Constitution) Order in Council 1958.

HELD (i) election day for the purpose of section 24 (c) (i) of the Mauritius (Constitution) Order in Council 1958, is not the polling day but the day fixed in the writ of election as election day coinciding with the day for the nomination of candidates; and as the required notice of the contract was published only after the statutory delay reckoning from "election day" had expired, the respondent was disqualified, and his election was accordingly null and void;

(ii) as there was no satisfactory proof that notice of the disqualification of the respondent and the fact of any vote that would be given to him was given to a sufficient number of electors to justify the claim to the sitting member's seat, there should be a fresh election. *Rajan v Dahal* (1959).

259. Proficiency in English language—*Moignac v Leal* (1964).

II. Electors

260. Residence means having a house in the locality—*Lacaze v de Rauville* (1911).

261. Immovable property – House built on "Pas Géométriques" leased from Government—A house ("campement") built on "Pas Géométriques" leased from Government and owned by the lessee of the "Pas Géométriques" is an immovable property and if it yields rent at the rate of 300 rupees per annum, it gives the required qualification to the owner, *de Boucherville v Henry* (1911).

262. Annual or monthly value—The annual or monthly value of land which qualifies a claimant as an elector, is the rental value of the agricultural produce that he can derive from his land. *Seesaran v Maurel* (1911).

263. Government officer under suspension on half pay – Where half pay not amounting to minimum salary required—A Government officer whose emoluments are 50 rupees per month is under suspension and drawing half the amount at the time when the revising officer considers the objection to his name remaining on the list of electors, is not "in receipt" of monthly salary of 50 rupees, and therefore not qualified as an elector. *Tanner v Dauban* (1911).

264. Qualifying period – Whether must be immediately preceding registration—The 3 years' residence previous to registration required, mean actual residence and not domicile, but in order to be entitled to be registered as an elector, it is only sufficient that there should have been 3 years' residence at any time previous to the date of registration, but not necessarily immediately preceding the date. *Lacaze v de Rauville* (1911). *Lacaze v Mongey* (1911).

265. "Date of registration" – Meaning—The words "date of registration", refer to a variable date in the year of preparation of the yearly register of voters and not to the date at which the person was for the first time registered as a voter. *Per* Roseby, J: "It can hardly be the actual time at which the list is finally issued, which will be some time after the Magistrate has completed his inquiry. Therefore in the case of an original application we would be forced to construe these words as having reference to the time at which the list was first made out in 1920, and it seems to me we would not do violence to the phrase if we continue to apply the same meaning even in the case of a man whose name was borne on previous registers". *Goburdhun v Hart de Keating* (1920).

266. Government Medical Officer paid in Port Louis but working outside Port Louis—A Government Medical Officer with 3 districts assigned to him all outside Port Louis, who did occasional work in Port Louis and received his pay from or at the head-office in Port Louis, held not qualified as a voter in Port Louis. *Masson v Ministère Public* (1925).

267. Salary – Meaning—A boiler (*bouilleur*) employed in a sugar factory is a competent voter in respect of his employment if otherwise qualified. The

word "salary" in clause (4) (e) of the Letters Patent of 11 September 1913, includes all who earn salary or wages in respect of their employment, whatever the nature of the services rendered. *Bazerque v District Magistrate of Grand Port and ors* (1925).

268. Conviction for perjury—A conviction for perjury disqualifies a voter whether he has purged his sentence or not. *Tronche v District Magistrate of Grand Port* (1925).

269. Immovable property belonging to *communauté*—A husband married under the system of *communauté* is qualified as an elector, if the property belonging to the *communauté* is of the annual value exceeding the prescribed amount, even where half the value of the property does not reach that prescribed amount. *Curé v District Magistrate of Rose-Hill* (1929).

270. Omnibus controller – Head office in Port Louis – Plying between Port Louis and Curepipe—The controller of an omnibus company, with its head-office in Port Louis, in receipt of salary from the company and acting as a collecting clerk for the company in Port Louis had his principal place of business in Port Louis notwithstanding that he resided in Curepipe and acted as controller in an omnibus of the company plying between Curepipe and Port Louis. *Gellé v District Magistrate of Port Louis* (1931).

271. Length of time during which salary drawn—A claimant may be registered under section XXI (4) (e) of the Letters Patent of 11 September 1913, if he has the necessary residency and is, at the time his claim is considered, in receipt of the adequate salary: he need not have been receiving the salary for 3 months previous to 1 January of the year in which he seeks to be registered. *Mooktaram v Manique* (1931).

272. Temporary absence—On appeal against the decision of a registration officer including respondent's name in the list of electors as being ordinarily resident in Mauritius.

HELD temporary absence did not cause loss or change of place of ordinary residence. *Naudeer v Mohamed* (1948).

J. Registration

273. Form of notice—A revising Magistrate rejected several notices of objection to electors' and claimants' names, on the ground that the notices were informal and did not state or show that the objectors were duly registered electors for the District. The Judge on appeal reversed the Magistrate's decision. *Jauffret v Acharaz; Jauffret v Ah-Hen; Jauffret v Allybaccus* (1911).

274. Grounds for expunging – Misnomer—The Magistrate was wrong to expunge the name of one Goorun "Abeeluck" who was born on the register of electors as Goorun "Aubeeluck". *Aubeeluck v Ramphul* (1911).

275. Omission from Register due to error – Insertion ordered on appeal—The names and qualification of a claimant who had been objected to, and

duly maintained, were, by mistake, not inserted in the Register. The Court on motion, the Magistrate acknowledging the error, ordered the Register to be amended by making the required insertion. *Radha v Hugues* (1911).

276. Objections – Time—The object of the enactment was to substitute a definite date in lieu of a variable date from which the delay to file objections to the list on the Register of voters should run. The retention in the amendment enactment of the variable date which was to be found in the previous enactment can only be ascribed to error or inadvertence and may not be construed as affecting destructively the unequivocal and substantive provision which allows a definite number of days to file objections to the list on the Register of voters. *Laurent v District Magistrate of Port Louis and anor* (1920).

277. Appeal from decision of revising Magistrate – When appeal lies – Admission of incompetent evidence—No appeal lies from a decision of a revising Magistrate admitting certain evidence as evidence in the strict legal sense, although it was not in truth such evidence. *Goburdhun v Hofong* (1920).

278. Appeal to Privy Council – Provisional execution – Judgment ordering expunging of name from Register—The Supreme Court allowed appeal to the Privy Council against their judgment ordering the striking out of a voter convicted for perjury but declined to order provisional execution of their judgment and extended the time for furnishing the security beyond the time when the elections were to be held. *Tronche v Ministère Public* (1925).

279. Pending appeal to Privy Council against judgment disqualifying elector—Pending an appeal to the Privy Council against their judgment disqualifying a voter owing to his previous conviction for perjury, as his name was on the register of voters, he was entitled to vote and stand as a candidate pending the decision of the Privy Council. *Tronche v Ministère Public* (1925).

280. The Supreme Court ordered the Register of Electors for the District of Port Louis for the year 1926 to be amended by the insertion of the applicant's name which had by mistake been omitted. *Hitié v Clair* (1926); *Tarby v District Magistrate of Grand Port* (1926); *Ex parte: Ramboccus* (1926).

281. Application for registration under changed qualification – Elector may be maintained on original qualification—An elector on the roll of electors who has put in a claim to be registered anew on a different qualification is not debarred from invoking his register qualification and may be maintained on the roll on that qualification. *Bernard v Moossajee* (1931).

282. Burden of proof—It is on the person objecting to the name of an elector remaining on the roll on the ground that the elector is an alien that the burden lies of making at least a *prima facie* case that the elector is an alien. *Mooktaram v Tiang-Qui-Lien* (1931).

283. Where objection was taken to a name on the list of claimants, the claimant was in attendance and answered certain questions tending to show

that he was in receipt of salary and entitled to be registered. On the objector stating that he was not satisfied with the evidence and wanted further proof of the claim, the case was postponed to a later hour in the day. The claimant did not appear then and his name was expunged.

HELD confirming *Mooktaram v Tiang-Qui-Lien* (1931), the claimant was entitled to be registered as a voter. *d'Unienville v Laurent* (1931).

284. Failure of claimant for registration under one qualification – Whether bar to registration under other qualification—A claimant for registration, having failed in the literacy test in one of the languages mentioned in the Schedule to the Legislative Council Order-in-Council, 1947, later submitted himself to a further test in another of the scheduled languages, which he passed. The Registration Officer expunged his name from the list of claimants.

HELD a claimant who fails to have his name registered as an elector under one qualification can subsequently claim registration for the same district under some other qualification, provided he applies within the statutory period. Literacy in any one of the languages specified is a sufficient qualification. *Joomun v Registration Officer of Port Louis* (1948).

285. Effect of register – Misnomer – What constitutes—*Rault v Returning Officer for the Electoral area of Stanley* (1959); *Paruit v Ramsamy* (1959).

K. Leader of political party

286. Rights and duties of leader of political party—Where the leader of a political party sought an interlocutory injunction preventing another person from passing himself off as the leader of the party and from using the party name and emblem, the Judge in Chambers analysed the constitutional provisions governing the role of political parties and their leader.

HELD (i) given the role ascribed to political parties in the political order established by the Constitution, the party leader has various rights and duties in the process of elections and beyond them; and consequently, those rights and duties are entitled to protection;

(ii) the symbol allotted to the political party concerned by the Electoral Commissioner for the purposes of elections had been used by the party as an emblem; although the use of the party's name and emblem is a right which primarily belongs to the party and that it is the party which is entitled to seek protection, nevertheless the right of the party and that of its leader in this regard coincide, with the result that the leader was also entitled to seek protection. *Duval v François* (1982).

287. Wrong allocation of air-time – Political broadcasts—The applicants sought orders directing the respondents to (i) allocate to the applicants air time for general election equal to that allocated to the Alliance MSM/MMM; (ii) refrain from giving certain publicity to the Alliance MSM/MMM; (iii) set up a panel of barristers to vet the final address made by the leader of the Alliance MSM/MMM.

HELD the Supreme Court will intervene only if there is, or might appear to be, a major flaw in the respondent's decision-making process or that its decision is unreasonable. *Purryag v Mauritius Broadcasting Corporation and Alliance MSM/MMM* (1991).

L. Symbol of identification

288. Allocation—Under regulation 16 (2) of the Legislative Assembly Regulations 1968, respondent No. 1 was required, by the end of nomination day, to allocate symbols of identification to electoral candidates. Prior to nomination day the applicant indicated to respondent No. 1 that he wished to use a sunflower as his symbol of identification in the forthcoming by-election. Respondent No. 1 declined the request on the ground that the sunflower was similar to another symbol which incorporated a sun with rays enclosing a heart, used by a party at the last general election. The applicant sought to have the decision quashed.

HELD respondent No. 1 should not have assumed that the sun ray symbol would be used by any party at the by-election, and should have sought the approval of respondent no. 2 on the decision. The applicant should have been told that, in the event of another party using the sun ray symbol, another symbol would be allocated to the applicant. If it transpired that the party which used the sun ray symbol at the last election sought to use it again at the by-election, the Court would be reluctant to interfere in a decision by the respondent to allocate another symbol to the applicant. *Michel v Electoral Commissioner* (1992).

M. Writ of Election

289. Notice of election – Day of election – Meaning—Election day is not the polling day but the day fixed in the writ of election as election day coinciding with the day for the nomination of candidates. *Rajan v Dahal* (1959).

290. More than one vacancy in a constituency—Two vacancies had occurred in a three-number constituency and a writ was issued for an election to return 2 members of the Assembly. The relevant regulations were then amended to provide that, in such a situation, electors should vote for as many voters as there are members to be elected. The plaintiffs contended that the new Regulations were unconstitutional.

HELD in the absence of specific provisions in the Schedule or elsewhere in the Constitution, where 2 out of 3 members of the Assembly resign their seats in the same constituency, paragraph 1 (2) of the First Schedule to the Constitution gives power to Parliament to make provision with regard to the number of votes which an elector could validly cast at a by-election. *Valayden v President of the Republic of Mauritius* (1995).

2. Parliament

A. Additional seats

291. Candidates available—A declaration was sought to the effect that there were no longer unreturned candidates for the purpose of filling vacancies

in the Legislative Assembly, on the ground that the availability of candidates unreturned at the general elections of 1967 for that purpose could have lasted only until 1972, because the life of the Legislative Assembly was by section 57 (2) of the Constitution itself fixed to 5 years.

HELD since under section 8 (3) of the Mauritius Independence Order, 1968, persons who were unreturned candidates at the general elections of 1967 were to be so regarded until the dissolution of the existing Parliament which had been prolonged by the Constitution of Mauritius (Amendment) Act, 1969, until 1976, those persons should be regarded as unreturned candidates until 1976. *Jeetah v Electoral Supervisory Commission* (1975).

292. Allocation – Method and circumstances of allocation—All the candidates of the only 2 successful parties having been duly elected to the sixty-two seats of the Assembly, only the first 4 of the 8 additional seats provided for in the Constitution could be allocated to unsuccessful candidates according to Schedule 1 of the Constitution. *Roussety v Electoral Supervisory Commission and anor* (1982).

293. Allocation of eight remaining seats – First Schedule—After the general election some seats remained to be allocated. The Electoral Commission recommended that the first 4 seats be allocated to the 4 candidates who were the most successful of those unreturned candidates belonging to the appropriate communities in respect of the remaining 4 seats. The Electoral Supervisory Commission sought directions as to whether any further seats could be allocated.

HELD paragraph 5 (4) of the First Schedule of the Constitution requires the appointment of a candidate belonging to the most successful party and the appropriate community – that is an alliance MSM/MMM candidate who is a Muslim – and no such person is available. While recognising that the Stonehouse Agreement 1966 was unwittingly not implemented in full, it is not up to the Judiciary to write important substantive provisions into the First Schedule of the Constitution – particularly when they relate to matters over which Parliament could only legislate by a three quarters majority. *Ex parte: Electoral Supervisory Commission and Electoral Commissioner* (1991).

294. Census form—The Court refused to entertain a suit requiring it to declare that the Census Regulations 2000 were unconstitutional on the ground that persons were not required to declare in the census form the community to which they belonged.

HELD since the First Schedule to the Constitution provided that "appropriate community" fell to be decided according to the results of the 1972 census, there was no ground for intervention. *Joomun v Government of Mauritius* (2000).

295. Appropriate Community – Way of life – Religion—**HELD** the Court was unable to determine the community to which the respondents were deemed to belong for the purposes of the First Schedule to the Constitution by reference to their way of life, and religion had no bearing on the issue. Those respondents who specifically disclaimed appurtenance to the Hindu, Muslim or Sino-Mauritian communities were declared to belong to the "residual" General Population. *Carrimkhan v Lew Chin* (2000).

B. Assent

296. Governor's assent – Not specified to be in name and on behalf of Sovereign – Whether validity of Ordinance affected—On appeal from Seychelles.

HELD the Seychelles Income Tax (Consolidation and Amendment) Ordinance, 1948, had been validly assented to by the Governor of Seychelles on behalf of Her Majesty by his use of the formula "I assent" followed by his signature. *Collet v R* (1953).

C. Law in force

297. Reprint of laws of Mauritius – Discrepancy from original—Rouillard's collection of the laws of Mauritius is not authoritative as a proclamation of laws, but only a reprint, under the authority of Government, of laws already proclaimed. Such collection is no evidence of the Statute law of the land. Where there was a discrepancy between the text, one text of a section as published in this collection and the text of the same section, as it appeared in a certified copy of the original section,

HELD the judgment ought to have been delivered on the latter text. *R v Baudon* (1870).

298. Civil Code – Includes amending enactments—The words "Civil Code" in the Labour Law must be taken to mean the Civil Code with enactments amending its articles. *Protector of Immigrants v Essoo* (1902).

299. Omission of Ordinance still in force—A Mauritius Ordinance still applicable in Seychelles was omitted from the Revised Edition of Laws, where it was referred to, in the Index, as "inoperative, spent".

HELD the Ordinance was still in operation notwithstanding such omission. *Collet v Attorney-General of Seychelles* (1954).

300. Amendment of Ordinance incorporated in – Revised Edition before coming into force—Where, before the coming into force of the Revised Edition of the Ordinances, a section was added to an Ordinance which was later incorporated in a chapter of the Revised Edition.

HELD the section so added formed part of that chapter, and a person was, in respect of a breach of that section, rightly prosecuted before a Bench of Magistrates, as the Courts Ordinance, as amended by section 16 of the Courts (Amendment) Ordinance, 1954, made any offence against the provisions of that chapter cognisable by a Bench of Magistrates. *Fakeermamode v R* (1955).

301. Power of Parliament to legislate – Constitution section 45—The Courts of Mauritius have such jurisdiction as is given to them by Acts of Parliament. Parliament itself can only legislate within the framework of the Constitution.

Section 34 (b) of the Dangerous Drugs Act 1986 makes it an offence to do anywhere in the world an act preparatory to the commission, in Mauritius, of an offence under the Dangerous Drugs Act, immaterial of the fact whether such act is an offence in the country where it is perpetrated or, as a

result of any international treaty. That law was duly enacted by Parliament which, under section 45 of the Constitution, is empowered to make laws for the "peace, order and good government of Mauritius".

A sovereign Parliament has power to enact laws with extra-territorial operation. See *Masson v R* (1962). The Parliament of Mauritius, so long as it legislates within the framework of the Constitution, is supreme. See *Motee v R* (1969). *Jeeawoody v R* (1989).

302. Conventions – *ius cogens* – Domestic law—Held referring to *Jubb v Governor of Seychelles and anor* (1956) and *Permal v Ilois Trust Fund* (1984), unlike *ius cogens* or other rules of customary international law, of the Hague Convention on the Civil Aspects of International Child Abduction which had been acceded to by Mauritius, could only be binding on our Courts if it provisions had been incorporated in domestic law. *Jordan v Jordan* (2000).

D. Membership

303. Membership – Extraordinary member – Head of Department summoned by Governor – Contempt of Council—The appellant was convicted in the District Court of sending an insulting letter to a member of the Legislative Council, on account of his conduct in the Council. The letter had been sent to the Labour Commissioner, who had been summoned by the Governor to attend for the consideration of certain business, pursuant to section 13 of the Mauritius (Legislative Council) Orders in Council, 1947 to 1953, the marginal note to which section reads: "Extraordinary members".

HELD the Commissioner was not a member of the Council. *Mason v R* (1955).

E. Publishing defamatory statement

304. Publishing defamatory statement or writing upon the Council—The appellant was prosecuted for publishing an article in a newspaper which was alleged to constitute a defamatory statement about the Legislative Council under section 6 (1) (n) of the Legislative Council (Privileges, Immunities and Powers) Ordinance (by virtue of Act 48 of 1991 – now National Assembly (Privileges, Immunities and Powers) Act). He was convicted and sentenced to 6 weeks' imprisonment. He pleaded that the impugned statement (i) was not a defamatory statement but a mere insult; (ii) even if it was defamatory, it was a reflection on individual members and not on the Council itself; (iii) he had no guilty intent; and (iv) the sentence was excessive.

HELD (i) the statement contained an imputation of fact sufficiently precise as theoretically to be susceptible of proof in an inquiry or debate and conseuently constituted a defamation and not merely an insult; (ii) a defamatory statement made about an unnamed majority acting as the Council is necessarily a defamation of the Council; (iii) when a defamatory statement is published, the author is presumed in law to have the intent that it should be defamatory unless there is proof to the contrary, the burden of which lies upon the party charged; (iv) the term of imprisonment was manifestly excessive in view of the nature of the defamation, its circumstances, apparent weight and probable effect, and should be commuted into a fine. *Coralie v R* (1957).

F. Powers of Supreme Court

305. Lack of jurisdiction to interfere with internal business of Parliament— The applicants sought an interim injunction to restrain (1) the Prime Minister from introducing a Bill in the Legislative Assembly; (2) the Speaker, from allowing discussion on the Bill; (3) the Governor-General from assenting to the Bill.

HELD the Supreme Court has jurisdiction to decide whether an Act is constitutional or not; but it would be neither legal nor reasonable for it to interfere with the internal business of Parliament. *Lincoln v Governor-General of Mauritius* (1973).

306. Order prohibiting introduction of Bills—The applicant asks, *ex parte*, for leave to seek an order to prohibit the respondent, the Prime Minister, from introducing 2 Bills to the National Assembly with the object of amending the Constitution and the Representation of the People Act.

The application is an abuse of process. The Court will not usurp the Assembly's powers by preventing it from considering those Bills. *Keetarut v Prime Minister* (1992).

307. National Assembly – Select Committee proceedings – Immunity from suit—The applicant sought a declaration that the findings of a Select Committee of the Assembly were null and void for a number of reasons. The Court refused the application as no arguable complaint had been established. *Utchanah v Berenger* (1998).

308. The Court may intervene in a case where it is averred that the Speaker has acted contrary to the Standing Orders of the Assembly. *Bérenger v Jeewoolall* (1999).

309. National Assembly – Suspension of a member—The Supreme Court has no jurisdiction, except where an infringement of a constitutional principle is involved, to intervene in the affairs of the Assembly, including a decision to suspend a member. *Bérenger v Jeewoolall* (1999).

G. Speaker

310 Powers of Speaker of Legislative Assembly—The Speaker of the Legislative Assembly, the respondent, had ruled on 20 November 1990 that a motion proposing his revocation as Speaker was not debatable on the basis that the matter was *sub judice*. The applicant, the Prime Minister of Mauritius, sought a declaration that the ruling of 20 November 1990 was improper and that an apprehended ruling of the Speaker on 27 November 1990 in relation to the presentation of the Constitution of Mauritius (Amendment No. 3) Bill was contrary to law.

No Speaker should preside over, still less rule on, a debate or motion in which the Speaker's personal and private interests are at stake. *Jugnauth v Daby* (1990).

311. Election and revocation of office of speaker—On 4 December 1990 the Legislative Assembly passed a motion, pursuant to section 32 (3) (d) of the Constitution removing the Speaker from office. At the same sitting the defendant was elected Speaker. The plaintiff argued that (1) the Constitution of Mauritius (Amendment No. 2) Act 1990 relating to the removal of the Speaker contravened section 3 of the Constitution, and (2) the election of the defendant to the office of Speaker contravened section 32 (4) of the Constitution.

HELD section 32 (3) (d) gives to two thirds of the members of the Assembly the absolute right to determine that they would prefer to carry on their business under the Chairpersonship of some other person. This does not deny the Speaker the protection of law. The real purport of section 32 (4) is that there should be no delay in filling the vacancy, and that the event would normally take place at the next sitting. There is nothing to prevent the replacement of the Speaker at the first sitting of the Assembly after a general election provided adequate notice has been given. *Duval v Seetaram* (1991).

H. Vacancy

312. Death of member—The causes of vacancy in the Legislative Assembly listed in subsection (3) of section 35 of the Constitution of Mauritius, read together with section 34, are not limitative and, although the death of a member is not included among those causes, it nevertheless creates a vacancy which is required to be filled in the same manner as any other vacancy. *Babooram v Electoral Supervisory Commission* (1975).

313. Absence from Legislative Assembly—On 2 January 1989, the Attorney-General moved that the Court should determine that the respondent had vacated his seat in the Assembly in terms of section 35 (1) (e) of the Constitution. By the time the judgment in the case was ready to be delivered, the Assembly had been dissolved. The Court nevertheless made observations regarding—

(a) the evidential value of the official record of a sitting of the Assembly regarding the presence or absence of a member;

(b) the right of the Speaker to summon members to a sitting of the Assembly on a certain date even though it had been adjourned to a later date. *Attorney-General v Duval* (1991).

314. Computation of time period—The applicant sought a determination as to whether the seat of the respondent in the National Assembly had become vacant under section 35 (1) (e) of the Constitution. The Assembly sat on 11 occasions between 14 July 1992 and 2 February 1993 and the respondent was absent from all but the last of those sittings. On 9 July 1992 the respondent had applied to the Speaker for leave of absence for a period exceeding 3 months in order to fulfil overseas commitments, and in October 1992 sought a further period of 10 months leave of absence in order to complete studies. The Court found that the respondent did have leave of absence until 28 July 1992 but thereafter he was absent without leave.

The issue was whether the respondent had been absent without leave for 3 months and whether the sitting of 26 January 1992 could be taken into account in computing the 3 months time period as the sitting was an unscheduled sitting called to discuss a matter of public importance at very short notice.

HELD the time period in section 35 (1) (e) does not provide for the exclusion of periods of adjournment. Where a National Assembly member is absent without leave the time period begins to run and stops at the sitting which takes place at the expiry of 3 months. The sitting of 26 January was a colourable device and the period of notice so short and unreasonable that it must be excluded from computation of the 3 months leave of absence. *Attorney-General v Ramgoolam* (1993).

315. National Assembly – Vacation of seat – Constitution section 37—It is established law that Parliament being sovereign No. 1 is authorised to probe into its internal affairs and in the present case to surmise that it is brewing mischief against the applicant. A series of cases from *Lincoln v Governor-General of Mauritius* (1973) to *Keetarut v Prime Minister* (1992) support this proposition.

However, it is significant to note that Counsel for both parties have recognised that the Constitution of Mauritius does not permit the Speaker to declare the seat of any member vacant. In fact, by virtue of section 37 of the Constitution the question of loss of membership is not the internal business of Parliament. It is the Supreme Court that is empowered to determine such a matter.

It is clear that the Supreme Court will act only when an action is brought by one or more of the persons listed in section 37 (4) (a) and (b) to the effect that a member has vacated his seat. It follows that the Speaker or any other member of the National Assembly or any elector of the State of Mauritius can take steps to declare the seat of the applicant vacant on 27 January 1993 or anytime thereafter "only by bringing an action before the Supreme Court" for the purpose of praying the Court to declare that the applicant's seat has become vacant, if the claimant thinks that by virtue of section 35 (1) (e) of the Constitution, the applicant has vacated his seat. The respondent is not entitled to restrain the applicant from attending Parliament without having recourse, in the first place, to the Supreme Court. *Ramgoolam v Speaker of National Assembly* (1993).

316. Contract with Government – Non-disclosure—Section 35 (1) (c) of the Constitution, relating to the causes for which a member of the Assembly should vacate his seat, must be interpreted strictly. The provision relates to contracts entered into by the Government and a firm or company of which the member is a partner or officer cannot be extended to contracts with a trust in which the member has an interest. *Gokulsing v Jugnauth* (1995).

I. Validity of Finance Law

317. Consolidated Fund – Exceptions-National Assembly—The plaintiff contended that the Privatisation Fund (Revenue and Expenditure) Act 1997 was in breach of sections 1, 103, 104 and 105 of the Constitution.

HELD (i) the Fund had been set up, as an exception to section 103, for a specific purpose; (ii) sections 104 and 105 did not apply to the case; and (iii) the Assembly was not being deprived of its power to control public revenue. *Seegobin v Minister of Finance* (1998).

318. Municipal Elections – Unconvicted detainee – Right to campaign and vote—The applicant, a candidate at the municipal elections, sought orders compelling the respondents to release him from detention, to enable him to hold press conferences, to vote and attend at polling stations in the ward and to be present at the counting centre on counting day.

HELD (i) a candidate who is in lawful custody is not on the same footing as his follow candidates and is inevitably deprived of certain rights and privileges he would otherwise have enjoyed. The restrictions on applicant's right to freedom of expression entailed by his detention were reasonable.

(ii) a candidates presence at polling stations and at the counting centre was not indispensable and he could not appoint agents to act for him.

(iii) the right to vote is not absolute. The applicant being in lawful custody was by virtue of section 44 of the Constitution not entitled to vote at the Municipal Council elections. *Fakeemeeah v Commissioner of Police* (2001).

319. Elections – Unconvicted detainee – Right to take oath as councilor—The applicant had been elected at the municipal elections and he sought orders compelling the respondents to release him from detention as to enable him to take the oath as councilor.

HELD since our law does not spell out clearly and exhaustively the rights which a detainee may exercise, the Courts have a large measure of discretion in keeping a proper balance between conflicting interests. The right of a prisoner to take an oath after being duly elected cannot be denied and the exercise of that right is not incompatible with remand pending trial. *Fakeemeeah v Commissioner of Police* (2001).

PART VII – REDRESS

320. Declaratory judgment of Privy Council—The plaintiffs were employees of the defendant. After an arbitration an award was made relating to the plaintiffs' conditions of employment. The plaintiffs applied to have the award made executory but an amendment to the Code of Civil Procedure allowed the Attorney-General to bar applications and as a result the plaintiffs' application was refused by the Supreme Court. The case went to the Privy Council which in a declaratory judgment held that the amendment to the Code of Civil Procedure breached section 3 of the Constitution and that the plaintiffs should be paid the extra salary and allowances which the award provided for. Subsequently the plaintiffs were paid the extra salary but no bonus payments were made. The plaintiffs entered a plaint with summons in the Supreme Court.

The defendants contended – (i) That the Privy Council judgment was declaratory and could not be enforced and (ii) salary and allowances did not include bonus payments.

HELD the plaintiffs did not seek the enforcement of a declaratory judgment, but the payment of bonuses due to them. The terms of reference of the arbitration made it clear that a bonus was included in the term salary and allowances. The action was for constitutional redress under section 17 of the Constitution and was appropriately brought by way of plaint with summons before the Supreme Court. *Mauritius Marine Authority Employees Union v Mauritius Marine Authority* (1989).

321. Legal Aid Act – Constitution sections 10, 17, 81 and 111 – International Covenant on Civil and Political Rights article 14.3 (d)—The plaintiffs were convicted of drug trafficking. Appeals were dismissed by the Court of Criminal Appeal and the plaintiffs applied for leave to appeal as of right to the Privy Council. The plaintiffs however did not have the means to pursue the appeal and sought constitutional redress under section 17 of the Constitution. The plaintiffs contended that failure by the Legal Aid Act to provide for appeals to the Privy Council was a breach of section 10 (2) (d) of the Constitution and article 14.3 (d) of the International Covenant on Civil and Political Rights.

HELD there is no breach of section 10 (2) (d). There may be a breach of article 14.3 (d) of the Covenant but the Supreme Court has no jurisdiction in an application for redress under section 17 of the Constitution to penalise the State for alleged breaches of the Covenant. The plaintiffs must rely on section 83 of the Constitution. They should have proceeded by way of a petition to a Judge in Chambers within 6 months from the omission complained of. *Gulam Rasool v Government of Mauritius* (1989).

322. Sugar Insurance Fund Amendment Act 1988—Until July 1988 the law required metayers to contribute to an annual insurance premium. The 1988 amendment to the Sugar Insurance Fund Act made retroactive provision for the sharing of payment of the metayer's contribution to the general insurance premium between *metayer* and *metayer's* landlord. The plaintiffs, the *metayers'* landlords brought proceedings against the Government of Mauritius to challenge the retroactivity of the amendment under the Constitution. The issue was whether the metayers should be joined in these proceedings.

HELD it would be a costly procedural impediment and would undermine the effectiveness of redress under the Constitution to require all persons who could be adversely affected by the Court's decision to be made defendants in an action. The parties most directly involved and those who can assist the Court in resolving the issues are before the Court. The State could bring the *metayers* as witnesses if it thought necessary. *Philippe Ltd v Government of Mauritius* (1990).

323. Failure by District Court Registry to notify attorney of date of judgment—The plaintiff rented a house owned by some of the defendants. Proceedings were taken to evict the plaintiff for non-payment of rent. A case was heard in April 1991, but the judgment date was postponed. In August 1991 plaintiff sought information from the District Court on the outcome of the case and was informed that in June 1991 judgment had been delivered ordering the plaintiff to pay the overdue rent and vacate the house by September 1991. It transpired that a letter was sent informing the plaintiff's

attorney of the date of judgment but it was not sent by registered post and the plaintiff never received it.

HELD the right to a fair hearing was contravened before the lower Court, *prima facie* enabling a remedy under section 17 of the Constitution. Two alternative means of redress were available – appeal out of time due to administrative failure and an application for a new trial under Rules 62 or 63 of the District Courts (Civil Jurisdiction) Rules. *Vert v District Magistrate of Plaine Wilhems* (1993).

324. Fair trial – Composition of jury—The plaintiff seeks redress pursuant to section 17 of the Constitution on the ground that he has not been afforded a fair trial by an independent and impartial tribunal established by law by reason of—

(i) the fact that the relevant jury list contained 4,000 names although there were some 175,000 persons in employment and some 45,000 income tax payers;

(ii) the fact that the jury list was not compiled according to law.

The defendant says that the plaint cannot be entertained because, first, the matter is "*chose jugée*" and, secondly, because adequate measures of redress against the alleged infringement of the plaintiff's rights have been available to him.

HELD (i) since the Privy Council had affirmed the plaintiff's conviction he could not raise those issues anew, and

(ii) the proviso to section 17 (2) of the Constitution does not permit the Supreme Court to grant redress where it is satisfied that other means of redress were available. *Poongavanam v DPP* (1993).

325. Rules governing plaints for constitutional relief—The new rule 10 of the Rules of the Supreme Court 1903, which appears to permit any party to a suit to apply for particulars of a statement of claim or defence, does not apply to a plaint seeking constitutional relief, which is governed by the rules relating to a plaint with summons. Hence the party in whose presence the plaint had been entered was not entitled to seek particulars of the defendant's plea. *Dinnoo v Minister of Education and Science* (1996).

326. Exhaustion of other remedies—The plaintiff was convicted of abduction and her appeal to the Supreme Court was dismissed. When her application for leave to appeal to the Judicial Committee was set aside she sought redress for an alleged infringement of her constitutional right.

HELD It is not open to a convicted party who has been afforded a fair trial under section 10 (1) of the Constitution and who has exhausted all the avenues open to him to challenge his conviction, to come and challenge that same conviction again under section 17. *Luk Tung v Commissioner of Police and ors* (1997).

327. Mandatory joinder of Attorney-General–The Attorney-General has not been put into cause, in breach of rule 2 (3) (b) of the Supreme Court (Constitutional Relief) Rules 1990 and no reason whatsoever has been advanced as to why (i) the Attorney-General has not been made a party or (ii) no amend

ment has been made at an early stage by the plaintiff's legal adviser to put into cause the Attorney-General, especially after having been put on notice by the defendant's plea *in limine* that all interested parties had not been put into cause.

HELD it is rather late in the day for Counsel of the plaintiff to come before us and pray, in the interests of justice, that the Court should exercise its discretion in favour of his client and allow him to proceed with his application in its present form, the more so as he knows perfectly well that, if he moves to amend his application after some 15 months have elapsed, he will not be able to offer any valid reason for so doing and will consequently fall foul of Rule 2 (2) of the Supreme Court (Constitutional Relief) Rules 1990. *Sahodeea v Electoral Supervisory Commission* (1997).

328. The plaintiff had successfully appealed to the Judicial Committee against decisions of the trial Judge and the Court of Appeal which held that he had not had a fair hearing and quashed the judgment ordering him to pay damages to another person. His subsequent action under section 17 of the Constitution was dismissed because he had had recourse to other means of redress. *Hurnam v State* (2000).

329. Rules of Court – Particulars of complaint—The provisions of the Supreme Court (Constitutional Relief) Rules 1990, which require a person seeking redress to state "with precision" the provision of the Constitution which has been contravened were not meant to limit recourse to the Court and it was sufficient to aver a breach of any one of sections 3 to 16. *London Satellite Systems Ltd v State* (1999).

330. Sufficient interest – Tax payer—The plaintiff claimed that the tax paid by him was used by the State to provide grants to Catholic colleges which practiced discrimination in the recruitment of pupils.

HELD the plaintiff did not have sufficient interest. There is no connection between the status of the plaintiff as a tax payer and the precise nature of the alleged constitutional infringement, namely discrimination under section 16 of the Constitution or impediment in sending to a RCEA school a child of whom the plaintiff "is parent or guardian by reason only that the school is not a school established or maintained by the Government". *Tengur v Ministry of Education and SR* (2002).

331. Constitutional redress by means of an action for judicial review—The applicant, who was in effect claiming redress for breach of his constitutional right to a fair hearing, applied for a judicial review of the ruling of the Magistrate who was holding a preliminary enquiry on the admission of evidence unheard in by the prosecution. It was contended that he should have proceeded by way of plaint with summons.

HELD the procedure of plaint with summons is not the sole avenue under our law for vindicating constitutional rights. The possibility of seeking constitutional redress by means of an action by judicial review is not ousted. *Fakeemeeah v DPP* (2002).

B – CASES LISTED IN ORDER OF PROVISIONS OF THE CONSTITUTION

	Name	Reference
General Reference		
Separation of Powers – Lincoln v Governor-General		1973 MR 290
	Ramgoolam v Speaker	1993 MR 269
	Police v Khoyratty	2004 MR 137
	State v Khoyratty	2006 MR 210
Public Interest – Reufac v Minister of Agriculture		1980 MR 20
Electoral Districts – Roussety v Attorney-General		1967 MR 45
Human Rights – T/Council of Curepipe v Arbitration Tribunal		1966 MR 127
Provision		
1.	Bérenger v Governor-General	1973 MR 215
	Dosoruth v State	2004 MR 230
	Lincoln v Governor-General	1974 MR 112
	Police v Khoyratty	2004 MR 137
	Philibert v State	2007 SCJ 274
	State v Khoyratty	2006 MR 210
	UDM v Governor-General	1990 MR 1181
	Union of Campement Sites Owners v Government	1984 MR 100
	Vallet v Ramgoolam	1973 MR 29
2.	Chung Fook Lung v Mootooveeren	1997 MR 218
	Compagnie Sucrière de Bel Ombre v Government	1994 MR 73
	DPP v Masson	1972 MR 204
	Lincoln v Governor-General	1974 MR 112
	Lincoln v Governor-General (PC)	1982 MR 345
	Mathoorasing v Governor-General	1973 MR 156
	Michel v Commissioner of Police	1992 MR 249
	Ng Yelim v Chinese Chamber of Commerce	1970 MR 125
	Police v Moorbannoo	1972 MR 22
	Police v Rose	1976 MR 79
	Police v Ruhomally	1983 MR 106
	Société United Docks v Government	1981 MR 500
	Union of Campement Sites Owners v Government	1984 MR 100
	Vallet v Ramgoolam	1973 MR 29

Provison	Name	Reference
Chapter II		
	Balloo v R	1969 MR 128
	Duval v Commissioner of Police	1974 MR 130
	Heeralall v Commissioner of Prisons	1992 MR 70
	Jaulim v DPP	1976 MR 96
	Jeekahrajee v Registrar of Cooperatives	1978 MR 215
	Lincoln v Governor-General	1974 MR 112
	Mathoorasing v Governor-General	1973 MR 156
	Michel v Commissioner of Police	1992 MR 249
	Noordally v Attorney-General	1986 MR 204
	Norton v PSC	1983 MR 11
	Payet v Seagull Insurance	1990 MR 347
	Police v Labat	1970 MR 214
	Reufac v Minister of Agriculture	1980 MR 264
	Société United Docks v Government	1981 MR 500
	Société United Docks v Government	1984 MR 174
	Vallet v Ramgoolam	1973 MR 29
	Velle Vindron v R	1973 MR 245
3.	Accountant-General v Baie du Cap Estate	1988 MR 1
	Audibert v Raghoonundun	1980 MR 7
	Babajee v Appadoo	1990 MR 175
	Babeea v R	1981 MR 67
	Babet v R	1979 MR 222
	Bess v Government	1989 MR 150
	Bhewa and Alladeen v Government	1990 MR 79
	Burgus v Jeewon	1999 SCJ 136
	Cathay Garments v Comptroller of Customs	1989 MR 156
	Chetty v R	1982 MR 194
	Compagnie Sucrière de Bel Ombre v Government	1994 MR 73
	Development Bank of Mauritius v Flore	1998 MR 91
	Dosoruth v State	2004 MR 230
	Edath-Tally v Glover	1994 MR 200
	Government Servants Assn v Minister of Finance	1989 MR 287
	Guyot v Government	1991 MR 156
	Hawaldar v Government	1978 MR 37
	Hossen v Dhunny	1972 MR 145

Provision	Name	Reference
	Hurnam v State	2005 MR 243
	Jaulim v DPP	1976 MR 96
	Jeekahrajee v Registrar of Cooperatives	1978 MR 215
	Jogee and Megadama v Government	1993 MR 133
	Labonne v State	2000 MR 65
	Lagesse v DPP	1990 MR 194
	Mahboob v Government	1982 MR 135
	MMA Employees Union v MMA	1989 MR 194
	Noordally v Attorney-General	1986 MR 204
	Norton v Public Service Commission	1985 MR 97
	Paul v Registrar-General	1989 MR 209
	Philippe Ltd v Government	1990 MR 40
	Purryag v MBC	1991 MR 265
	R v Boodhoo	1990 MR 191
	Ramburn v Government	1997 MR 70
	Ramburn v Stock Exchange	1990 MR 67
	Ramdhony v Municipal Council of Vacoas-Phoenix	1995 MR 103
	Ramphul v Stock Exchange	1989 MR 187
	Reufac v Minister of Agriculture	1980 MR 264
	Robenco Ltd v Government	1990 MR 251
	Shamboonath Sewalaye v Sanatan Dharma Temples	1991 MR 1
	Société de Riche en Eau v SIFB	1982 MR 276
	Société United Docks v Government	1981 MR 500
	Société United Docks v Government	1984 MR 174
	State v Hussain Sheik	1993 MR 356
	State v Kanojia and Sheikh	1992 MR 169
	UDM v Governor-General	1990 MR 118
	Union of Campement Sites Owners v Government	1984 MR 100
	Vieillesse v R	1988 MR 233
4.	Amasimbi v State	1992 MR 227
	Union of Campement Sites Owners v Government	1984 MR 100
5.	Babeea v R	1981 MR 67
	Babet v R	1979 MR 222
	Carré v Commissioner of Police	1972 MR 124

Provision	Name	Reference
	Chetty v R	1982 MR 194
	DPP v Indian Ocean International Bank	1989 MR 110
	Hossen v DM Port Louis	1993 MR 9
	Hurnam v State	2005 MR 243
	Islam v Senior District Magistrate, Grand Port District Court (3)	2006 MR 282
	Jeau Export Ltd v Felino (SA)	1993 MR 272
	Karamtally v DM Port Louis and DPP	1991 MR 79
	Kristnamah v DM Grand Port	1990 MR 339
	Motee v R	1969 MR 34
	Noordally v Attorney-General	1986 MR 204
	Norton v PSC	1985 MR 97
	Police v Khoyratty	2004 MR 137
	Police v Labat	1970 MR 214
	R v Boyjoo	1991 MR 292
	Rodolphe v DPP	1983 MR 54
	Samserally v State	1993 MR 94
	Sheriff v DM Port Louis	1989 MR 260
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57.	Bérenger v Governor-General	1973 MR 215
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