

B/536 The Honourable First Member for Port Louis South and Port Louis Central (**Mr Osman Mahomed**)

To ask the Honourable the Attorney-General, Minister of Agro-Industry and Food Security

Whether, in regard to cases of death of detainees whilst in police custody, he will state if consideration will be given for the introduction in the Mauritian judicial system of the investigative judge to investigate therein?

REPLY

1. The District and Intermediate Courts (Criminal Jurisdiction) Act, DIC (CJ) Act provides for a procedure for investigations in connection with violent, suspicious and unnatural deaths. Section 64(1) of the DIC (CJ) Act empowers the DPP to require an inquiry into a crime. Section 64(1) provides as follows:

“64. DPP may require inquiry into crime

(1) The Director of Public Prosecutions may also require a Magistrate to proceed to inquiry and examination into any offence, and on such requisition the Magistrate shall proceed as above provided, whether or not such offence is one of the offences mentioned in section 116 of the Courts Act, and whether or not such offence was committed within his district.

(2) The Director of Public Prosecutions may also require in all criminal cases from any Magistrate or officer any further and additional information, inspection or examination or such other legal matters and proceedings as may be necessary.”

2. Section 110 of the DIC (CJ) Act provides that an investigation may be initiated by a Magistrate in case of violent death when a Magistrate is informed that a person –

- (a) has committed suicide;
- (b) has been killed by another, or by an animal or by machinery or an accident;
- (c) has died under circumstances raising a reasonable suspicion that some person has committed an offence; or
- (d) has died in prison or while custody of the Police, (...)

3. The procedure provided for in section 110 of the DIC (CJ) Act is, in practice rarely used as it is a matter of course for the Police to start an enquiry where there are suspicions in relation of the cause of a death.

4. In cases where a police enquiry is initiated where death is suspected to be of unnatural or suspicious causes, the established practice is for Police to send its file on completion of the enquiry, to the Office of the DPP for advice. The DPP, having studied the file, may where the circumstances warrant it, pursuant to sections 111 and 112 of the DIC (CJ) Act require a Magistrate to hold a judicial enquiry into the death.

5. The independence of institutions involved in the above procedure cannot be questioned given that a police enquiry is under supervision of the Commissioner of Police who has security of tenure under the Constitution and who in the exercise of his responsibilities and powers with respect of the use and operational control of the force, cannot be subjected to the direction or control of any person or authority (vide section 71(4) of the Constitution).

6. Further, the independence of the enquiry into any case of suspicious death is further guaranteed as it is the DPP, who is an independent law officer pursuant to section 72 of the Constitution who will decide whether to require a Magistrate to hold a judicial enquiry. Section 72(6) of the Constitution enshrines the independence of the DPP as follows:

“72(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. In addition to the above, it is worth highlighting that the Magistrate who will hear the judicial enquiry (typically it will be a District Magistrate or a Senior District Magistrate in the District where the death has occurred who will preside the judicial enquiry) is a judicial officer appointed by the Judicial and Legal Service Commission, established under section 86 of the Constitution. The appointment of Magistrates by the Judicial and Legal Service Commission is in itself a guarantee of their independence.

8. Having regard to the above, it is patently clear that the procedure provided for under the District and Intermediate Courts (Criminal Jurisdiction) Act and the mode of appointment and security of tenure of the Commissioner of Police, the DPP and Magistrates undoubtedly ensure that any enquiry conducted under the DIC (CJ) Act bears the hallmark of independence. There is therefore no need to amend the law to provide that police inquiries in case of death in police custody to be conducted under the supervision of a Magistrate.

9. In addition to the above section 4(b) of the Independent Police Complaints Commission Act provides that the Independent Police Complaints Commission shall investigate into the cause of death of a person who died in police custody.

10. On completion of an inquiry, the Police Complaints Commission, may pursuant to section 16 of the IPCC Act refer the case to the Office of the Director of Public Prosecutions or the Disciplined Forces Services Commission for prosecution or disciplinary action, as the case may be.

11. It is also apposite to highlight that the National Preventive Mechanism Act empowers the National Preventive Division of the National Human Rights Commission established under the Protection of Human Rights Act to, inter alia, under sections 4(a) to 4(e) to:

4(a) to visit places of detention on a regular basis so as to examine the treatment of persons deprived of their liberty with a view to ensuring their protection against torture and inhuman or degrading treatment or punishment;

(b) to investigate any complaint which may be made by a detainee and, where the detainee so requests, investigate the complaint privately;

(c) to make to the Minister recommendations regarding the improvement of the treatment and conditions of persons deprived of their liberty in places of detention, taking into consideration the relevant norms of the United Nations;

(d) to submit to the Minister and other relevant authorities proposals and observations concerning legislation relating to places of detention and the treatment of persons deprived of their liberty;

(e) to work, where appropriate, in co-operation or consultation with any person or body, whether public or private, in connection with the discharge of any of its functions under this Act and the Optional Protocol.

It is also noteworthy to highlight that the National Preventive Mechanism Act defines “place of detention” as follows:

“place of detention” –

(a) means any place where a person is or may be deprived of his liberty by virtue of an order given by a public authority or at its instigation or with its acquiescence;

(b) includes a police cell, a prison, a Correctional Youth Centre, a Rehabilitation Youth Centre and a mental health care centre;

It therefore follows that given that a police cell is included in the definition of place of detention, the National Preventive Mechanism Division of the National Human Rights Division is fully empowered to inquire into the matters set out in section 4 of the National Preventive Mechanism Act.

12. In the light of the various procedures set out and in view of their compatibility with the Mauritian legal system, it is unnecessary, to import the foreign concept of investigative judge in our Mauritian jurisdiction.

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Annex A

I– Extracts from the District and Intermediate Courts (Criminal Jurisdiction Act)

50. Inspections and post-mortem examinations

(1) The Magistrate shall make or cause to be made such local inspections as circumstances may require and may make or cause to be made any examination of the person of the accused as circumstances may require.

(2) In a case of homicide a Magistrate may order the performance of a post-mortem examination, and, for the purpose of such examination, may order the body of any person who has already been interred to be disinterred.

110. Investigation in case of violent death

- (1) Where a Magistrate is informed that a person —
- (a) has committed suicide;
 - (b) has been killed by another, or by an animal or by machinery or an accident;
 - (c) has died under circumstances raising a reasonable suspicion that some person has committed an offence; or
 - (d) has died in prison or while in custody of the Police,

he shall proceed or order an officer to proceed to the examination of the body and an investigation of the matter with the assistance of a medical practitioner.

(2) The Magistrate may, in any such case, exercise all of his powers under section 50.

(3) The Magistrate shall forward to the Director of Public Prosecutions the reports of the officer and medical practitioner, together with his own report and any further information bearing on the case.

111. Inquiry into violent or suspicious death

(1) In any of the cases specified in section 110, the Director of Public Prosecutions may (whether before or after receiving from the Magistrate the reports referred to) require the Magistrate to hold an inquiry into the cause of the death and circumstances connected with it, and thereupon the Magistrate shall hold such inquiry and shall proceed to take the depositions of those who know the facts and circumstances of the case.

(2) The depositions shall be taken and recorded as depositions are taken at an inquiry under Part II and all witnesses shall be liable to the same penalties for non-attendance when summoned, and for giving false evidence as any witness in such inquiry.

(3) In holding such inquiry the Magistrate may exercise any of the powers referred to in sections 50 and 110.

(4) Such inquiry shall be held in open Court.

112. Similar inquiries

A similar inquiry shall be ordered by the Director of Public Prosecutions where a person has suffered some grievous bodily injury in consequence of a crime or accident or where the death of a person may have been due to unnatural causes.

II. EXTRACTS FROM THE CONSTITUTION

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.

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.

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.

The Offices set out in the Second Schedule to the Constitution are as follows:

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)

III-Extracts from the Independent Police Complaints Commission Act

4. Functions of Commission

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

- (a) investigate into any complaint made by any person or on his behalf against any act, conduct or omission of a police officer in the discharge of his functions, other than a complaint of an act of corruption or a money laundering offence;
- (b) **investigate into the cause of death of a person who died whilst the person was in police custody or as a result of police action;**
- (c) advise on ways in which any police misconduct may be addressed and eliminated;
- (d) promote better relations between the public and the Police; and
- (e) perform such other functions as may be conferred to it by any other enactment.

16. Completion of investigation

- (1) On the completion of an investigation, the Commission –
 - (a) shall make an assessment and form an opinion as to whether or not the subject matter of a complaint has or may have occurred; and
 - (b) may, where appropriate, refer the matter to –
 - (i) the Director of Public Prosecutions, with a recommendation that the police officer be prosecuted for a criminal offence;
 - (ii) the Disciplined Forces Service Commission, with a recommendation that disciplinary proceedings, or such other action as the Commission considers desirable, be taken against the police officer;
 - (iii) the Attorney-General, with a recommendation that the complainant or his representative be paid such compensation or granted such relief as the Attorney-General may deem appropriate;
 - (c) shall transmit a certified copy of the record of the investigation, together with its observations and recommendations, to the relevant authority;
 - (d) shall inform the complainant of the outcome of the investigation, including such recommendation as may have been made under paragraph (b).

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

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

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

(1) In this section –

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