



# LAW REFORM COMMISSION

## *Issue Paper*

# Social Partnership Framework

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# LAW REFORM COMMISSION

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## **About the Commission**

The Commission consists of –

- (a) a Chairperson, appointed by the Attorney-General;
- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
- (d) the Director of Public Prosecutions or his representative;
- (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
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- (g) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
- (h) two members of the civil society, appointed by the Attorney-General.

The Chief Executive Officer has responsibility for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

## **(A) Introductory Note**

1. Whilst Government and the Private Sector have traditionally worked with NGOs<sup>1</sup>, the economic imperatives of globalization now call for a new partnership between the Government, the private sector and NGOs<sup>2</sup>, the more so as a CSR Fund has recently been established.<sup>3</sup>

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<sup>1</sup> Government funding, in the form of grants and other financial assistance, has been made available to NGOs. There are a variety of direct financing mechanisms available to support NGOs. Vide ‘Assessment report on the review of the legal and Regulatory framework affecting NGOs in Mauritius’ by P.R. Domingue & D. Moore (UNDP, Sept 2007) at pp. 45 seq. Many companies must have supported activities of NGOs having ‘charitable status’, owing to the existence until 1 July 2007 of corporate donor incentives in the income tax regime.

<sup>2</sup> In his 2007-2008 Budget Speech, the Minister of Finance and Economic Development had this to say [at paragraphs 183-186] on the need for a new partnership model:

“Whilst Government will certainly do its share and we are committed to use our growing fiscal space to help the neediest, I am calling today for a new model. I would like to invite the private sector to forge a partnership with Government and NGOs to expand the reach and effectiveness of a national effort to assist those who cannot help themselves.”

<sup>3</sup> In his 2009 Budget Speech, the Minister of Finance announced (at paragraphs 253-254) that:

“NGOs have a key role to play in our efforts to protect the population and improve our society. I, therefore, welcome the offers from the private sector to spend some of their profits on Corporate Social Responsibility (CSR) schemes. However, the response and implementation have been uneven. I am, therefore, requiring all profitable firms to either spend 2 percent of their profits on CSR activities approved by Government or to transfer these funds to Government to be used in the fight against poverty. The CSR program or the direct payment to Government could provide some of the resources to underpin the efforts of the Ministry of Social Security to build up a strong NGO community through the development of the four pillars mentioned earlier (at para 181) in the budget speech.

Some of the projects that the CSR programs could undertake by supporting NGOs include

- Literacy
- Social housing
- Life skills training
- Micro enterprises
- Support to improve academic performance and reduce drop outs
- Aids prevention and support
- Assistance to women and children in need or abused
- Assisting the handicapped
- Alcohol and substance abuse prevention and rehabilitation
- Promoting Arts and Crafts”.

The Income Tax Act was amended by Finance (Miscellaneous Provisions) Act by the addition of a new section 50L entitled “CSR Fund”

### **50L. CSR Fund**

- (1) Every company shall, in every year, set up a CSR Fund equivalent to 2 per cent of its book profit derived during the preceding year to –
  - (a) implement an approved programme by the company;
  - (b) implement an approved programme under the National Empowerment Foundation; or
  - (c) finance an approved NGO.

2. It is increasingly recognized world wide that NGOs are important actors in building necessary social consensus for economic reforms and long term development, in promoting effective governance by fostering transparency and accountability of public institutions, and in efforts to fight inequality and exclusion. NGOs also have an increasingly critical role in the direct delivery of social and economic services, and in improving natural resource management and environmental protection through collective action.<sup>4</sup> The current needs of the country call - on the part of NGOs - for a professionalized approach to social service delivery, improved organizational and project planning/management capacities, improved accountability to both funding agencies and constituents; financial independence and sustainability and a move beyond service delivery to partnership with government and the private sector in policy formulation, implementation and monitoring.
  
3. The Commission is of the opinion there is a need for an institutionalized platform for dialogue and partnership amongst the sectors, which goes beyond the mere setting-up of committee to administer the CSR Fund. The current framework of co-operation is grossly inadequate. Whilst it must be reckoned that the beneficial role of NGOs is increasingly

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- (2) A programme under subsection (1)(a) or (b) or an NGO under subsection (1)(c) shall be deemed to be an approved programme or an approved NGO, as the case may be, where it falls within the guidelines issued, with the approval of the Minister, by a committee set up under subsection (3).
  - (3) The committee referred to in subsection (2) shall be appointed by the Minister and shall consist of a Chairperson and not more than 6 other members comprising of representatives from the public sector, private sector and civil society.
  - (4) Where, in respect of a year, the amount paid out of the CSR Fund under subsection (1) is less than the amount provided under the Fund, the difference shall be remitted to the Director-General at the time the company submits its return of income under section 116.

<sup>4</sup> It is apposite to refer to Article 23 of SADC Treaty which stipulates as follows:

1. In pursuance of the objectives of this Treaty, SADC shall seek to involve fully the people of the region and non-governmental organizations in the process of regional co-operation.
2. SADC shall co-operate with, and support the initiatives of the peoples of the region and non-governmental organizations, contributing to the objectives of this Treaty in the areas of co-operation in order to foster closer relations among the communities, associations and people of the region.

being recognized,<sup>5</sup> there still lacks a comprehensive Government policy towards NGOs. Government has so far interacted with NGOs on an ad hoc basis.<sup>6</sup> Whilst companies are

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<sup>5</sup> These are some of the measures announced in the 2008 Budget speech regarding areas of collaboration between Government and NGOs:

- (1) Government in its resolve to eradicate absolute poverty, will ensure that no child of school age is left out of school; to that end it will partner with NGOs to provide counselling to parents [para 223];
- (2) To help families living in the 229 pockets of poverty (comprising 7,157 families) across the island, Government will partner with NGOs for them to implement programs based on the needs of each family and each family member in the pockets of poverty; NGOs will be responsible for individual issues and for specific families [para 225];
- (3) Government will work with NGOs and the private sector to expand the integrated housing project at bamboos to Cité Lumière and other pockets of poverty [para 227];
- (4) Government wants to help NGOs assisting patients afflicted by cancer and Alzheimer [para 281];
- (5) Provision to NGO schools and day care centres for disabled children with special education needs, like APEIM, APDA and CEDEM, is increased by 20 percent [para 282];
- (6) Fund to the Ministry of Social Security is being provided for a 20 percent increase in the capitation fee for elderly persons in charitable institutions [para 283];
- (7) Government will work in close collaboration with NGOs and with support from UNAIDS and the World Bank to implement the National Multi-Sectoral HIV and AIDS Strategic Framework. Overall spending on this item is increased by 50 percent from Rs 32 million to Rs 48 million. Within this amount, funds are provided to allow NGOs on the frontline to expand their reach. PILS will receive Rs 1.5 million, Chrysalide Rs 1.2 million and Idriss Goomany Centre Rs 1 million. In addition the HIV/AIDS and Substance Abuse Programme, available to support NGOs campaigns, is being expanded from Rs 10 million to Rs 15 million. The additional funding should increase the number on anti-retro-viral treatment to 500 from 300 last year; allow 2,000 users to benefit from needle exchange compared with 700 last year; and place 2,500 on methadone substitution therapy compared with 700 last year [para 284].

In the 2009 Budget the following measures were announced:

- (1) To ensure sustainability of small businesses initiated mostly by women, the National Empowerment Foundation is introducing a mentoring service to be delivered by capable NGOs and private consultants on a cost-sharing, performance-based arrangement. These mentors will assist the small enterprises in setting-up and developing their marketing capabilities as well as their competencies in managing their Businesses [para 76];
- (2) The Decentralised Cooperation Programme will support, inter alia, the efforts of the Ministry of Social Security to build up a strong NGO community through the development of four pillars:
  - building capacity of NGOs;
  - providing adequate financial/technical and human resources to support NGOs in programme implementation;
  - setting up of a professional corps of volunteers for NGOs to tap into; and
  - an appropriate monitoring and evaluation system for programmes [para 181].
- (3) DCP will continue supporting various projects by non-state actors and local governments such as basic education, upgrading of social infrastructure and services [para 182];
- (4) To support NGOs efforts, Government will refund VAT for construction that have been undertaken under programmes approved by the NEF [para 183].
- (5) Government remains very committed to face down the problem of HIV/AIDS. We will continue to work in close collaboration with NGOs and with support from development partners on this problem including combating alcohol and substance abuse. Despite the pressure on public finances due to the crisis, the same exceptional level of support is provided as the year before. Funding will continue flowing to those NGOs that have been on the forefront to continue their excellent work. PILS will receive Rs 750,000 and Idriss Goomany Centre Rs 500,000. In addition the HIV/AIDS and Substance Abuse Programme, available to support NGOs campaigns, will receive Rs 7.5 million [para 207];

willing to collaborate with NGOs, they know only a few NGOs very well and are not in a position to evaluate and appreciate the work of the big majority.<sup>7</sup>

## **(B) The Rationale for an Institutionalized Framework**

4. The setting up of an institutionalized framework would constitute the recognition of the complementary roles of the sectors in the socio-economic development of the country, and that the NGO sector is fundamental to the development of a democratic, socially inclusive society. Voluntary and community groups, as independent, not-for-profit organizations, bring distinctive value to society and fulfill a role that is distinct from both the state and the market. They enable individuals to contribute to public life and the

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- (6) To help NGOs assisting patients afflicted by cancer and Alzheimer, I am providing Rs 500,000 each to Link to Life and the Alzheimer Association on an annual basis [para 208];
  - (7) The exceptional level of support to assist women and children in need is maintained. Chrysalide Centre will receive Rs 600,000 for 2009, the Shelter for Women and Children in distress Rs 750,000, SOS Villages Rs 4.2 million, Crèche Coeur Immaculé de Marie Rs 1 million and CEDEM Rs 1.1 million [para 214];
  - (8) The Ministry of Women is working with the Ministry of Social Security and NGOs to develop a comprehensive program to offer shelter and support to Women and children who need assistance [para 215].

<sup>6</sup> As was pointed out in the Assessment Report by P.R. Domingue & D. Moore, “Review of Legal and Regulatory Framework affecting NGOs in Mauritius” [UNDP, Sept 2007] at pp. 50-51:

“To promote healthy NGO/Government cooperation, many countries have found the development of policy documents critical. Policy documents in this context might include a wide range of written documents, including a unilateral government strategy or a bilateral compact, charter, or program for cooperation. Whatever the specific tool, the goal is to develop a clear, comprehensive policy framework, which acts as a form of official recognition of the important relationship between NGOs and Government. The specific objectives of policy documents may vary, but might include, for example, (1) to outline principles of cooperation and define parameters of partnership, (2) to encourage public participation in political life, or (3) to establish mechanisms for cooperation to ease the burden on government of delivering public services. We are aware of no such overarching NGO/Government policy document in Mauritius, nor of ministry-specific policy documents for cooperation with NGOs. Policies adopted towards NGOs have rather been worked out on an ad-hoc basis, and when the need for its formulation has been felt.”

<sup>7</sup> Deloitte’s CSR Study, Draft Final Report on “Review of Corporate Social Responsibility policies and actions in Mauritius and Rodrigues” [14 December 2007], at p. 52.

development of their communities by providing the opportunity for voluntary action. In doing so, they engage the skills, interests, beliefs and values of individuals and groups.

5. There are economic, political and social factors for a greater co-operation amongst the sectors:
  - (a) Multilateral Organizations (such as World Bank, IMF) and Western donors now have less faith in the ability of governments and markets to deliver;
  - (b) Increased need for and/or reduced national budgets to meet the demands of health, social welfare, education and other sectors, leading to a government desire to “share the burden”;
  - (c) Increased ability of the voluntary sector to attract funding to support delivery of basic services;
  - (d) Government recognition of the lower cost and added value of voluntary sector (compared to other sectors, e.g. private);
  - (e) Advent of a new era leading to an increased desire and ability for government to expand the role played by civil society and its citizens;
  - (f) Partnerships between the NGO, the private sector and the State are often seen as the most effective way of solving increasingly complex socio-economic problems;
  - (g) Social capital (the increased will and capacity of citizens to engage in public affairs) is increasingly seen as an essential accompaniment to economic growth and development;
  - (h) The NGO sector is motivated by public benefit, not purely by profit;
  - (i) Inclusive and pluralist decision-making is recognised as a tool for generating vital social consensus around new policies/reforms.
  
6. The potential benefits from such a closer co-operation amongst the sectors would include:
  - (a) Clarifying and strengthening the relationship between the sectors leading to better focus and greater public awareness of social needs;
  - (b) Mobilisation of greater combined resources to solve social problems;

- (c) Better targeted programmes and services due to decision making being closer to beneficiaries.
7. Such co-operation entails a commitment on the part of Government and the private sector for resource allocation policies towards the non-profit sector, and for the NGO sector to adhere to mechanisms of accountability.
  8. It must be emphasized that such partnership and dialogue amongst the sectors should be rooted in 'benefit to the society' rather than 'mutual benefit to the partners' and should centre on the concept of equity. Norms must stipulate that partnerships contribute to strengthening of social safety nets in disadvantaged settings and should be set within the context of 'social responsibility' as the idea is not meant for private funds to be put to public use nor to privatize public responsibilities.

### **(C) Choice of Institution**

9. A platform for dialogue and partnership amongst the three sectors can take different forms. It can be either (a) a committee (or Council) established by legislation or by agreement amongst the stakeholders and entrusted with a mandate, or (b) a body corporate established by legislation. This is a matter for the stakeholders to decide upon.
10. The form which the institution may take will very much depend on the objects and functions, which the stakeholders want to ascribe to this institution. If funds are to be vested in the institution by Government and the private sector for social projects, then the

corporate form would be more appropriate. Were it to be the case, the existence and/or role of the NGO Trust Fund would have to be considered afresh.<sup>8</sup>

11. The Commission has considered whether the platform for dialogue and partnership amongst the three sectors should exist on its own or should not rather be integrated within the NESC [the National Economic and Social Council]<sup>9</sup>, and is of the opinion that it should exist on its own.

#### **(D) Representation of Stakeholders in the Institutionalized Platform**

12. The manner in which the three sectors [Government, the Private Sector and the NGO Sector] are represented is a critical issue for the efficient functioning of the institutionalized platform.

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<sup>8</sup> The NGO Trust Fund has been established under section 24 of the Finance and Audit Act [Finance and Audit (Non-Governmental Organisation Trust Fund) Regulations 1999 (GN 50/1999)] , with the following objectives: to consider and approve application for assistance from NGOs; to finance, wholly or partly, services and projects of NGOs which have been approved by the managing Committee. The Committee consists of (a) a chairman appointed by the Minister; (b) a representative of the Ministry responsible for the subject of finance; (c) a representative of the Ministry responsible for the subject of education; (d) a representative of the Ministry responsible for the subject of economic development; (e) a representative of the Ministry responsible for the subject of health; (f) a representative of the Ministry responsible for the subject of social security; (g) a representative of Mauritius Council of Social Services; and (h) 2 persons involved in social work appointed by the Minister.

<sup>9</sup> The objects of the NESC are: (a) to promote dialogue as a means of achieving consensus for social integration to keep pace with economic development; (b) to express its opinions, and make appropriate recommendations to Government, for the promotion of social integration and national development.<sup>9</sup>

Its functions are inter alia: (a) to undertake studies on socio-economic issues of national importance; (b) to build consensus through a permanent and sustained social dialogue for a greater participation of society in the democratic process with the aim of ensuring that social harmony keeps pace with economic development; (c) to formulate its opinions and make recommendations to Government regarding economic and social policies.<sup>9</sup>

The Council has three Commissions: a Commission on Economic Affairs; a Commission on Infrastructure, Physical Resources, Environment and Sustainable Development; and a Commission on Social Affairs and Human Resource Development]. The Commissions have the power to initiate the carrying out of any research or studies and can prepare reports, and can set up Working Groups.

13. Both central and local government would have to be represented. Representatives from central government would certainly comprise the Head of the Civil Service, the Financial Secretary, the Permanent Secretary from the Ministry of Social Security and would also have to include Ministries having dealings with NGOs. Representatives from municipal council, district council and from Rodrigues Regional Assembly would also have to be involved in the process. Government can also ensure that International Donor Organizations are represented.

14. The private sector would certainly be represented by the Joint Economic Council<sup>10</sup>, whose members are:

- Mauritius Chamber of Commerce and Industry
- Mauritius Chamber of Agriculture
- Mauritius Employers' Federation
- Mauritius Sugar Producers' Association
- Mauritius Export Processing Zone Association
- Mauritius Bankers' Association
- Mauritius Insurers' Association
- Association des Hôteliers et Restaurateurs de l'île Maurice
- Association of Mauritian Manufacturers

SMEs too would have to be involved in the process.

15. The NGO sector representation should reflect the diversity of that sector and would have to include informal community groups [CBOs: Community based Organisations]. Representatives of the NGO sector should have wide support in the sector and a mechanism should be established for guaranteeing the rotation of them after some time. It

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<sup>10</sup> The Joint Economic Council has adopted in 2001 a Model Code of Conduct for Directors and Employees of Private Sector Companies, which expressly lays down that “participation by directors and employees in community activities and civic affairs is encouraged” and that “the company supports charitable organizations and encourages directors and employees to do likewise”.

is a matter for NGOs (those engaged in public interest activities) to determine who would be their representatives and would voice their concerns. NGOs may have, in the first instance, to create a common platform for policy dialogue. A CSI [Civil Society Index] study can certainly shed light on this issue of appropriate NGO representation.

### **(E) Objects and Functions of the Institutionalized Platform**

16. This is a matter for the stakeholders to reflect upon. The objects and functions of the institutionalized platform would certainly encompass the following:
- (a) To provide the forum for Government/Private Sector (Business) Sector/NGO Sector to engage in a civil dialogue on economic and social policies (including poverty reduction strategies) thereby developing a participatory approach to decision-making<sup>11</sup>;
  - (b) To clarify the responsibility of Government towards vulnerable groups in society and in providing social safety nets;
  - (c) To consider the achievements and activities of the NGO Sector, its participation in the delivery of social services and its needs in terms of capacity-building;
  - (d) To encourage businesses to promote corporate social responsibility practices and adhere to the UN Global Compact<sup>12</sup>;
  - (e) To broker corporate social responsibility relations between businesses and NGOs;

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<sup>11</sup> For conceptual clarity, a fine line needs to be drawn distinguishing between social dialogue and "civil dialogue". Whereas social dialogue focuses on the labour market as shaped by economic and social policy, and has clearly recognizable actors and an agenda, civil dialogue seeks to enable consultation between public authorities and community groups, non-governmental organizations or other interest groups. The general goal of civil dialogue is to foster a more inclusive society.

<sup>12</sup> A network of 2,900 companies, along with governments and civil society organizations, that promotes responsible corporate citizenship. See <http://www.unglobalcompact.org>  
It is reported in Le Mauricien issue of 12 December 2007 that six Mauritian companies had signed the UN Global Compact.

- (f) To elaborate a Social Compact, to be supplemented by Codes of Practice<sup>13</sup>, which recognizes the role of each sector in the development process, their distinctive values and roles, and sets the framework for the relationship to develop, including the establishment of liaison offices between the sectors;
- (g) To discuss and reach collaborative agreements about social projects [as regards formulation, monitoring and evaluation of social projects with key performance indicators for each project] and to promote social entrepreneurship.<sup>14</sup>

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<sup>13</sup> The English Compact (1998) is the agreement between the government and the voluntary and community sector in England to improve their relationship for mutual advantage. The Compact also includes various codes of good practice - on black and minority ethnic groups, community groups, consultation and policy appraisal, funding and procurement, and on and volunteering. These spell out the rights and responsibilities which government and the voluntary and community sector should reflect in their relationships to make them work. Local areas are now producing local codes of good practice as part of Local Compact development work to better reflect local priorities. The Scottish Compact (2003) is an agreement between the Scottish Executive, its Agencies and Non-Departmental Public Bodies (NDPBs) and the voluntary sector on the principles of working in partnership. It is based on a mutual understanding of the distinctive values and roles of the Executive and the voluntary sector. Its aim is to develop robust relationships for the wider public good.

<sup>14</sup> A social entrepreneur is someone who recognizes a social problem and uses entrepreneurial principles to organize, create and manage a venture to make social change. Whereas business entrepreneurs typically measure performance in profit and return, social entrepreneurs assess their success in terms of the impact they have on society. For years the work of social entrepreneurs often passed unnoticed in the outside world. Now that is changing. John Elkington, the Chief Entrepreneur of SustainAbility, a consultancy company dealing with social responsibility and sustainable development issues had this to say:

“Social entrepreneurs are set to have a profound impact on the world’s most complex societal and environmental challenges. Their impact may be limited by their current scale, but could be limitless with the right business partners.”

The Schwab Foundation for Social Entrepreneurship, created by World Economic Forum founder Klaus Schwab, organizes annual summits. Its latest report noted:

“Social entrepreneurs can help a company bridge the delicate balance between returning profits to shareholders and upholding its social responsibilities.”

Several developments indicate the rise of social entrepreneurship in public awareness:

- *Microfinance*. The success of microfinance is highlighting social entrepreneurship as a poverty-reduction tool with global impact.
- *Education*. Leading academic institutions, such as Oxford and Harvard Universities, are introducing social entrepreneurship courses and opening their own social entrepreneurship centres. Graduates from top business schools and senior business executives are starting to see the non-profit sector as an attractive career option.
- *Events*. Social entrepreneurs are invited to high-profile events such as the World Economic Forum alongside some of the world’s richest and most influential people. Several awards and competitions have been set up to identify and fund the most successful social entrepreneurs.
- *Philanthropy*. While development philanthropy is becoming increasingly fashionable, the ineffectiveness of some charity spending has brought onto the scene “philanthropic intermediaries”, some of them businesses, to advise donors on the organizations which can best help them tackle social problems. These intermediaries often recommend social entrepreneurs as the implementing partner.

17. There seems to be consensus as to the areas in which the three sectors can collaborate: Education, Health and Quality of Life, Poverty Reduction, Community Development, Leisure and Sports, Environment and Sustainable Development.

### **(F) Concluding Remarks**

18. We trust the establishment of an institutionalized platform for partnership and dialogue between Government/international donors, the private sector and NGOs would help achieve economic progress in a spirit of social inclusiveness and we recommend accordingly