

SECOND READING
THE EQUAL OPPORTUNITIES (AMENDMENT) BILL
AT THE SITTING OF THE NATIONAL ASSEMBLY ON
TUESDAY 29 NOVEMBER 2011

Mr Speaker, Sir,

I beg to move that the Equal Opportunities (Amendment) Bill (No XXII of 2011) be read a second time.

Mr Speaker, Sir,

The Equal Opportunities Bill was debated in the House on the 16th December 2008 and adopted.

However it was not proclaimed.

I have explained why on a few occasions in reply to parliamentary questions.

Let me, Mr Speaker, Sir, give some details why this amendment is being brought today.

The underlying philosophy when the law was passed was that there would be four different Divisions under the supervision of the National Human Rights Commission. Government, at the time, did not want to create a multiplicity of institutions. It was then felt that the creation of divisions within the Commission would provide greater cost effectiveness and efficiency.

The Equal Opportunities Division was given multiple responsibilities namely:-

- To build a better society, free of prejudice with fair chances for all, guaranteeing every single person gets treated with decency, dignity and respect.
- To protect people from unjust and unequal treatment.
- To ensure that every person has an equal opportunity to attain his or her objectives in various spheres of activities.
- To achieve social, cultural and economic stability.
- To ensure that no person is placed, or finds himself or herself, at a disadvantage, by reason of his or her status, namely, his or her “age, colour, creed, ethnic origin, impairment, marital status, political opinion, race, sex or sexual orientation”.

However, while we were looking at the details of the implementation of the new legal, institutional and administrative structure of the National Human Rights Commission, we found that we might not attain the objectives we set.

The Protection of the Human Rights Bill itself was being re-looked at as well as the National Human Rights Commission in the context of the restructuring exercise.

The UNDP also made new suggestions. For example, the UNDP felt that more NGOs should be involved in the National Preventive Division.

It was becoming more evident, that the whole legislation would be more complex and that in these circumstances there was a real risk that the Equal Opportunities Division, which was to be one of the four divisions falling under the umbrella of a restructured National Human Rights Commission, would be diluted in its effect.

During the debate on the Bill, the Honourable Leader of the Opposition made some suggestions. One of the suggestions was that the Equal Opportunities Division should not be mixed with the National Human Rights Commission.

The more we looked at the restructuring of the National Human Rights Commission, the more this seemed to be a valid suggestion.

Given such a huge responsibility, it is now felt that an independent Commission to promote equal opportunities will be most suitable to meet the objectives of the new legal framework. In a society, rich in diversity as ours, it is important for the organization to stand on its own in order not to give the impression its importance is being minimized - the more so that the Act will apply to both the public and private sectors. At the same time, it will receive greater acceptance for its work from the public.

Mr Speaker, Sir,

As the House is aware, the Equal Opportunities Act is a law which will have far reaching consequences for our society and proper planning and

foresight are needed for its long term implementation. It is precisely for these reasons that amendments are being brought to the Equal Opportunities Act in order to create a full-fledged Equal Opportunities Commission standing on its own instead of an Equal Opportunities Division forming part of the National Human Rights Commission.

Mr Speaker, Sir,

Allow me now to outline the salient features of the Bill:

- Clause 7 of the Bill provides for section 27 of the Act to be amended to provide for the establishment of an Equal Opportunities Commission which shall be a body corporate and which shall consist of a Chairperson and 3 other members;
- The Chairperson shall be a person who has been –
 - (i) a Judge; or
 - (ii) a Magistrate for not less than 10 years; or
 - (iii) a law practitioner for not less than 10 years; or
 - (iv) a Magistrate and a law practitioner for an aggregate period of not less than 10 years.
- One of the members shall be a person who has been a law practitioner for not less than 5 years.

- The other members shall be persons having knowledge and experience in the field of law, employment, industrial relations, sociology or administration.
- The members shall be appointed by the President of the Republic, acting on the advice of the Prime Minister after consultation with the Leader of the Opposition, on such terms and conditions as the President thinks fit.
- Every member shall hold office for a term of 4 years and shall be eligible for reappointment.
- Clause 8 of the Bill seeks to insert a new section 27A in the Act which will provide for the staff of the Commission. The Secretary to the Cabinet shall make available to the Equal Opportunities Commission an officer of the rank of Principal Assistant Secretary who shall be the Secretary of the Commission, and such other administrative and other staff as the Commission may require.
- The Commission may also recruit staff on contract for the proper discharge of its functions.
- Clause 10 of the Bill amends section 35 of the Act to provide that a complaint shall only be heard and determined by the Tribunal if the person making the complaint has waived his right to initiate civil proceedings before any Court in Mauritius in respect of the facts that form the subject matter of the complaint. This clause will prevent forum-shopping by complainants who want to obtain

maximum compensation. In any case, those who are not satisfied with the order of the Tribunal may appeal before the Supreme Court.

As I have explained earlier, what the amended subsection (5) of section 35 seeks to do is to prevent duality of action. There is nothing in the existing subsection (5) to prevent a complainant, after bringing a case before the Equal Opportunities Tribunal and obtaining monetary compensation, from lodging another case before a Court, in respect of the same subject matter.

It is anticipated that such instances will arise. Therefore, the spirit behind the new subsection (5) is simply to prevent a person from claiming compensation twice for the same alleged harm. This would be unfair, it would also clog the system and you might as well get two different findings.

I am advised that the words “civil proceedings” used in the proposed new subsection (5) are to be given their plain meaning and would not extend to claims for constitutional redress. However, I have been made aware of a judgement of the Supreme Court where the Supreme Court stated that “civil proceedings include constitutional proceedings”.

In order to remove all doubt, specially after the judgment of the Supreme Court and following certain observations from the legal profession, particularly from Mr Yousouf Mohamed, Senior Counsel, that have appeared in the Press recently on the Equal Opportunities (Amendment) Bill (L'abandon du droit à recourir à la justice). I have discussed the matter with the Attorney-General, the Solicitor General and the Principal

Parliamentary Counsel. In order to avoid any doubt and to make matters clearer I have circulated an amendment to be brought at Committee Stage.

Therefore, in regard to Clause 10 of the Sub Clause 5(a), it is proposed to introduce a paragraph (c) as follows: "Civil proceedings" does not include an application made under Section 17 or 83 of the Constitution.

Hence, "civil proceedings", in this Section, shall not include applications for constitutional redress.

Finally Clause 11 of the Bill seeks to amend section 36 of the Act to provide for higher penalties for committing contempt of the Equal Opportunities Tribunal set up under the Act.

Mr Speaker, Sir,

The Equal Opportunities Commission will have the latitude to conduct its business in all independence. It will be an organisation offering a wide range of services including guidance to an exchange of good practices with various target groups. The Commission will thus have greater independence, power and autonomy in exercising its role of putting an end to any bias within the Mauritian society. It will have far reaching benefits on the national as well as international front.

As a national human rights institution, it should not operate in isolation whilst addressing human rights problems like discrimination. It will have to work effectively as part of an overall framework of democratic institutions. Consideration should be given to the interrelationship of all human rights institutions in their functioning. As such, the Equal Opportunities

Commission will be called upon to partner through collaborative arrangements like international coordination, exchange of information and joint implementation with national as well as international human rights institutions for its own effectiveness and efficiency.

Mr Speaker, Sir,

The benefits to be derived from the creation of an Equal Opportunities Commission are enormous. It will reinforce the democratic set up in our country. This will ensure respect for democracy as enshrined in the Constitution. Institutions in a democracy cannot function in isolation but should be inter-dependent in order to achieve the objectives set. This cohesion and interrelationship is best seen through partnership arrangements with human rights stakeholders such as training and sensitization programmes conducted by my Office with the Attorney-General's Office, the National Human Rights Commission and Amnesty International.

The new organisational structure for the National Human Rights Commission with its three divisions and the Equal Opportunities Commission will respond to the growing expectations of the public for an equitable, fair and just society.

On the international front, Mauritius stands to gain international recognition as a serious trade and political partner which has respect for human rights and where there is social cohesion.

Mr Speaker, Sir,

The battle for political and social emancipation has always been at the core of our political “raison d’être”.

Our policy thoughts and actions will always be guided by our unflinching commitment to social justice.

Let there be no doubt about the importance that this Government attaches to the promotion and safeguard of human rights !!

Let there be no doubt about our commitment to combating discriminations in all its forms, promoting equality of opportunity and enhancing social justice.

The independent and dedicated Equal Opportunities Commission that we are setting up to ensure the effective implementation of the Equal Opportunities Act clearly demonstrates the political will and determination to take bold and ambitious actions to transform Mauritius into an exemplary opportunity society.

And we have shown, that we believe in democratic debate and do take on board any suggestions made by the Opposition which can improve our laws.

Mr Speaker, Sir,

“Putting People First” was not simply an empty vote – catching slogan as some would have it.

It will always be a fundamental philosophy underpinning all the actions of my Government.

With these words, I commend the Bill to the House.
