



## **National Integrity System**

# **Transparency International Country Study Report**

**Mauritius 2007**

## Report Author

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All material contained in this report was believed to be accurate as of 2007.

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## List of People Interviewed

Mrs Chauvin, Mayor of the town of Rose Hill  
Mr Boyramboli, Permanent Secretary, Ministry of Local Government  
Mr Isram, Chief Executive Officer, Municipality of Beau Bassin/Rose Hill (BB/RH)  
Mrs Marshall, Personnel Section, Municipality of BB/RH  
Mr Jugernauth, Director of Audit  
Mr Rahman, Electoral Commissioner  
Mr Sanhye, Assistant Director, FIU  
Mr Seebaluck, Head of the Civil Service  
Mr Ah Sen, Assistant Legal Advisor, ICAC  
Mr Gobin, Chief Legal Advisor, ICAC  
Mrs Manrakhan, member of the Board of the ICAC  
Mr Emrit, member of the Board of the ICAC  
Mr Ujoodha, Director General of the ICAC  
Mr Kooloomuth, Chief Registrar, Judiciary  
Ms Deerpalsing, Member of Parliament for the majority coalition and member of the Public Accounts Committee  
Mr Purryag, Speaker of the National Assembly  
Mr Bhagwant, Chairman of the Central Tender Board  
Mr Meetarbhan, Editor in Chief of [Mauritian daily newspaper] *L'express*  
Mr Ahnee, Editor in Chief of [daily newspaper] *Le Mauricien*  
Mr Salaroo, manager of Le Défi Media Group  
Mr Hattea, Ombudsman  
Mrs Dindoyal, Director, Internal Affairs, MRA  
Ms Jugmohan, Director [Designate, Tax Payers Services], MRA  
Mr Khadun, Deputy Commissioner, NTA  
Mr Gopalsingh, Police Commissioner  
Mrs Narain, Assistant Parliamentary Counsel, Attorney-General's Office  
Mr Namdarkhan, State Counsel, Attorney-General's Office  
Mr Bodha, parliamentary opposition leader, MSM  
Mr Cuttaree, MMM Member of Parliament and President of the Public Accounts Committee  
Mr Makhoond, JEC  
Mr Koenig, Administrative Executive, Harel Frères  
Mrs Boolell, business lawyer  
Mr Rey, IBL  
Mr Morellec, Franco-Mauritian Chamber of Commerce  
Mr Teyssedre, Franco-Mauritian Chamber of Commerce  
Mr Boodhoo, former editor in chief for the weekly *Sunday Vani*  
Mr Hookoom, Chief Registrar of Associations  
Mr Bizlall, trade unionist and member of the Anti-Corruption Action Group  
Mr Taylor, former Chief Executive Officer of Rogers Group

## Abbreviations

AU	African Union
CCID	Central Criminal Investigation Division
CEO	Chief Executive Officer
CTB	Central Tender Board
DFSC	Disciplined Forces Service Commission
DPP	Director of Public Prosecutions
EBC	Electoral Boundaries Commission
EC	Electoral Commission
ECAM	Economic Crime and Anti-Money Laundering Act
ECO	Economic Crime Office
ESC	Electoral Supervisory Commission
EU	European Union
FIAMLA	Financial Intelligence and Anti-Money Laundering Act
FIU	Financial Intelligence Unit
FRC	Financial Reporting Council
ICAC	Independent Commission Against Corruption
IRP	Independent Review Panel
IRS	Integrated Resort Scheme
JEC	Joint Economic Council
JLSC	Judicial and Legal Service Commission
LGSC	Local Government Service Commission
MLP	Mauritius Labour Party
MMM	Mauritian Militant Movement
MRA	Mauritius Revenue Authority
MSDP	Mauritian Social Democratic Party
MSM	Mauritian Socialist Movement
NIS	National Integrity System
NTA	National Transport Authority
ORC	Operational Review Committee
PAC	Public Accounts Committee
PC	Police Commissioner
POCA	Prevention of Corruption Act
POTA	Prevention of Terrorism Act
PS	Permanent Secretary
PSC	Public Service Commission
ROSC	Report on the Observance of Standards and Codes
RPA	Representation of the People Act
SADC	Southern African Development Community
SEM	Stock Exchange Mauritius
TI	Transparency International
UNDP	United Nations Development Programme

## About the NIS Studies

### What Is the NIS?

The National Integrity System encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of TI's holistic approach to combating corruption.<sup>1</sup> While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. The NIS studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

### Why Conduct NIS Studies?

The purpose of each NIS study is to assess the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries. They can also be carried out at the regional level, thus producing an Integrity Study.

The studies provide a starting point for signalling areas requiring priority action. They also form the basis from which stakeholders may assess existing anti-corruption initiatives. Integrity studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. Integrity studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the integrity system.

The studies create a sound empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development.

For Transparency International, Integrity Studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 70 such studies have been completed as of August 2007.

TI believes that it is necessary to understand the provision for and capacity of the integrity pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. Integrity Studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

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<sup>1</sup> Details of the NIS can be found in *The TI Source Book* 1997 and 2000 and the *TI Anti-Corruption Handbook* (Berlin: Transparency International [TI], 1997, 2000), [www.transparency.org](http://www.transparency.org).

## **Methodology of the Integrity Studies**

The Integrity Studies offer a qualitative assessment of the integrity system in a country or region. The studies are based on both objective and subjective sources of data, which differ in quantity in each country or region evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the Integrity Study. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g. lawyers, accountants and engineers), media and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the integrity system and to comment on the draft Integrity Study. The results of the meeting then inform further revision of the Integrity Study.

Each Integrity Study is reviewed by an external expert referee.

## Executive Summary

The Republic of Mauritius ('Mauritius'), which achieved independence in 1968, became a republic in 1991. The country has a solid history of democracy. The Constitution determines the rules of operation of Mauritian democracy and protects it. It guarantees a multi-party system as well as respect among all for the rule of law. The political system has remained relatively stable since independence. With the exception of the 1970s, which saw the declaration of a state of emergency and the postponement of elections, legislative elections are organised regularly and allow for rotation of power.

Since the 1990s, the state of Mauritius has spent a long time looking for the appropriate legislative formula for eradicating corruption. This chequered legislative history took a new turn with the adoption of the Prevention of Corruption Act (POCA) in 2002. This law applies to all civil servants and people invested with public authority (members of Parliament, ministers, members of commissions created by the Constitution etc.). It created the Independent Commission Against Corruption (ICAC), the institution responsible for investigating acts that are likely to violate the provisions of the law. It is the main player in the fight against corruption in Mauritius.

The members of the Mauritian executive (president, vice-president, ministers), who are invested with public authority, are subject to the POCA. Several ministers have been accused of acts of corruption in judicial proceedings over the last few years thanks to investigations by bodies charged with ensuring observance of the law on corruption.

The legislature plays an important role in the fight against corruption within public institutions. The monitoring work of the Public Accounts Committee (PAC) on the effectiveness of the management of public finances coupled with the power of members of Parliament to question the relevance or transparency of the activities of members of the executive mean that members of parliament are an essential element in ensuring that the National Integrity System (NIS) functions properly.

However, the absence of a legal framework covering the financial activities of political parties as well as the corrupting behaviour of certain candidates are both elements that damage the very foundation of the Mauritian NIS. The Electoral Commission has no power to monitor the transparency of the financial activities of parties and their candidates. This role of watchdog over the potential corruption of candidates during elections is assigned to the judiciary.

The most likely occasion for corrupt transactions is in the awarding of public contracts to private enterprises. A succession of laws has been introduced in a bid to find the appropriate formula to avoid this pitfall. The Public Procurement Act was introduced in 2006 to replace its immediate predecessor. As this law is new, its provisions had not yet been implemented at the time this report was prepared. It is difficult, therefore, to judge its effectiveness.

The POCA's scope for intervention is very limited with respect to corruption in the private sector. Voluntary initiatives on the part of the private sector, aiming at the adoption of methods of good governance, is currently the preferred approach to tackling this phenomenon.

All public administration employees are subject to the POCA and obliged to ensure complete transparency and independence in carrying out their duties. However, certain public administration departments are still regarded as extremely corrupt. Long-term work is under way at various levels to address this phenomenon (code of conduct, information about the POCA, legal prosecutions, etc.)

The media sphere in Mauritius is highly dynamic. Nevertheless, access to public information is difficult for journalists and therefore their room for manoeuvre is limited in terms of exposing acts of corruption. In addition, given that the press lacks the financial and human resources to launch spontaneous investigations into alleged cases of corruption, it can only follow the flow of information and try to ensure there is no cover-up of information.

There is a general awareness in Mauritius that has been emerging over some years of the importance of arranging the necessary means to fight corruption. This phenomenon can be noted in the legislative means the state has made available, in the review of internal procedures to make them more transparent and in private initiatives undertaken to attempt to find additional resources to fight against the various forms of corruption that exist in the country. However, a number of measures still need to be taken to fine-tune the overall anti-corruption system. Some key reforms are necessary in order to put an end to corruption.

## **Summary of Recommendations**

- Establishment of a legal framework covering the financial activities and functioning of political parties and adoption of a system for funding political parties.
- Introduction of a Freedom of Information Act to facilitate access to public information for all.
- Extension of the requirements for asset declaration to civil servants holding key posts in the public contracting system.
- Strengthening the resources available to the judicial system (human, financial and specialist training) in order to combat corruption more effectively.
- Introduction of amendments to the POCA ensuring the establishment of a supervisory body for the investigative work of the ICAC and extending the law's applicability to everyone (private individuals, election candidates, advisors).

## Country Profile

Mauritius is an Indian Ocean state, independent since 1968. It became a republic in 1991. Its territory covers the islands of Mauritius, Rodrigues and the Agalega islands.<sup>1</sup> This report focusses on the prevailing situation on the island of Mauritius.

The history of Mauritius is one of several colonisations: by Holland, France and finally Britain. Around 1,200,000 Mauritians live on this island on a restricted landmass, making it one of the most densely populated countries in the world. At the time of independence, the Mauritian state furnished itself with a Constitution guaranteeing a strict separation of powers and governing all the fundamental aspects of the operation of Mauritian democracy.

## The Population

The Mauritian population originates from different parts of the world. Immigration is linked with the economic history of the country: the descendants of the settlers from Europe, the descendants of the slaves principally from Madagascar and Mozambique. A second stage of its population took place with the arrival of large groups of 'coolies' from pre-independence India to work in the sugar cane fields and whose descendants stayed in Mauritius. There have also been various periods of Chinese migration.

This great diversity is a distinctive cultural feature that plays a large role in society. It is also important for politicians, who have to deal with individuals with diverse sensitivities, religions, languages and therefore identities in their work.

This distinctive cultural feature is also one of the foundations of the Mauritian social structure and is an incontrovertible element of it, creating 'communities' that are officially recognised in the Constitution.<sup>2</sup> The Constitution recognises the existence of four communities: Hindu, Muslim, Sino-Mauritian and the general population. These communities have a feeling of belonging and create social relationships linked to internal obligations of protection and promotion of the group, of the 'community' to which all Mauritians belong.

## Political History

After a long period as a British colony, Mauritius achieved independence in 1968. The country has a solid democratic history, the result of regular elections. The multi-party system is guaranteed, as is respect among all for the rule of law. In 1991, Mauritius became a republic with a president as its head of state.

The political system has remained relatively stable since independence (with the exception of the 1970s). Legislative elections are held regularly and allow for periodic rotation of power. Four large parties have been the main players on the political scene since independence. Depending on circumstances, they create successive political alliances to win elections and exercise power.

## Framework for Economic Development

Mauritius has a developed public infrastructure (road networks, water supply networks, electricity and telephone networks). The Mauritian welfare state has been fulfilling its role to date by providing free primary and secondary education and free healthcare services as well as a wide range of social welfare benefits for the most vulnerable members of society (retirees, disabled people, etc.)

For a long time, the Mauritian economy has been dependent on the vitality of raw goods (with the cultivation of sugar cane) and textile production (with the setting-up of numerous manufacturing plants thanks to the consolidation of the tax-free zone in the 1980s).

The good health of these two job pools was the principal motor of the economy (together with tourism, the third source of employment and income). It guaranteed almost full employment into the 1990s while at the same time ensuring massive use of a low-skilled workforce. The combination of these phenomena created what was called an economic boom and contributed to the fact that Mauritius is regularly quoted by international donors as a model country.

This economic framework, relying mainly on the existence of preferential agreements (notably with the European Union and the United States), is today being called into question. Reconsidering these agreements therefore requires that the state of Mauritius find a new economic identity within the context of international competition. As a result, Mauritius is currently in a state of economic transition. In a bid to find new economic sectors sufficiently dynamic to ensure the sustainability of Mauritian development, priority support has been given to the creation of other sectors, notably the offshore sector, which has experienced significant growth, and the Business Processing Outsourcing sector.

## Corruption Profile

Three main studies have been carried out on the perception of corruption in Mauritius in the last ten years. The following discussion presents some of the conclusions from these studies in order to understand better the national context in which the fight against corruption fits.

The attitude of Mauritians with regard to corruption in general, but also when these practices can be directly linked to personal advantage, is an essential element to take into account in order to ensure the effectiveness of the institutional mechanisms for the prevention of corruption. In addition, perception studies allow those sectors to be targeted that are, according to the general public, the most hit by corruption in order to be able to reform how they operate. Thus, some information contained in these studies will be used in different sections of this report.

In 1998, the research institute Analysis carried out a study on the perception of corruption in Mauritius using a representative sample of 500 people.<sup>3</sup> During the same year, the De Chazal Du Mée (DCDM)<sup>4</sup> business school carried out a more specialised study on the perception of corruption in the business sector. A third perception study was undertaken by the StraConsult Institute at the request of the ICAC in 2004.<sup>5</sup>

## Public Tolerance of Corruption

One of the conclusions emerging from these three studies is the general tolerance of corruption or favouritism among Mauritians when these practices are of benefit to the interviewee. People are quick to condemn corruption in general, but less so when it allows them to benefit directly from some kind of advantage.

Within the private sector, 37 per cent of managers questioned believe that corruption is generally accepted and tolerated in this sector but that it is not indispensable in terms of ensuring the success of economic activities. A genuinely ambiguous attitude towards corruption appears in the results of this study. In fact, 85 per cent of those interviewed say that they do not tolerate corruption while 61 per cent of them admit that corruption has a direct impact on the performance of their activity.

In addition, in the Analysis study a significant proportion of respondents said they would agree to receive money in exchange for their vote, or other advantages in exchange for their support for a candidate.

In 2004, 58 per cent of people interviewed said that they would report a case of corruption if they knew about it. But 30 per cent of people think whistle-blowers risk creating difficulties for themselves and 22 per cent fear possible reprisals.

## The Sectors Considered Most Corrupt

The conclusions of the above-mentioned reports are similar on the sectors considered most corrupt. In all three studies customs, the police and the National Transport Authority (NTA) are cited as being the most corrupt. Corruption is considered most common in the awarding of contracts to private enterprises, while ministers and politicians are considered the most corrupt individuals.

The general public's opinion of private sector practices is also very negative: according to the study commissioned by the ICAC in 2004, 28 per cent of respondents think the private sector operates in a corrupt manner and 54 per cent think the private sector is little or in no way involved in the fight against corruption.

## Public Opinion on Corruption

One of the most relevant findings on corruption in general is a conclusion of the study commissioned by the ICAC, which showed that corruption is considered to be the country's biggest problem (20 per cent of respondents), ahead of unemployment and drugs. This information shows the extent of the problem as well as the need to tackle it as a matter of urgency.

Still more worrying is the fact that 42 per cent<sup>6</sup> of the people questioned think the corruption problem will worsen over the coming years and 25 per cent do not think the problem will be resolved. Only 32 per cent of those surveyed think levels of corruption will drop.

## **The Effectiveness of Legal Measures**

In 2004, 29.5 per cent of those questioned believed the existing anti-corruption laws to be suitable and effective, compared to 26 per cent who thought the opposite.

Of those questioned, 20 per cent considered the laws to be adequate but insufficiently applied. In addition, 32.8 per cent of those questioned (who have not received a university education) think that certain individuals are above the law regardless of the effectiveness of these laws. This last figure illustrates well the prevailing perception of impunity in the country with regard to corruption.

# Anti-corruption Activities

## A Chequered History

For many years, no law dealt specifically with corruption in Mauritius. Nevertheless, certain corrupt practices were included in the Mauritian Criminal Code. Sections 126, 128 and 132 of the Criminal Code criminalised certain corrupt practices involving civil servants, for example the act of requesting, of being offered or of accepting a gift, payoff or promise to influence the civil servant's work or for the latter to refrain from doing something. Article 125 addressed conflicts of interest of civil servants who use their office for their own interest.<sup>7</sup> However, the scope of application of these Criminal Code provisions was limited and the offences were too difficult to prove for the provisions to be genuinely effective.

In 1993, the Anti-Corruption Tribunal Act tried to reinforce the legal instruments to fight corruption and to widen the applicability of the law to all officers of a public body – i.e. those exercising or invested with public authority, notably members of parliament, local government civil servants, elected members of local authorities and members of commissions created by the Constitution. This law also created a tribunal to investigate allegations of corruption. Once again, however, as several cases were not covered in the law, reform of this law has been necessary to close the loopholes.

In 2000, the National Assembly drew up the Economic Crime and Anti-Money Laundering Act (ECAM), which for the first time criminalised money laundering and aimed to tackle crimes of an economic nature (including corruption and fraud). An Economic Crime Office (ECO) was put in place to ensure respect for this law and to investigate allegations of money laundering as well as alleged acts of corruption.

The relative stability of the legal instruments created to fight corruption witnessed chaotic acceleration in the five years after the creation of the ECO, as follows:

- 1993 to 1998: The Anti-Corruption Tribunal Act is in operation.
- July 2000: The ECO is created.
- August 2000: The ECO investigates two government ministers accused of corruption. Early elections are organised, leading to a new political team in government. The ECO continues its work of tracing cases corruption.
- October 2001: A Select Committee (special committee composed of national experts and members of parliament) on fraud and corruption is set up.
- December 2001: The ECO is abolished following an amendment to the Constitution.
- 2002: The legal framework is heavily modified by the adoption of the POCA, the Prevention of Terrorism Act (POTA) and the Financial Intelligence and Anti-Money Laundering Act (FIAMLA). The POCA is adopted, creating the Independent Commission Against Corruption (ICAC). The first members of the ICAC replace the ECO.
- 2005: A new government is elected. The POCA is amended.
- 2006: The POCA is amended again and new members are appointed to the ICAC.

## Other Legal Dispositions

Corruption linked specifically to certain sectors of activity is included in various legal provisions separate from the POCA,<sup>8</sup> notably:

- Section 55 of the Courts Act criminalises bribery of a jury.
- Section 14 of the Central Tender Board Act criminalises the attempt to influence a board member.
- Section 11 of the Local Government Service Commission (LGSC) Act criminalises the attempt to influence the functioning of this commission.
- Section 6 of the National Assembly Act addresses corrupt practices linked to the work of members of parliament.

- Section 24 of the Police Act prevents a police officer from accepting favours during the course of his/her work.
- Sections 64 and 65 of the Representation of the People Act define electoral corruption and condemn attempts to influence the smooth running of the electoral process.
- Rule 5 (1) of the Public Service Commission Regulations criminalises the attempt to corrupt a member of this commission.

## International and Regional Instruments

Mauritius is a party to the United Nations Convention against Corruption (UNCAC). The state is also signatory to the United Nations Transnational Organised Crime Convention (UNTOCC). At the regional level (Southern African Development Community, African Union), several treaties have also been developed and signed to fight corruption more effectively.

These international treaties create obligations and standards the member states must respect, for example the independence of the bodies charged with investigating acts of corruption, monitoring political party finances and the criminalisation of corruption within the private sector.

## Overview of the Prevention of Corruption Act

The POCA, passed in 2002, is the main legal tool in the fight against corruption in Mauritius. This law applies to all civil servants and people invested with public authority (members of parliament, ministers, members of commissions created by the Constitution, etc.). It applies also to individuals or agents who could act as intermediaries in a corruption case.

As a complement to the FIAMLA, this law reinforces the means necessary to sustain the fight against corruption, money laundering and the financing of terrorist activities. It provides for punishments of up to ten years in prison.

Articles 4 to 17 specify the offences that fall within the scope of this law. The main provisions that criminalise corrupt practices are as follows:

- Request for a favour made by a public officer for him-/herself or another person to carry out or not carry out an action that is dependent upon his/her work or position. The favour can take the form of a gift, payoff or any other form of advantage.
- Bribery of a public officer for the reasons set out above.
- Bribery of a public officer to avoid punishment.
- A public officer using his position for personal interests.
- Bribery of someone to influence decision-making by a public body.
- Influencing the work of a public officer by means of violence, pressure or threats.
- Influence peddling to obtain a job, contract or other form of advantage from a public body.
- Bribery to influence the awarding of contracts.
- Bribing an intermediary: this provision criminalises a person's requesting or accepting a favour to influence the work of another person.
- Conflicts of interest (if the public officer has interests in a company with which his/her institution does business) must be declared, subject to risk of imprisonment.

In addition, this law establishes the Independent Commission Against Corruption (ICAC), the institution responsible for investigating acts in violation of the law. This commission is also responsible for the prevention of corruption by educating the public and civil servants about the provisions of the law. It also carries out assessments of the administrative procedures implemented in the public sector to make them more transparent and more effective in the fight against corruption. Finally, it helps carry out research on corruption.

In addition to its anti-corruption activities, the ICAC is responsible for drafting certain reports that fall under the FIAMLA, on money laundering activities and the financing of terrorist activities linked to corruption. To do this, it works in partnership with the Financial Intelligence Unit (FIU), whose role will be explained later in this report.

The law creating the ICAC does not allow the commission to be completely autonomous in its investigation of alleged corruption cases. The commission does not have the power to arrest suspects. During its investigations, it therefore must call on the police commissioner in order to carry out a formal arrest. Similarly, the ICAC does not have access to the bank accounts of suspects without the involvement of the judiciary. Thus, the commission's fight against corruption is conducted with the collaboration of various pillars of the NIS. Without this collaboration, the ICAC would not be able to complete its investigations. This limiting of the ICAC's room for manoeuvre helps avoid situations of possible abuse during investigations (victimisation of certain people, omnipotence of the commission, etc.).

Certain loopholes are apparent in the POCA's scope for intervention. The law does not cover certain managers in key positions, notably international consultants in ministerial posts. Thus the term 'public officer' does not cover consultants and experts sent by international organisations such as the United Nations, the World Bank, etc. Some of these experts, however, carry out their consultancy or project implementation tasks within organisations responsible for important contracts such as the construction of a hydraulic reservoir, the planning of port zones, etc.

A second loophole in the POCA is the difference in treatment between the public and private sector as far as acts of corruption are concerned. Thus, although within the private sector people can be prosecuted as a result of the term 'officer' being defined by law (private intermediary perpetrating an act of corruption against the wishes of his/her superior), the acts criminalised by this law remain extremely limited in comparison with the provisions covering civil servants. In addition, if acts have been committed with the agreement of one's superior, they are no longer considered an offence.

Another important loophole in this law appeared after a legislative amendment ended the activities of the Operational Review Committee (ORC) in 2005.<sup>9</sup> This committee was responsible for monitoring the investigative work of the commission, therefore acting as an external counterweight. This committee, composed of about ten members including the police commissioner, was charged with monitoring the work of the commission on investigations launched. It could request reports from the leadership of the ICAC on the reasons why investigations had been stopped, thus ensuring that it would be impossible to bury certain matters. Following this legislative amendment, the committee (along with three others) was dissolved but has not been replaced by any other type of external counterweight. Thus, in 2007, in accordance with the POCA currently in force, no organisation can question the administrative council of the ICAC about the reasons why certain preliminary investigations have been stopped nor about how its work is conducted. More detailed investigations can only be stopped with the agreement of the Director of Public Prosecutions (DPP). This situation creates a very large loophole in terms of the transparency of the activities of the commission.

# National Integrity System

## Executive

Mauritius is a republic with a president as its head of state. However, the president has a secondary role in the exercise of political power and only the government is charged with governing the country. In articles 58 to 75, the Constitution defines the roles and functions of various members of the executive in Mauritius.

Following legislative elections, the president of the Republic is responsible for naming the prime minister, the deputy prime minister and the cabinet ministers. The chosen prime minister is traditionally the head of the party or of the alliance that won the legislative elections.

The president is elected by the Parliament on the proposal of the prime minister. The presidential mandate is for 5 years and is renewable. The National Assembly approves the presidential budget. In 2005–06 it was MUR 26,500,000 (USD 871,900). The vice-presidential budget was MUR 6,650,000 (USD 213,000).<sup>10</sup>

The ministerial Cabinet, whose membership cannot exceed 24, is accountable to Parliament, which can pass a motion of no confidence against the sitting government. Each minister holding office is responsible for managing the services of a ministry, whose budget is allocated every year by the National Assembly. Only the office of the Attorney General (or minister of justice) can be held by someone who has not been elected in legislative elections.

As the ministers are invested with public authority, they are subject to the POCA. In addition, they are accountable to Parliament and to the citizens of Mauritius for the activities of their ministry. Ministers are obliged by law to declare their assets at the time they take office. This declaration also takes into account the assets of their immediate families (spouse, minor children).<sup>11</sup>

In recent years, several ministers have been accused in corruption cases as a result of investigations by the Economic Crime Office (ECO) and then the Independent Commission Against Corruption (ICAC). These prosecutions have sent a serious signal to the whole of the political class, putting an end to what many considered a situation of complete impunity. As mentioned above (see 'Corruption Profile'), the conclusions of the ICAC study on the perception of corruption in Mauritius showed that the general public saw ministers and members of parliament as actively involved in corrupt practices. Similarly, 32.8 per cent of those questioned (who have not received a university education) thought that certain individuals were above the law regardless of the effectiveness of these laws.

Former minister Vishnu Bundhun was convicted for accepting a bribe in the awarding of a contract.<sup>12</sup> His case is currently under appeal. Other investigations are in progress (directly or indirectly) that implicate ministers (previous or current office holders), but these have not yet resulted in judicial prosecutions.

These recent cases implicating members of the Mauritian executive show the will to put an end to the impunity that has prevailed (or which was seen as such) in this sector. The fact that some of these cases have ended in convictions proves that no one in Mauritius is above the law.

In the fight against corruption, cleaning up the executive is closely linked to the work of the ICAC, which, with the police, is charged with investigating acts of corruption. The other pillars that have a direct relationship with the executive are: the legislature, through the right of members of parliament to question the legitimacy of executive activities (parliamentary questions); the judiciary, the main guarantor of respect for the laws; and the press, the ultimate protection against the impunity of members of the executive.

## Legislature

### The Mauritian Electoral System

Mauritian democracy is often cited as exemplary in comparison with neighbouring countries on the African continent. It is characterised by a multi-party system, regular elections and political stability. Four parties have dominated the post-independence years: The Mauritius Labour Party (MLP), the Mauritian Militant Movement (MMM), the Mauritian Socialist Movement (MSM) and the

Mauritian Social Democratic Party (MSDP). There are also other weaker parties on the Mauritian political scene.

Legislative elections are held every five years. Mauritius is divided into 20 constituencies. Electors vote for three candidates in each constituency. The 21<sup>st</sup> constituency is the neighbouring island of Rodrigues.

The Mauritian electoral system is inspired by the British first past the post system. Thus, in each constituency the three candidates who have received the greatest number of votes are elected. The absence of proportional representation results in stable parliamentary majorities. However, the losing party (or alliance) may win a significant share of the vote but be under-represented in Parliament.

Citizens who have reached the age of 18 can vote in a secret ballot. The turnout at elections is always high, close to 80 per cent. The election has a single round. At the last legislative elections, 71 parties participated, with 535 candidates running for the 70 parliamentary seats.

The Mauritian Parliament comprises a single chamber of 70 members, of whom 62 are directly elected in Mauritius's 21 constituencies. Another eight members of parliament are chosen to fill the 'corrective' seats based on their membership of a particular community. Thus, the 'Best Loser System' allows those members of parliament with the most votes who have not been elected to enter Parliament, depending on their community. Thus, after the election results, the Electoral Commission is responsible for calculating the extent to which each community is represented in Parliament and then allocating these 'corrective' seats to candidates from under-represented communities (in proportion to their size at the national level). This particular feature of the Mauritian electoral system was implemented at the time of independence to ensure fair representation in Parliament of the diverse cultural communities in Mauritius.

## **Administration of Parliament**

In addition to being an assembly of members, the Parliament is also an administration. This administration is responsible for informing the public about everything to do with the work of the Mauritian Parliament: dates of parliamentary sessions, content of parliamentary questions, laws that are going to be debated etc. On the Parliament's Internet site, the administration of this institution has published a Citizen's Charter in which the values the administration wishes to uphold in its daily business are set out. Integrity and transparency have a prominent place in the charter.<sup>13</sup>

As with all civil servants, people working for the Parliament are subject to the POCA. The budget for the administration of the Parliament is approved each year by the National Assembly. In 2005–06 it was around MUR 70 million (USD 2,300,000).

## **Work of the Parliament**

The Parliament draws its power from the Constitution, which, in chapter 5, stipulates the general rules for the operation of the legislature in Mauritius (role of the speaker, cases when a person cannot be an member of Parliament, etc.). More precise regulations governing the work of members of parliament and the chamber are contained in the Standing Orders of 1995 and the National Assembly Act (Privileges, Immunities and Powers) of 1982. They set the framework for the work of members of Parliament as well as their rules of conduct.

The work of Parliament to pass laws is complemented by the work of three permanent parliamentary committees: The Standing Orders Committee, the Public Accounts Committee and the Legislative Committee. These committees are responsible for work relating to particular aspects of parliamentary business such as analysing the annual public expenditure and revision of the provisions of the Standing Orders.

Other ad hoc parliamentary committees can be created to advise Parliament on certain issues. The members of these special committees can be members of the judiciary or specialists whose expertise is relevant to the work to be carried out. Two special committees or Select Committees especially relevant to the NIS are the Select Committee on the Funding of Political Parties and the Select Committee on Fraud and Corruption.

## Parliamentary Obligations

### *Asset Declaration*

Members of Parliament are obliged by law to declare their assets at the time they take office. This declaration also takes into account the assets of their immediate families (spouse, minor children).<sup>14</sup> Any interests a member of Parliament may have in private enterprises must also be included in this declaration to avoid any possible conflict of interest. Under oath before the Supreme Court, members of Parliament certify a written declaration stating that the information contained in this declaration is true and complete. If their assets increases or decreases by MUR 100,000 (USD 3,290), a new declaration must in principle be made.

If the information given in the declaration is inaccurate, the member of Parliament incurs a fine of MUR 50,000 (USD 1,645) or a prison sentence of maximum two years. The declaration of assets is passed to the ICAC but is not made public.

### *Code of Conduct and Regulations*

As they exercise public authority, members of Parliament are subject to the POCA. There is no specific code of conduct for the behaviour of members of Parliament. However, they must respect the provisions stipulated in the Standing Orders of Parliament and in the Representation of the People Act (RPA). If, for example, a member of Parliament is in a situation of conflict of interest, s/he must declare it to the Speaker or to Parliament.

Section 6 of the National Assembly Law (Privileges, Immunities and Powers) states the rules of procedure for meetings and covers all scenarios in which the member of Parliament commits an offence in relation to these rules. The list of prohibited behaviour is long, for example: refusing to respond to official questions arising from the working committees of the assembly, refusing to obey an order of the assembly, striking or insulting a member of the assembly during meetings, directly or indirectly receiving money or a gift to oppose or support a law.

These laws and regulations also protect members of Parliament in their work to monitor and question the executive. They enjoy immunity from prosecution for everything they say or write during parliamentary debates or committee work while they are sitting in the Assembly. They are therefore free to question ministers or ask delicate questions without fear of being prosecuted for defamation.

## Parliament and Public Expenditure

Every year, members of Parliament are responsible for approving the budget for public services. The vote takes place after numerous parliamentary sessions during which members of Parliament from the majority alliance and the opposition can debate the budget and the economic policy pursued by the sitting government. Parliamentary questions, which can be asked throughout the year, are therefore a way of querying the relevance and effectiveness of certain public expenditures.

The parliamentary working committee on public expenditure, or Public Accounts Committee (PAC), is composed of nine members, five of whom are members of the majority alliance in power. The president of the committee is traditionally a member of the parliamentary opposition.

The role of this committee is to examine the conclusions of the Audit report each year and to ask for clarifications on situations the committee considers not to conform with sound financial practice (waste of public funds). Members of the committee seek to understand the reasons behind differences between the amount allocated for the fiscal year and the sum actually spent and track down waste of public funds. They can ask high-level civil servants in departments targeted in the Audit report to provide key documents and give views on the reasons for leakage of funds. They then submit a report to Parliament on the conclusions of their investigations. This report is made available to the public.

Given that its activities take place downstream of the chain of financial activities (and therefore after the funds have been squandered), the PAC cannot step in to prevent bad financial practice. In addition, having no power to sanction, their work to improve the management of public funds can only be effective through their intimidation of civil servants as a result of the seriousness of their work. To date, the PAC has not referred a single case it considered suspect to the ICAC for investigation.

In the fight against corruption in public institutions, which can cause waste of public funds, the legislature, through the work of the PAC, is closely linked to the work of the Audit Office.

With respect to financial scandals or cases of corruption that can damage the reputation of public figures (ministers, members of Parliament, leading civil servants), members of Parliament can question the officials concerned by means of parliamentary questions to ask for clarification. In addition, a special parliamentary committee is responsible for supervising the administrative work of the ICAC. Members of Parliament therefore play an essential role in ensuring that the National Integrity System functions properly.

## Political Parties

The various elections (legislative, local government and village council) prompt the appearance of myriad political parties, some of them launched purely for the occasion. Since independence, a few large parties have occupied a predominant place in the political life of Mauritius, namely the MLP, the MSDP, the MMM and the MSM.

### Legal Framework and Structure of the Parties

Each party has its own internal structure defined by statutes. The largest parties share the same structure: a political committee, a central committee, an annual conference and regional branches. The authority of the leader of the party is absolute. S/he takes the decision on the nomination of candidates, the creation of alliances and the means of funding the party.<sup>15</sup> The parties also appoints individuals to manage internal party business. Thus, the treasurer, for example, could be asked to hand over the account books to the political office in cases of suspected embezzlement; however, this never happens in practice.

There is no legal framework covering the activities of political parties in Mauritius. The Constitution only stipulates that parties must be registered with the Electoral Commission during an election. The National Assembly Elections Act of 1968 gives details of the registration process (forms, signatures, etc.) But these rules only apply during election periods. Between elections, no specific rule applies to political parties, for example a legal obligation for audited accounts. This legal void and the total absence of accounting obligations are the main problems with fighting the lack of financial transparency that prevails in political parties. As a result, any unsound financial practices are completely legal.

### Funding and Expenditure of Political Parties

#### *Electoral Expenses*

The Representation of People Act (RPA)<sup>16</sup> fixes the maximum amount for authorised expenses during an election campaign at MUR 150,000 (USD 4,935) for a party candidate, and MUR 250,000 (USD 8,200) for an independent candidate.

A declaration of campaign expenditure must be made before a magistrate by candidates or their political agents. This declaration must be complete and accurate. Any candidate that does not respect these provisions can be fined MUR 1,000 (USD 33), an amount that is today considered insignificant.

The maximum authorised amount for expenditure is completely out of date and has not been modified. This situation leads candidates to act illegally, forcing them to lie during their official declaration. In practice, the amount spent by a candidate for legislative elections exceeds the authorised amount by at least ten times.

Maintaining 'bases', a kind of general headquarters where party (or alliance) members meet in the constituencies, is one of the main electoral expenditure, along with the hiring of cars for members to travel, campaign posters and the plastic party flags used to decorate rooves, walls, street lighting, trees, etc. The number of bases fluctuates according to the size and political importance of the constituency, but can be about 20 per constituency. These bases are created as soon as the elections are officially announced and are maintained until the end of the electoral period. Maintaining bases includes food and drink for the members, who stay there day and night.

To make operations less opaque, a Select Committee on the Funding of Political Parties was created in 2004 to propose reforms. This Select Committee commissioned a study from the Central Statistics Office to estimate the total amount needed for an election campaign today. Based on the

conclusions of this study, a new authorised expenditure threshold of MUR 1 million (USD 32,900) was proposed. This proposition has yet to be adopted.

### *Funding Sources*

The funding of political parties is completely obscure because no legal provision imposes clear rules of transparency. The candidate and the party seek private funding (family, close relatives, companies etc.). Support for a party or candidate may come in cash or in kind (T-shirts, paying for posters, car hire, etc.).

It is not possible to determine who has funded whom and in what amounts. This complete lack of transparency has always been a source of concern in terms of the genuine independence and ethics of elected candidates in relation to their 'benefactors'. It raises the question of the accountability of elected candidates to those who have funded them and of the indirect means of repaying the favour. This situation represents fertile ground for unsound practices, for example in the awarding of public contracts.

### *Initiative of the Mauritian Private Sector*

During the last legislative elections in 2005, the Joint Economic Council (JEC), which brings together the main representative bodies of the Mauritian private sector (such as the Chamber of Commerce and Industry, the Chamber of Agriculture, the Employers' Federation, the enterprises of the tax-free zone, etc.), decided for the first time that its members would write checks to political parties. The principle was to abandon cash funding in order to promote transparency through the traceability of funding sources.

Moving in the same direction, the codes of ethics and good governance recently adopted by the Mauritian private sector stipulate that companies must publish the total sum that they have given to parties during an electoral campaign.

### *Sachs Report*

The Sachs report (2001–02) recommending reforms to the Mauritian electoral system<sup>17</sup> mentions changes necessary to reform the funding of political parties. The conclusions of this report have been taken one step further thanks to the work of the Select Committee on the Funding of Political Parties. Reform proposals have been presented, but Mauritian politicians have yet to reach consensus on the rules governing party financing.

## **Corrupt Practices of Candidates during Elections**

The activities of candidates during elections are not governed by the POCA because, not yet elected, the candidates are not invested with any public authority. However, another law stipulates certain forbidden practices that would violate electors' freedom to vote and thus prevent genuinely free and fair elections. The Representation of People Act defines certain corrupt practices, such as bribing someone to withdraw his candidacy, offering money or any other benefit (work, gifts, drink, food, etc.) in exchange for a vote or a non-vote before or after an election (section 64) or influencing how someone votes through threats or violence. These provisions of the law had never been used to convict in court a candidate accused of corruption until 2007. In that year, Supreme Court judges invalidated the election of a politician on the grounds of bribery of voters by a candidate. This conviction is currently under appeal. As argued in *L'express*:

The Supreme Court judges Lam Shang Leen and Domah have created enormous waves in our electoral practices this week. By declaring invalid the election of Ashok Jugnauth in July 2005, the Supreme Court has pronounced for the first time on practices constituting an offence of 'bribery' under the Representation of the People Act (RPA).<sup>18</sup>

And also,

They declare that he violated articles 45 (1) (a) (ii) and 64 (1) of the RPA. Ashok Jugnauth was found guilty of corrupt practices for having promised Muslims in constituency No. 8, in return for their vote, a plot of land worth MUR 2 million in Constance, Saint-Pierre, and which is earmarked to be laid out as a cemetery. He was also found guilty of corruption for having recruited voters in the constituency to work in hospitals (he was Minister of Health) in the run-up to the elections in order to secure their vote.... The judges wonder why the government of the day considered it

useful to announce the extension of a cemetery nine days before the elections.... The Minister of Health completed the recruitment of 388 candidates three days before the elections, with the consent of Ashok Jugnauth. This list included 101 people from the constituency where Ashok Jugnauth was a candidate.<sup>19</sup>

The absence of any legal framework for the parties, their opaque funding system and the reprehensible behaviour of certain candidates are crucial elements that rot the very foundation of the Mauritian National Integrity System. These factors result in a number of situations (return favours disguised by means of awarding certain public contracts, for example) that could potentially threaten the principles of good state governance once the candidates are elected and serving a decision-making function.

## **Electoral Commission**

### **Role and Powers**

The Electoral Commission (EC) draws its power from the Constitution (chapter 5, sections 38 to 44). The electoral commissioner is independent and reports to no one by law but is accountable to the candidates who judge the impartiality and effectiveness of his/her work. The commissioner can remain in office until retirement. The EC's budget is approved by Parliament, almost MUR 41 million (USD 1,400,000) in a non-election year.

The EC's role consists of updating the voter register, registering the parties and the candidates during elections, organising legislative, local government and village council elections, as well as elections to the Rodrigues Regional Assembly, and announcing election results.

The EC's role is only to register parties and candidates. Verification of the information given is not one of its functions. Thus, for example, the declaration of assets of those elected to public office is neither verified nor retained by the EC. Nor does it verify the accuracy of the information given by the candidates when they fill in their application to stand in parliamentary elections (or local government or village council elections). Moreover, no one is responsible for verifying the accuracy of the information given by candidates in their declaration (returns) of expenditure for their election campaign.

In its mission, the EC is supported by two other bodies to ensure 'free and fair' elections are held.<sup>20</sup> The Electoral Boundaries Commission (EBC) defines the boundaries of the electoral constituencies. The Electoral Supervisory Commission (ESC) oversees the work of the EC (voter registration and organisation of elections).

#### *The People Present at the Vote*

Following consultation with the EC, the ESC appoints the supervisory officers, who are all civil servants. Their role is to ensure that transparent elections are held in each constituency.

The supervisory officer is the person responsible for ensuring the electoral process runs smoothly in the polling station for which s/he is responsible. Other civil servants play a supporting role. The supervisory officer must declare all potential conflicts of interest s/he may have with the candidates in the constituency. In the case of a conflict, s/he is transferred to another constituency. The supervisory officer is considered to be impartial due to the fact that other candidates would not hesitate to complain if there was a conflict of interest that could harm their chances.

The guarantee for transparent elections is strengthened by the fact that candidates' agents are ever-present in the polling stations. It is highly unlikely in this case that a ballot box or ballot papers would disappear. These agents are responsible for ensuring the voting process runs smoothly and that ballots are counted at the polling station (and ballot boxes are not removed).

#### *Institutional Means for Fighting Corruption*

As civil servants (members of the Attorney-General's office, professors at state universities, etc.), supervisory officers are subject to the POCA and can be prosecuted for violating provisions of this law.

In the event that a candidate engages in corrupt or bad practices, the case is not submitted to the EC because it has no investigative powers. The candidates or the voters can bring cases before the Supreme Court by means of an electoral petition requesting that the election be declared invalid

on the grounds of an attempt by a candidate to bribe voters. It is again the Supreme Court that decides disputes between the EC and election candidates. There are sometimes disputes between the EC and the parties over the choice of political symbols.

## **Supreme Audit Institution (Office of the National Audit)**

### **Role of the Audit**

The work of the Office of the National Audit is protected under section 110 of the Constitution, which defines its powers and safeguards its independence. The Finance and Audit Act of 1972 strengthens and stipulates the powers of the Director of Audit in the task of carrying out an annual inspection of public expenditures.

The role of this public office is to check the accounts of public officials and bodies such as ministers, their departments and some public institutions (universities, public research centres, quasi-governmental bodies, local governments, etc.). The inspection of accounts as well as the conclusions of the Director of Audit on the management of finances by each institution inspected are made public in an annual report. This report is put before Parliament. It is then examined in detail by the Public Accounts Committee (PAC) as outlined above (see 'Legislature').

Because of the nature of the work involved, the Director of Audit must remain wholly independent of all potential influence from the executive and the administration. Thus the Constitution stipulates that, in carrying out the functions of his/her office, the Director of Audit cannot be subject to anyone's authority or control.<sup>21</sup>

The Constitution stipulates that the country's public accounts, including those of the courts and all authorities, will be inspected by the Director of Audit, who must have access to all necessary documents.<sup>22</sup>

In the course of his/her work, the Director of Audit can be called upon to give an opinion on the way in which public funds are spent (fight against waste) and on financial management of public services. For example, the Director sends out management letters that remain confidential. These are tools allowing for improvements in the management of public finances by each public department inspected.

### **Administration of the Office of the National Audit**

The Director of Audit is named by the Public Service Commission (PSC) following discussions between the prime minister and the leader of the opposition (see 'Public Service'). The Office of the National Audit's responsibility as a public expenditure monitoring body (control mechanism) is key to ensure that government institutions, and therefore democracy, function properly. It is therefore important that the parliamentary opposition is also party to this selection process. The procedures laid down for the dismissal of the Director of Audit, which is difficult, protect him/her from all intervention that could influence his/her work and impartiality.

There are 150 civil servants working in this office, which is led by the Director of Audit. As civil servants, they are subject to the POCA. Civil servants responsible for inspecting public accounts must work entirely independently in the departments they are auditing. Thus any conflicts of interest they may have must be declared to the Director of Audit.

The Office of the National Audit is not financially independent. Its budget is approved by the minister of finance and Parliament (MUR 51,715,000 [USD 1,700,000] in 2005–06) and it does not have control over this process. However, Parliament has never used this as a means to limit the activities of the Office of the National Audit. The Office is not accountable to anyone but has voluntarily chosen to have its own accounts inspected by an external private auditor.

### **Office of the National Audit and the Fight against Corruption**

Investigations into cases of corruption do not fall under the power of the Office of the National Audit. It is therefore not directly concerned with the fight against corruption. However, waste of public funds may be the result of corruption.

The Office of the National Audit does not have the necessary powers to carry out careful investigations into situations it suspects may be the result of dubious financial practices (it cannot call witnesses, for example). Thus, the Office can adjudicate on the waste of public funds but has no mandate to investigate the causes of this waste (corruption, fraud, embezzlement of funds). In light of this situation, its responsibility is therefore to highlight in its report cases of waste or circumvention of government rules and procedures and feed this information to the Public Accounts Committee.

The Office of the National Audit is sometimes very severe in its assessment of certain services or ministries. This was the case in its 2006 report, in which it lamented the behaviour of the minister for foreign affairs and his tendency not to respect procedures, a tendency which opens the door to too much discretionary power.<sup>23</sup>

If the Director of Audit suspects that public money has not been used wisely, s/he can submit a report to the Financial Intelligence Unit (FIU), which is charged with further investigating certain elements and then referring the file to the ICAC. This procedure has not been used to date.

The watchdog role of the Office of the National Audit over how relevant items of public expenditure are is supplemented by the work of the PAC (see 'Legislature').

## Public Contracting System

The purchasing and public contracting system is central to the way taxpayers' money is spent. As such, it plays a pivotal role in the National Integrity System.

It has been difficult in Mauritius to find the essential balance across the public procurement system between the necessity for the state to function efficiently (avoiding long procedures) and the transparency that is essential in public contracting procedures. A succession of laws have aimed to find the appropriate method to fulfil these two goals (the Central Tender Board Act of 1994, the Public Procurement Transparency and Equity Act of 1999 and the Central Tender Board Act of 2000).

In 2006, another new law was passed to replace the one introduced before it. This law, the Public Procurement Act, reforms how the Central Tender Board (CTB) operates and improves the system of awarding public contracts. As this law is new, its provisions have not yet been implemented at the time of this study. It is difficult, therefore, to judge its effectiveness. The following discussion explains how the CTB operates as it exists today and the gaps this new law seeks to fill.

### Role and Operation of the CTB

At the time of this study, the CTB was the public institution responsible for invitations to tender from state bodies.<sup>24</sup> Its operations are currently governed by the Central Tender Board Act (2000), which will soon be replaced by the provisions of the Public Procurement Act. The CTB's budget is approved each year by Parliament. In 2005-06 it amounted to MUR 15 million.

The board of the CTB is responsible for the selection of service providers for contracts awarded by the state. The board comprises 11 people. It ensures that bidding procedures are respected as well as (i) equal opportunity for all bidders, (ii) equality of treatment, and (iii) that the choice is made on the basis of best value for money. It also monitors transparency in the public bidding procedures.

The board of the CTB:

- defines the criteria and procedures of invitations to tender
- approves the announcements of public invitations to tender
- in certain cases issues the invitations itself
- receives and opens the applications
- examines and assesses them
- approves the awarding of contracts

The law stipulates that all public contracts above a maximum threshold must go through CTB procedures. This threshold fluctuates depending on the public body involved. Thus, for example, for ministries and their departments, whatever the nature of the contract, if the total value of the contract is more than MUR 1 million (USD 32,900), the invitation to tender must be issued in

accordance with the procedures applied by the CTB. For other public institutions such as local councils, the value of the contract being awarded must be more than MUR 10 million (USD 320,900) for it to go through the CTB. For others still, the value must be more than MUR 25 million (USD 822,000), for example the Mauritius Housing Authority.

As a result, there are numerous contracts worth less than the fixed thresholds that do not have to be awarded in accordance with CTB procedures. This weakens the guarantee of transparency. Below these thresholds, ministries, departments and public institutions apply their own procedures. This situation of procedural flexibility and the absence of common standards increase the risk of procedures becoming subjective and do not therefore facilitate transparency nor the certainty of equal treatment for all.

These exceptions notwithstanding, in 2001 the CTB organised 310 meetings at which 1,480 contracts were assessed. The total value approved was MUR 6.5 billion (USD 214,000,000).

Interviews with the CTB showed that the Board is aware of the fact that the current system of awarding public contracts can be sidestepped at the procedural level with the participation of certain key actors. For some contracts, the CTB must request a technical appraisal, most often provided by civil servants in the ministries themselves (e.g. engineers, doctors, etc.). Thus, if there is a plot between a contracting party and experts who are civil servants, a contract can be awarded to a less competitive applicant on the basis of technical considerations that go beyond the expertise of the CTB. In such a case, the CTB will decide not to risk choosing the tenderer with the cheapest offer to avoid being held responsible for the ineffectiveness of certain medications or the poor structure of a building, for example.

No case concerning activities suspected of circumventing the CTB's procedures has ever been sent to the ICAC, although information is sometimes sent to the Director of Audit. This correspondence targets 'excesses' in terms of the costs of an awarded contract.

## Public Procurement Act

The responsibilities of the CTB as stipulated in the law are enormous, creating a workload too large for the staff to handle. This situation has limited the ability of the board to pay sufficient attention to all the details of the contracting procedures, thereby presenting a real problem in terms of transparency.

Conscious of this gap, members of Parliament, by way of the Public Procurement Act, have sought a better allocation of responsibilities, creating several institutions instead of having only one. This structural change set out in the new law was initiated with a view to improving effectiveness through a better distribution of roles and by ensuring maximum transparency in the public contracting process.

In addition, this parliamentary initiative aims to prove how seriously the state takes its responsibility to operate transparently in order to convince the international donor community of its commitment to good governance. The minister of finance presented this new law as a bid to resolve a problem Mauritius encountered in its reform phase: 'It is very difficult to convince the international donor community that our bidding system is fair, transparent and in conformity with the principles of good governance'.<sup>25</sup>

This law thus establishes three new control bodies:

1. The Procurement Policy Office will oversee the entire process of bidding and awarding of contracts without being responsible for the purely technical aspect of this procedure. It will draft standard formats for all public bidding documents. This means that public services will no longer be able to use documents that do not conform to the standard formats. This uniformity will be an additional guarantee of the transparency of the procedures. In addition, the Office will act as an advisory body for ministries and public bodies, advising authorities on how to improve their system of awarding contracts and how to draft new, more transparent procedures.
2. The Central Procurement Board will handle the technical aspect of invitations to tender. It will approve the bidding documents, receive applications and oversee the awarding of contracts. What was implicit before will now be clearly stated. All invitations to tender will be made through the press to honour equal opportunity for all. An important addition is that all offers will be made public and all criteria will be stated in the published initiation to tender.

3. The Independent Review Panel (IRP) can be called in to assess adherence to the public procedures. A bidder that alleges wrongdoing can appeal to the IRP and will be compensated if the panel concludes that the procedures have not been adhered to. An invitation to tender can therefore be cancelled or re-examined. This possibility for bidders who feel themselves injured to have the process independently reviewed is a guarantee of greater transparency.

These amendments to the law have been modelled on international public contracting procedures such as the EU Directives on public contracts and those of the United Nations Commission on International Trade Law.

Although this initiative has been unanimously welcomed, some gaps were noted in an article by members of the Association of Public Procurement Professionals (APPP).<sup>26</sup> Proposals have been made to reinforce the effectiveness of the newly created bodies, for example to publish the list of public institution projects at the beginning of the year to allow all tenderers to prepare themselves better to respond to the invitations to tender (for example by enlisting partners), and to submit the declaration of assets stipulated in the new law to all civil servants involved in these procedures and not just to members of the new bodies established by the law.

The new law includes provisions governing the conduct civil servants involved in these new institutions (code of conduct, for example). These provisions stipulate explicitly that civil servants working for these three institutions must, for example, adopt an impartial attitude, act in the public interest, avoid conflicts of interest, not accept bribes and keep all information confidential. The tenderers themselves also have to pledge explicitly that they will not corrupt or seek to influence the procedures nor present false quotes.

## Civil Service

### General Functioning

It is difficult to give a complete overview of the Mauritian civil service due to the wide range of services it offers and the diversity of its structures. The Mauritian civil service has around 55,000 employees. It can be defined as the administrative organ that allows the state to fulfil its public service mission. The civil service is responsible for implementing the policies approved by the executive and Parliament. It can take various forms: ministries, departments, public hospitals, state schools, social security services, local social centres, etc.

One of the common features of all these public services is that most recruitment, as well as internal appointments, promotions and disciplinary sanctions, are governed by the Public Service Commission Regulations. (Some exceptions include those working in quasi-governmental bodies, who are employed by their board and not by the PSC, and local government civil servants, who are recruited by the Local Government Service Commission (LGSC).) The Parliament approves the budgets to be allocated to the different institutions of the Mauritian civil service (administration of ministry, prisons, Central Statistics Office, etc.). These institutions are accountable to the National Audit Office for their financial management.

A strict hierarchy within the departments determines the roles and responsibilities of civil servants. The top civil servants in the ministries are the Permanent Secretaries (PS) or the Chief Executive Officers (CEOs). The head of the civil service oversees the work and the internal relations of the Mauritian Civil Service. S/he can, in the final instance, resolve issues of political or other interference or a bad relationship between a civil servant and a superior. The head of the civil service reports to the prime minister.

The law stipulates that civil servants can carry out their work independently of political or other influences. The law and procedures that control civil servant activities protect them from intervention and guarantee their political independence. According to the law, civil servants cannot declare their political allegiance and they have a duty of professional discretion, which is necessary to ensure the impartiality of their role. The role of civil servants is to implement the policies of any government regardless of its political 'colour'. However, in practice the independence of civil servants depends to a large extent on the personality of the office-holder.

## Public Service Commission

### *Responsibilities*

The Public Service Commission is the body responsible for the recruitment, appointment and promotion of all persons working in the civil service (with some exceptions). It is also responsible for taking disciplinary measures. Its role is defined by the Public Service Commission Regulations and by the Constitution (section 88). Its operating budget is approved annually by Parliament. In 2005–06 the budget amounted to MUR 27 million (USD 900,000).

This commission comprises a chairman, two deputy chairpersons and four other members. Because of the importance of their role, commission members are appointed by the president of the Republic following consultation with the prime minister and the leader of the opposition. They are supported in their role by the staff employed for this purpose.

Section 118 (4) of the Constitution stipulates that the PSC must carry out its work out entirely independently and not under the influence of any authority. Civil servants or others wishing to contest the decisions of the PSC can do so through the courts, requesting a judicial review by the Supreme Court.

Several divisions are responsible for carrying out the work of the PSC. The recruitment division, for example, is responsible for publishing all vacant positions, receiving applications and organising aptitude tests (written exam, physical test if necessary, interview). These procedures have been placed under the responsibility of an independent committee to avoid any political attempt to intervene in the recruitment of civil servants.

### *Independence*

The PSC is duty-bound to operate as independently as possible to carry out all aspects of its work effectively. Thus, the regulatory provisions stipulate that basically any threat to the integrity of the Commission on the part of an official is liable to punishment.<sup>27</sup>

### *Disciplinary Measures*

Civil servants are subject to the POCA for all matters relating to cases of corruption. For those who have not carried out their duties in accordance with other regulations, two procedures exist:

1. Administrative bad practice can be handled by the direct superior of the civil servant in question if it is of minor importance (reprimand, loss of salary for a period of less than 14 days). The civil servant who has been punished can appeal to the Commission (an event which is rare). S/he can then still demand a Judicial Review of the case at the Supreme Court.
2. The Commission has the constitutional power to impose disciplinary punishments on civil servants for serious offences. It follows the procedures set out by law depending on the nature of the offence (criminal and/or administrative). It can, for example, inform the civil servant of dismissal from the civil service, in accordance with the procedures<sup>28</sup> in force.

In statistical terms, dismissals are rare; reprimands are the most common form of sanction.<sup>29</sup> In 2001, 155 civil servants were brought before the Commission for non-adherence to regulations (the figure was 194 in 2002 and 43 in 2003).

## Civil Service Code of Conduct

In addition to the provisions of the POCA, a civil servant code of conduct has been published by the minister of Civil Affairs and Administrative Reform.<sup>30</sup> This code of conduct lists the general principles concerning ethics and responsibility that civil servants must observe in carrying out their work. It supplements the internal regulations and laws in force and provides guidelines for conduct in relations with the sitting government and the public. It reiterates the political impartiality that all Mauritian civil servants must observe.

Some paragraphs of this code specifically govern the behaviour of civil servants with respect to corruption:

- Civil servants cannot use their office as a means of furthering private interests; they must not request or accept gifts or favours that may influence their activities (Paragraph 9).

- They must declare their interests (partnerships, shares) in any company that could give rise to a potential conflict of interest (Paragraph 10).
- They cannot state in public an opinion on the actions of the government or their own political views. They must not seek to influence the government by divulging information to which they have access by virtue of their position.
- They must ensure that public money is spent effectively and for just ends. They also must avoid any waste of public funds.
- Except with the approval of their direct superior, they cannot hold two positions concurrently if these are likely to lead to a conflict of interests.

Civil servants are not currently obliged to declare their assets.

In the event of a complaint of corruption made against a civil servant, the ICAC investigates. Based on the principle of presumption of innocence, the civil servant remains in public office and receives salary until the matter has been decided, even if s/he does not actively work. In the event of conviction and rejection of appeal, s/he is dismissed from the civil service in addition to whatever sentence is decided.

As a result of the extent and variety of its duties, the civil service represents a key sector in the National Integrity System. The civil service must be as transparent and incorruptible as possible as it occupies a privileged role as the link between the state and the public. However, certain sectors of the Mauritian civil service are perceived as being extremely corrupt (see 'Anti-corruption Activities'). This perception reverberates across the whole of the civil service, eating away at the principle of impartiality and fairness by which the state seeks to carry out its activities.

The following discussion presents two state services that for a long time have been considered the most corrupt: the National Transport Authority (NTA) and the Mauritius Revenue Authority (MRA).

### **Example 1. The National Transport Authority (NTA)**

#### *The Role of the NTA*

The NTA is a division of the Ministry of Public Infrastructure, Land Transport and Shipping. It was created in 1980 and is responsible for implementing policies concerning land transport. Its budget is approved annually by Parliament. In 2005–06 the budget amounted to 106 million. Its responsibilities are varied: for example, registration of motor vehicles, collection of licence fees, vehicle inspection and awarding of motor vehicle licences. Its structure includes a head office (225 people), an office in Rodrigues and two test centres (80 people).

In the 1980s, there were two vehicle test centres for the whole of the island. This continues to be the case even though the number of vehicles has increased by 400 per cent. Thus, each test centre inspects 400 to 450 vehicles per day.

The NTA has long been perceived as one of the most corrupt public services in Mauritius. It is generally accepted that it is possible to pay vehicle inspectors to obtain a licence or a test certificate.

#### *The Support of the ICAC*

In 2004, the ICAC carried out an evaluation of the internal procedures of the NTA in a bid to reduce the risk of corruption. This study was the object of a report with recommendations aimed at procedural reform. According to an interlocutor at the NTA, some of these recommendations have been implemented. For example:

- Civil servants directly involved with the public can no longer occupy a decision-making role.
- All civil servants involved in the examination of a particular file must put their name on it. This allows for increased traceability of the responsibilities of each person involved.
- Licensing procedures were accelerated to remove the necessity to pay bribes in order to speed up procedures, known as 'speed money' in Mauritius.

### *The Limits of the Fight against Corruption*

The inspector who confirms that a vehicle is fit to be driven must justify any refusal to award the vehicle test certificate (which states that the vehicle is roadworthy). Procedures for appealing against the inspector's conclusions exist and anyone who feels unjustly treated can write to the NTA commissioner to request a second inspection. Despite these procedures, no victim of corruption has ever made any official complaint against a corrupt inspector and the success rate for vehicle inspections is 99 per cent. Officially speaking, therefore, there is no corruption in the NTA's vehicle test centres because no one has ever blown the whistle on anyone working there.

This phenomenon of a Mafia-esque vow of silence can be explained by the fact that the investigative and judicial procedures for corruption cases are long (giving statements to the police, cases sent to court, long trial) and the general public believes it risks repercussions. It is interesting to note that in spite of people's negative perception of the NTA and its supposed corruption, people do not report cases of corruption when it serves their personal interest (obtaining a motor vehicle licence, for example).

## **Example 2. The Mauritius Revenue Authority (MRA)**

### *Role and History of the MRA*

Before 2006, the tax administration, revenue collection and customs departments were separate entities. On 1 July 2006, they were brought together under a single administrative structure, the Mauritius Revenue Authority.

The MRA is a quasi-governmental agency that functions under the aegis of the Ministry of Finance. The management of the MRA reports to the Board whose members are appointed by the minister; the Director General of the MRA is appointed by the president of the Republic. The MRA's function is to collect taxes and duties (customs, VAT, income tax, etc.)<sup>31</sup> and to verify tax declarations. Around 70,000 people pay taxes and duties in Mauritius. Taxes are verified on a random basis or on the basis of information provided anonymously.

The employees of the MRA (approximately 1,300) are subject to the POCA. They are employed by the Board, which is in charge of staff recruitment. Promotion is not automatic. The leading officers of the MRA are employed on a contractual basis. If they do not perform well or are corrupt, it is possible not to renew their contracts.<sup>32</sup> MRA employees receive a higher salary than other civil servants.

In accordance with the law, all employees must declare their assets. Asset declarations are made under oath and in writing before the Supreme Court. This declaration must be updated annually and is very comprehensive (it even includes jewellery). On taking up their positions, all employees receive a document containing the regulations in force at the MRA and sanctions that apply in case of violation.

### *Action against Corruption*

#### Procedures in Force

As a result of the new law and at the impetus of the Director General of the MRA, the procedures in force have been reformed to ensure greater transparency in the work of the various departments (taxes, customs). Thus, according to the Director General: 'What we have done is to modify the whole process to reduce as much as possible human intervention in the administration of revenue collection. (...) In addition, no single individual has the power to influence affairs; the various work stages are henceforth carried out by different people and different departments. When you remove such discretionary power from someone in authority, the problem is resolved'.<sup>33</sup>

The customs department has itself been rewarded by the ICAC for 'the improvement of its system, making it more likely to detect corruption offences'.<sup>34</sup>

Two MRA divisions are charged with ensuring that legal regulations are respected by employees and that transparency is strengthened: the Internal Affairs and Internal Audit Divisions. Both these departments are independent of the Director General. They are not under his/her control but rather under the direct control of the Board, to which they report their activities.

Code of conduct

To implement the principles of good governance internally, the MRA published a code of conduct<sup>35</sup> for its employees. Numerous aspects relating to proper conduct at work are stipulated in this code: declaration of conflicts of interest, respect for the POCA, prohibition (unless authorised) from holding a second job, prohibition from accepting gifts, requirement to notify the head of department immediately in the event of a bribery attempt, declaration of income by each employee (including spouse and minor children). Each employee receives a copy of this code.

The Internal Affairs Division

This division is charged with ensuring that employees show proper respect for the rules in place within the MRA and legal regulations in force. In addition, it verifies the asset declarations of all employees. In this way, if an allegation of financial embezzlement or corruption is made against an employee, the asset declaration can serve as a reliable source for verification. The division can receive complaints against employees from members of the public, employees and directors. The complaint can also be made anonymously. The Internal Affairs Division published the Prevention of Malpractice Manual 2006, presenting the way it works, the responsibilities of those working within the division and how to make a complaint to the division. If the division identifies a case of corruption, it can refer the matter to the ICAC (or to the police) for further investigation, along with all necessary information. But the Board can also apply various disciplinary and administrative sanctions before opting for judicial prosecution. Often, because of the seriousness and the slowness of criminal investigation procedures, the choice is to impose administrative sanctions following a hearing before a disciplinary committee. The employee can appeal against the disciplinary committee's decision.

## Ombudsman

### Mission

The Ombudsman (the equivalent of the Republic's mediator) is charged with ensuring that members of the public, businesses or associations are treated fairly with respect to public services. Following receipt of a complaint or on his/her own initiative, the Ombudsman can investigate the causes of bad administrative practices such as unreasonable delays in obtaining a licence, the lack of an official response to an enquiry or cases of discrimination. The complaint must be directed against a national or local government worker; the Ombudsman has no direct authority over civil servants of quasi-governmental organizations such as the Central Electricity Board and the Central Water Authority (in these cases, the case is referred to the ministry responsible). Based on the results of the investigation, the Ombudsman makes recommendations to the civil servants concerned to resolve the situation and satisfy the wronged party. If the civil servants refuse to follow the recommendations, the constitution allows the Ombudsman to refer the case to the highest authorities, such as the prime minister's office and Parliament.

### Functioning

The Ombudsman's office is governed by the Constitution (sections 96 to 102) and by the Ombudsman Act. The Ombudsman is appointed by the president of the Republic following consultation with the prime minister, the leader of the opposition and the heads of political parties represented in Parliament.

The Ombudsman has the power to investigate all cases s/he believes to have resulted from poor administrative practices. By law the Ombudsman has the right to access all files deemed necessary (except for classified defence and national security files). The Ombudsman has no explicit power to sanction uncooperative civil servants and cannot take disciplinary measures against a public sector employee. Conciliation is therefore the favoured way of working. The Ombudsman intervenes directly at the level of the head of the department relevant to the complaint. Civil servants are not obliged to follow the Ombudsman's recommendations, but in practice it has never occurred that a civil servant does not do so.

The Ombudsman deals with between 300 and 400 cases per year. S/he can intervene in a wide range of areas: poor accounting of the number of years of service of civil servants, unreasonable amount of time waiting for an administrative response, failure to receive work equipment,

allocation payment due, reinstatement to a service.<sup>36</sup> The budget for the Ombudsman's office, approved by Parliament, was MUR 4 million (USD 130,000) in 2005–06.

Cases of corruption involving civil servants do not fall within the remit of the Ombudsman. If the Ombudsman is presented with a case of corruption, s/he must refer the file to the ICAC or the police. This has not yet occurred.

## **Independence and Integrity**

The independence of Ombudsman activities is guaranteed by the Constitution but depends also on the personality of the person holding the office. The Ombudsman presents a report of his/her work to the president of the Republic and publishes an annual report on activities and the types of cases addressed. There is no specific regulation governing the integrity of the conduct of the Ombudsman and his/her employees. However, as part of the public service, the office is subject to the POCA. The only specific obligation the Ombudsman must respect is to the confidentiality of the information brought to his/her attention.

## **The Police**

As an agency for law enforcement, the police force is charged with ensuring respect for the laws of Mauritius. One part of its responsibility is to investigate cases of corruption affecting all areas of Mauritian society. On the other hand, as a public institution, the police force can also be a victim of corruption within its own ranks. The following discussion deals solely with police activities with respect to corruption, internally and externally, rather than the entire range of duties carried out by police officers (investigations into crimes and offences other than corruption, observance of the highway code, etc.).

### **Administration and Functioning of the Police Force**

The police force is governed by the Police Act of 1974. Approximately 10,000 staff are employed in the various divisions operating under the authority of the Police Commissioner (PC). Police officers are public servants but are not governed by the PSC. They fall under the authority of the Disciplined Forces Service Commission (DFSC), which manages recruitment and promotions. The DFSC is also in charge of disciplinary sanctions against police officers. The members of this commission are basically the same as those of the PSC and share the same operating budget. As in the case of civil servants under the authority of the PSC, this procedure guarantees the maximum transparency and avoids in principle the possibility of intervention in terms of recruitment and promotions. Thus, the DFSC is responsible for recruitment tests, employment interviews and the final selection of future police officers. The final list of those selected is sent for ratification to the PC, who is not involved in the selection process itself.

The Police Commissioner works independently but under the responsibility of the minister of the interior, who is also the prime minister. The Constitution stipulates that the prime minister can give administrative directives to the Police Commissioner but not operational directives that dictate how to ensure respect for the law. The PC must deliver the results the prime minister wants to see, however. There are, therefore, blurry boundaries around the PC's independence, which is more of a working partnership.

### **Police Investigations into Corruption**

The Central Criminal Investigation Division (CCID) is the unit charged with criminal investigations. Currently, anyone wishing to blow the whistle on a case of corruption can do so to the ICAC or the police. The CCID investigated 97 cases of corruption from 1990 to 2000. Of these, 30 cases were judged worthy of prosecution, nine cases resulted in convictions and six were still being tried at the time of its report. Disciplinary proceedings have been launched in five cases.<sup>37</sup>

There are two co-existing structures for investigating acts of corruption. For cases of corruption reported directly to the CCID, the latter is charged with carrying out an initial investigation before referring the file to the ICAC for a supplementary investigation. If the matter concerns a corruption claim levelled against a police officer, the CCID expedites the file to the ICAC for investigation. This allows for greater transparency and avoids a situation in which police officers must investigate their own colleagues.

## Corruption within the Police Force

All police officers are subject to the POCA. Police officers come into direct contact with instances of lawbreaking during their work and for members of the public there is a strong temptation to bribe a police officer to avoid punishment. In addition, the power vested in police officers is sufficient to enable them to influence the matters they are investigating. For example, a police officer who took a witness's statement could present the facts in a way that misleads the Attorney General's Office, which might then either not prosecute or prosecute for a lesser offence.

The risk of corruption also exists at the administrative level, as it does in all public departments responsible for example for purchasing equipment. Here, as elsewhere, not all sectors are affected by corruption; only those that exercise discretionary powers.

### *Investigations Commission*

A special Investigations Commission on fraud and corruption in the Mauritian police force was set up in 1997. Following the recommendations of this Commission, those in charge of police administration reformed procurement procedures within the sector, rationalising them and making them more transparent. The police force is a public department and therefore must follow CTB procedures in awarding contracts worth more than MUR 1 million (USD 32,000). Financial control and management of the sector's human resources is no longer the responsibility of police officers themselves but of representatives from the Ministry of Finance.

### *The Activities of the ICAC*

The Licensing Department, which organises driving tests, has long been considered very corrupt. In the past a frequent rumour was that it was possible to buy a driving licence from the department. The ICAC carried out a study on how this department operates in order to review procedures and implement a more transparent system. Several proposals were made following their study, such as, for example, separating this service from other departments and organising a rotation of staff every three or six months. In addition, the ICAC organises training events on integrity aimed at police officers; studying the POCA is part of the police officer training programme. Thus it is presumed that no police officer is unaware of the law that applies to him. In addition to the POCA, the Standing Orders governing the work of police officers stipulate clearly that corruption is an offence.<sup>38</sup>

Other initiatives have been implemented to avoid bribery of police officers responsible for ensuring observance of the Highway Code. When giving injunctions, at least two police officers must be on patrol together. A rotation of staff ensures that members of the patrols are not always in the same teams.

### *Recent Cases of Corruption in the Police Force*

Several cases of alleged corruption in the police force have recently come to light. In one case concerning the driving test, for example, it is alleged that a young girl was given her licence even though she ran two red lights during the test. The Driving Instructor Association complained.<sup>39</sup>

One police officer has been charged with corruption, accused by the ICAC of having accepted a bribe from a bookmaker for tipping-off the latter about a raid by the police gambling squad.<sup>40</sup>

A trial has taken place involving the ex-head of the CCID, accused of having stayed with his family in a hotel for several days for free.<sup>41</sup> The verdict was three months' imprisonment. He lost an appeal against the conviction at the Supreme Court.<sup>42</sup>

As a law enforcement agency and an institution responsible for ensuring respect for the law, the police force has an important place in the National Integrity System. Police officers who appear to be corrupt and corruptible generate distrust on the part of citizens. The impartiality and incorruptibility of police officers are the guarantee for all citizens that the same law applies everyone and that money will not buy special favours.

# The Office of Public Prosecutions and the Attorney-General's Office

## The Office of the Director of Public Prosecutions

The Director of Public Prosecutions (DPP) plays a key role in ensuring that Mauritian democracy functions properly and that society has confidence in the rule of law. According to the Constitution (section 72), which guarantees the powers of the DPP, s/he is the only person who can decide whether or not to instigate public proceedings against a citizen accused of committing a crime. S/he is completely independent from the executive and the legislature and reports to no one on his/her decisions. Thus, s/he does not need to justify a refusal to prosecute someone. However, the Office of the DPP is not financially independent; the operating budget, approved each year, is included in the budget allocated to the Attorney General (Ministry of Justice). On the basis of the information presented in the DPP dossier, s/he decides whether or not to prosecute. The case files are prepared by the police or by the ICAC (in corruption cases) following investigation. Investigation does not fall within the remit of the DPP.

## The Attorney-General's Office

The Attorney General's Office is composed of attorneys. It is responsible for prosecuting on behalf of the state those accused of violating the law.

The members of the Attorney General's Office are not recruited by the PSC. Rather it is the Judicial and Legal Service Commission (JLSC) that is responsible for their recruitment and promotion and for bringing disciplinary sanctions against them. This generally guarantees their independence from political or even administrative interference. It is difficult to dismiss members of the Attorney General's Office.

Members of the Attorney General's Office report directly to the DPP, to the Solicitor General or in the final instance to the JLSC. They do not have to declare their assets.

### *The Judicial and Legal Service Commission*

The members of the JLSC are the Chief Justice, as president of the Commission; the Senior Puisne Judge; the president of the PSC and another member (sitting or retired judge) appointed by the president of the Republic in consultation with the chief justice. In addition to the Attorney-General's Office, judges and magistrates also fall under the responsibility of the JLSC.

### *Code of Conduct of the Attorney-General's Office*

There is no specific code of conduct for members of the Attorney General's Office. However, as they are attorneys, they are governed by the code of conduct of all attorneys practising in Mauritius. This code reaffirms the necessity to carry out their work independently (section 13).<sup>43</sup> The code also governs the various aspects of attorneys' work: relationship with clients, relationship with the judiciary, conflicts of interest, rules for questioning witnesses, declining to plead cases before a judge or magistrate who is a relation, etc.<sup>44</sup> The code supplements the Law Practitioners Act of 1984. In the event that the provisions of this law and the code are not respected, attorneys can be disbarred.

The workload of members of the Attorney General's Office is too heavy in proportion to their numbers. Such a situation can create a risk in the effectiveness of the system. Lack of management of the workload of members of the Attorney General's Office is another potential risk factor for inadequate handling of corruption cases.

## Judiciary

In Mauritius, the administration of justice is governed mainly by the Constitution (chapter 7, sections 76 to 84) and the Courts Act.<sup>45</sup> There is a strict separation of power between the executive, the legislature and the judiciary. There is, however, a financial relationship linking the judiciary to the legislature, as its operating budget is approved annually by Parliament. Its budget was MUR 175,400,000 (USD 5,765,600) for the fiscal year 2005–06.

The Mauritian judicial system is divided into two tiers: the Supreme Court, which acts, depending on the case, as a Court of First Instance or a Court of Appeal; and other courts (Court of Rodrigues, 12 District Courts, Intermediate Court, etc.). The Supreme Court comprises different courts operating under its jurisdiction. The final court of appeal for a court case is the Queen of England's Privy Council.

The Supreme Court is made up of the chief justice, the senior puisne judge and nine other judges. It is the highest court in the land and is responsible for ensuring the application of laws. It can also be called on to assess the constitutional validity of a law passed by Parliament. The head of judicial administration is the chief justice who, according to the principle of separation of power, reports to no one for his actions. Recruitment of, promotion of and disciplinary sanctions against magistrates and judges charged with administering justice fall under the responsibility of the JLSC by virtue of chapter 8 sections 85 and 86 of the Constitution.

## **Administration of Justice: Court Officials**

Court officials ensure efficient running of the day-to-day work of the judiciary and help judges and magistrates in their work (bailiffs, secretaries, etc.). The PSC manages these officials, who are subject to the POCA. They are not decision-makers as far as the administration of justice is concerned but they can be responsible, for example, for distributing copies of judgements and minutes (which must be paid for) or returning bail payments.

## **Administration of Justice: Judges and Magistrates**

In the event that a magistrate or judge is suspected of corruption, the JLSC gives a hearing, which determines the subsequent procedures to follow. No case involving a magistrate or judge has been referred to this commission to date.

The potential advantage of bribing a magistrate is obvious. Therefore, several instruments govern the conduct of magistrates and judges. Sections 124 and 125 of the Courts Act govern the conduct of magistrates and a code of conduct was drawn up in 2002 to cover the conduct of judges. These measures are intended to promote transparency in the behaviour of those who administer justice in order to guarantee greater public confidence in this institution.<sup>46</sup>

The code stipulates that the person responsible for administering justice:

- must avoid being too personally involved with other members of the legal profession to avoid the perception that the justice system is not impartial.
- cannot be involved in the adjudication of a matter in which one of the parties is a member of the judge's family.
- must avoid belonging to associations or taking the floor in a public debate.
- must, when appointed, end all political activity and avoid taking part in political meetings.
- cannot use the fact of being a judge to further personal interests or those of his/her family.
- cannot, neither can his/her family, request or agree to receive a gift for his/her work.

In addition, judges must make sure that their conduct is above all reproach and must not participate in cases in which they know they cannot pass impartial judgement.

## **The Judiciary and the Fight against Corruption**

Charged with administering justice, magistrates and judges are the final links in the chain in the fight against corruption.

A first step was taken in the fight against electoral corruption as this report was being prepared. Judges convicted a candidate for a deliberate attempt to bribe voters and declared his election invalid. This was universally welcomed: 'Judicial self-restraint has become judicial activism, which, let's hope, will actively support fundamental freedoms and satisfy the needs of democracy. It is a transformation that is necessary to mitigate the fact that politicians have abdicated their responsibilities in relation to certain scourges'.<sup>47</sup> This judgement has been interpreted as an end to the impunity that had hitherto prevailed when election candidates engaged in questionable practices. Moreover: 'Judges have clearly defined the parameters of what is permitted to

parliamentary candidates.... The notion of a free and fair election has finally received its patent of nobility.<sup>48</sup> This decision is currently under appeal.

## The Independent Commission Against Corruption

### Mission and Operation

The ICAC was created by the Prevention of Corruption Act (POCA) in 2002. It can intervene in a variety of situations. Its mission consists of 'combating corruption through effective law enforcement, education and prevention to help keep the Republic of Mauritius fair, just, stable and prosperous'.<sup>49</sup> The aspects of the ICAC's work allowing it to achieve this objective are listed in the POCA (section 20). The operating budget of the ICAC is approved annually by Parliament. It was 115 million in fiscal year 2005-06. As with all public institutions, its accounts are audited by the Office of the National Audit.

The ICAC is run by a board of three members including the director general (who is appointed by the prime minister following consultation with the leader of the opposition) and two other members, who are appointed by the prime minister alone.

In contrast to the situation at the Economic Crime Office (ECO), the director general of the ICAC does not enjoy constitutional protection in terms of the position and his/her possible dismissal. The parliamentary committee that follows the administrative activities of the ICAC can suspend it for 'irregularity or negligence'<sup>50</sup> or if the director general is no longer in a position to carry out his/her duties as a result of a physical infirmity or a psychological problem.

Four departments are charged with achieving the mission of the ICAC as set out in the law.

- the Corruption Investigation Division
- the Corruption Prevention and Education Division
- the Legal Division
- the Administration and Finance Division

All ICAC employees have a legal obligation to declare their assets and are subject to the POCA. As a result of the agreements signed between the ICAC and various other institutions of enquiry, ICAC employees receive specialist training as well as technical advice provided by international experts.

The work of the ICAC is one piece of a larger process (investigation, prosecution, trial). The files on 15 ICAC investigations are currently with the DPP awaiting endorsement to launch public prosecutions.<sup>51</sup> Another 14 cases are already before the Intermediate Court, while two others are under appeal. There have been no final convictions at the time of this report.

In addition to its investigative work into corruption, the ICAC is responsible for working with the Financial Intelligence Unit (FIU) to investigate cases concerning money laundering and the financing of terrorist activities.

### Accountability

By law, the ICAC is an independent body. In accordance with the law, it must 'act in a manner that is independent, impartial, fair and serves the public interest'. Thus, the ICAC is accountable for its actions only to the parliamentary committee that oversees the administrative aspect of its work (not on the relevance of pursuing a particular case). This committee is composed of five members appointed by the prime minister and four by the leader of the opposition. According to Yatin Varma, president of the parliamentary committee:

The only circumstance that can justify intervention by the Parliamentary Committee is the existence of a formal complaint.... What the legislators rule is considered to be right. The parameters of the Parliamentary Committee's authority have been established to mark out a demarcation line between its role and that of the ICAC. If the Law had authorised the Committee to intervene in individual cases, it would then have been impossible for the ICAC to avoid the risk of being under the influence of politicians.<sup>52</sup>

However, the absence of any external examination as far as the relevance of pursuing certain investigations or not is a serious loophole in terms of balancing the powers conferred on the ICAC.

In fact, no authority is currently authorised to verify the investigative work of the ICAC and therefore to ensure that investigations are neither buried nor used as pretexts for possible victimisation.

The ICAC is legally accountable to the Director of Public Prosecutions who alone has the power to decide if a case can be prosecuted before a court.

In the final instance, the ICAC is accountable to the general public, which is quick to judge its actions. Given the nature of its work, the actions of the ICAC also receive intense media coverage.

## **The Stages of an Investigation**

When the ICAC receives a complaint, anonymous or not, about an act of corruption, a preliminary investigation takes place. Following this investigation, the ICAC decides whether or not to pursue the case. There are three possible scenarios:

- If the board judges that there is insufficient substance to take the case forward, it can stop the investigation after 15 or 21 days.
- If the board thinks that there is sufficient evidence to continue the investigation, the work goes on. If, after this stage, the board wants to stop the investigation, it must obtain the prior agreement of the DPP.
- If the board thinks the investigation justifies a legal prosecution, it sends the file to the DPP, the sole person authorised to decide on the relevance of initiating a public prosecution. The DPP judges the soundness of the files sent by the ICAC.

## **Limits of the ICAC's Scope for Intervention**

The ICAC has no power to arrest suspects. Thus, in the event of needing more detailed information (witness statements, seizure of documents), the ICAC must request the co-operation of the police commissioner to arrest the suspect. Without the active co-operation of the police commissioner, the ICAC cannot carry out its work properly.

Certain cases are not provided for in the areas of intervention stipulated in the law. The ECO had a broader mandate than the ICAC; it can investigate economic crimes (including fraud), which is not the case for the ICAC.

Furthermore, non-transparent funding of political parties is not considered corruption because it does not involve 'public officers': because the candidates are not yet elected, they are not invested with public authority. In addition, certain managers in key posts, notably international consultants in ministries, are not covered by the law. Another loophole in the POCA is the difference in treatment between the public and private sector as far as acts of corruption are concerned (see 'Anti-Corruption Activities').

## **Corruption Investigation Division**

The ICAC's mandate for investigations is defined in the POCA. The ICAC's functions, in addition to those concerning collaboration with the FIU in cases of money laundering, are as follows<sup>53</sup>:

- Examining and investigating all allegations of corruption offences.
- Detecting all acts of corruption and launching an investigation into these matters.
- Investigating the conduct of all civil servants who, in the opinion of the ICAC, are linked to corruption or are likely to turn to corruption.

The ICAC has a mandate to investigate acts of corruption carried out outside of the boundaries of Mauritius<sup>54</sup> but linked to the country (illegal transactions made in Mauritius, one of the parties involved being Mauritian, etc.). It does so through its Corruption Investigation Division.

In its investigative work, the ICAC can work with international investigative bodies, such as Interpol, through the Mauritian police force.

The ICAC can handle two types of complaint. According to the provisions of the law, all civil servants who suspect that an offence has been committed within or in relation to the public body to which they belong must prepare a written report for the ICAC. A second category of complaint concerns those made by members of the public, whether anonymous or not. The ICAC can also launch investigations on its own initiative. Anonymous complaints are permitted in order to

alleviate the fear of reprisals that anyone wanting to blow the whistle on a case of corruption could experience. However, even in the event of a non-anonymous complaint, the confidentiality of the whistle-blower is respected.

## Corruption Prevention and Education Division

The Corruption Prevention and Education Division of the ICAC is in charge of informing the public about the POCA. It is also responsible for the prevention of acts of corruption by assessing the procedures in force in public institutions (evaluations). The ICAC's mandate therefore is to work ahead of and subsequent to the commission of corrupt acts.

The Corruption and Education Division draws up evaluations of corruption prevention. These evaluations are the result of research into the practices and procedures of public institutions and aim to promote the establishment of effective safeguards in public procedures. The evaluation undertakes a detailed analysis of the institution's systems and procedures with a view to strengthening them against the risk of corruption. A follow-up exercise is normally undertaken six months later to assess the implementation of the recommendations as well as the constraints faced.

The success of these evaluations relies to a large extent on a partnership approach between the ICAC and the managers of these institutions.<sup>55</sup>

The following are examples of evaluations undertaken by the ICAC. Some of these have been mentioned elsewhere in this report.

### Example 1: The NTA Evaluation

The NTA evaluation had numerous objectives: rationalising procedures and reducing the possibilities for corruption, proposing recommendations to help the organisation resist corruption, promoting awareness of the risks of corruption among NTA employees and also of the necessity to establish a strategy for long-term corruption prevention.

The final, comprehensive report submitted to the NTA in June 2004 dealt with the operational aspects of several departments, including issuing licences, registration, vehicle inspection, application of the law, collecting payments, computerisation, ethics and integrity. Discussions of the document were organised not only with the management of NTA but also with the Ministry of Public Infrastructure, Land Transport and Shipping, which has the right to review NTA matters. The impact of this collaboration with public bodies, however, depends to a great extent on the willingness of decision-makers to implement the ICAC's recommendations.

### Example 2: Allocation of State Lands

The objectives of this evaluation were to identify the weaknesses in the system of allocating state lands that give rise to risks of corruption, as well as to make appropriate recommendations to tackle this problem. This sector was chosen because of the strong perception of corruption within it and as a result of a string of critical reports by the National Audit Office.<sup>56</sup>

### Example 3: Police Department – Administration of Driver's Licences

The goal of this evaluation was to identify the possibilities for corruption inherent in the national and international system of registering and issuing driver's licences by the Police Department, as well as to make appropriate recommendations to improve the system to reduce the risks of corruption.

## The ICAC and the Financial Intelligence Unit

In its task to combat corruption, the ICAC works in partnership with other bodies whose mission complements its own, for example the FIU. The relationship between these two bodies is clearly defined by the Financial Intelligence and Anti-Money Laundering Act (FIAMLA).

The FIU was created by the FIAMLA in 2002. It is the body charged with gathering, receiving, analysing and handing over to the authorities responsible for investigations the financial

information relating to suspected cases of money laundering and financing of terrorist activities. Its operating budget, allocated by the Ministry of Finance, was MUR 20 million in 2005–06.

The FIU gathers financial information and analyses it. It draws up reporting procedures for those organisations obliged by law to declare suspicions of dubious financial practices (banks, accounting experts, attorneys, gaming houses, members of particular professions, etc.). In this way, all private or public organisations that, in the scope of their work, could witness dubious financial activity must report it to the FIU for consideration. This is a legal obligation and anyone failing to respect it can be prosecuted.

After the facts have been gathered, the case file is sent to other bodies responsible for carrying out investigations. The FIAMLA stipulates three of these:

- The ICAC, when the money laundering is linked to a case of corruption.
- The MRA, if the money laundering case is linked to customs, taxes and duties.
- The police, if the money laundering is linked to organised crime (drugs).

The FIU is not responsible for follow-up of the files it sends to the above-mentioned bodies.

The FIU is run by a board appointed for five years. It comprises a director and staff. The FIU's 25 employees are not civil servants, although the work of this body is led by the minister of finances and its budget is publicly funded. All employees must declare their assets at each fluctuation of MUR 200,000 (USD 6,500) in their assets.

A code of conduct regulates the conduct of employees in carrying out their work. This includes registers in which employees can declare gifts they have received. In the event of a conflict of interest, the employee must declare it and withdraw from the case.

Between 2005 and 2006, the number of declarations of suspicion reviewed by the IFU<sup>57</sup> increased by 50 per cent: 141 in 2006 compared to 89 in 2005. A total of 34 files have been sent to the ICAC for further investigation, 11 to the police and six to the MRA.

## Local Government

### The Local Authority Framework

Local authorities and the decentralisation process undertaken by the state are governed by the Local Government Acts of 1989 and 2003.

Local authorities operate under the aegis of the Ministry of Local Government. In addition to local authorities' own financial revenues, the ministry allocates to them an annual operating budget so that they may fulfil their public service mission (providing street lighting, construction and maintenance of roads, gas and water mains, public spaces, construction of bus shelters, organisation of sporting and leisure activities). The responsibilities of local authorities are defined by the Local Government Act section 51. Their accounts are audited by the National Audit Office.

There are various types of local authority. These include the five authorities that manage administration of the towns (Port Louis, Beau Bassin/Rose Hill, Quatres Bornes, Vacoas Phoenix and Curepipe), the district councils, which are responsible for co-ordinating activities in the districts (Grand Port/Savanne, Moka Flacq, Black River and Pamplemousses/Rivière du Rempart), and the 124 village councils, responsible for the administration of the island's villages.

The Local Government Service Commission<sup>58</sup> (LGSC) is charged with the recruitment and promotion of local government civil servants and with administering disciplinary sanctions against them. The LGSC was created to avoid situations of abuse and clientelism at the local level (recruitment of political agents, reprisals against opponents, etc.). It is an independent commission. The chair is appointed by the president of the Republic on the prime minister's recommendation. The independence of the LGSC is guaranteed by the law but depends a great deal on the personality of its members.

The following is an example of how a local authority operates.

### **Example: Municipality of Beau Bassin/Rose Hill**

Two structures work in concert within this local authority: a political structure comprising local councillors and an administrative structure charged with implementing policies and with managing the municipality's own inherent responsibilities.

#### *The Municipal Council*

The Municipal Council has several roles:

- A legislative role to pass regulations governing town activities (street names, public health, market inspections, etc.).
- A monitoring role in relation to the regulations through the work of engineers, health inspectors, etc.
- A public service role to improve the quality of life of local residents (combating noise pollution and pollution in general), laying out public spaces (road maintenance, street lighting, cleaning up river banks, etc.), providing nurseries, embellishing public spaces, offering leisure opportunities (public parks, library, art gallery etc.), promoting sporting activities (development of a sports infrastructure, organising activities).

Municipal elections take place every five years. A system has been put in place for rotation of mayoral responsibilities. The mayor's term usually lasts one year with a possibility of re-election by the council. The mayor presides over local activities and debates and signs contracts passed by the municipal council. The municipal councillors must declare all conflicts of interest in cases where contracts are being awarded. They are subject to the POCA.

The work of the council is divided into several committees designated to handle specific areas of business (finance, social services, art and culture, health, sports, etc.). The Finance Committee, for example, prepares the council budget for the coming year, including a comparison of expenditure. It can give its opinion on new types of activities generating income for the local authority. The Expenditure and Fiscal Committee examines payments and expenses. Requests for exemptions and free rent of municipal infrastructure are examined by this committee.

#### *Local Authority Administration*

To help the council in its task, the local authority is supported by several administrative departments. One of these, the Department of the Chief Executive Officer, is responsible for the day-to-day management of all local authority administration. The CEO is the hierarchical superior of all civil servants working in the local authority. The CEO is charged with implementing local government policies, implementing provisions of the law and ensuring the effectiveness of programmes and services offered by the local authority. The personnel section handles matters relating to the management of administrative staff (discipline, leave, uniforms, etc.).

#### *Bribery of Local Government Civil Servants*

On-going collaboration has been established with the ICAC. Heads of department and civil servants working directly with the public have been informed of the provisions of the POCA at workshops on the issue of corruption. Several sessions have been organised. The CEO is responsible for ensuring that the regulations and laws in force are observed by all civil servants working under his authority.

Members of the public do report wrongdoing by local government civil servants, but when reports are anonymous any investigation into the matter proves difficult. There is often a lack of precise information supporting the report, which is necessary if the accusations are to be proved. Investigations have already been launched in certain departments but the lack of proof and the fact that witnesses change their views complicate the work. The long legal procedure discourages members of the public (numerous summonses and therefore a need for applications for leave in order to go to court).<sup>59</sup>

#### *Licences Awarded by the Local Authority*

The local authority is charged with awarding a certain number of permissions and licences (construction, economic/commercial activities, etc.). The waiting time for a licence as well as the

risk of seeing the application refused are two factors that can lead to attempts to bribe local government civil servants. An engineer from the town of Quatre Bornes has been prosecuted for corruption by the ICAC. He is alleged to have requested a pay-off of MUR 50,000 (USD 1,600) from the director of a company to settle a bill for work carried out for the local authority.<sup>60</sup>

Since the passing of the Business Facilitation Act in 2006, the licence issuing procedures have been accelerated and the allocation criteria are now published. Decision-making civil servants are no longer in direct contact with licence applicants.

## Media

The media world in Mauritius is highly dynamic. There are numerous daily and weekly newspapers. Liberalisation of the airwaves in 2000 has given Mauritius three new private radio stations to complement the state-controlled Mauritius Broadcasting Corporation (MBC). Only television remains monopolised by the MBC. However, efforts are under way to continue liberalisation and create private television stations.

### Journalist Independence

Newspaper or broadcast journalists should carry out their work entirely independently and be protected from 'friendly' or aggressive pressure likely to influence their work.

There is always some risk of bribery of journalists and it is difficult to guarantee the complete integrity of all journalists.<sup>61</sup> Low wages are one reason why journalists may accept money in return for writing an article. This form of bribery would be linked more to the promotion of a product in the media, for example, rather than bribery to bury information. This commercial corruption certainly has less effect, however, than influence resulting from the membership of some journalists in certain networks (associations or political parties, for example).

To guarantee the transparency and credibility of their media institution, those in charge can draft internal procedures and regulations aimed at avoiding ambiguous situations and ensuring respect for procedures among journalists. Each media organisation has its own regulations governing the conduct of journalists. Each organisation has its own way of working, whether through an editorial charter, a code of ethics or practices that are promoted but not codified. Some of these documents, which may or may not be written, cover the conduct of journalists in carrying out their work. Thus, for example, the code of ethics for journalists of the La Sentinelle press group states, 'Journalists must not use their professional status to obtain advantages and personal privileges, nor do they allow their families to benefit from this status. Neither may journalists cover up or publish information with the aim of deriving a personal advantage from such an action or to benefit their families'.<sup>62</sup> Journalists must refuse gifts or favours that could influence their work and they must maintain a strict separation between information and publicity.

There is an impenetrable barrier between newspaper proprietors and the editorial team.<sup>63</sup> There should therefore be no risk of interference by proprietors in the way information is handled by journalists nor in terms of the topics they address. The guarantee of being able to work entirely independently is not stipulated in internal rules or regulations but depends to a large extent on the personality of the editor, who ensures that the journalists are free to work independently.

In Mauritius press groups are currently being incorporated into larger financial groups. This phenomenon can have two types of consequences. It can certainly help strengthen the independence of the particular press organ by ensuring its profitability and by consolidating its position with respect to advertisers and against attempts to exert financial pressure. However, the fact that the press organ belongs to a financial group with wider economic interests can have an influence on the way it handles information relating to these other interests. This raises the question of impartiality and the genuine credibility of the information relayed by the medium concerned.

### Access to Information

Journalists have difficulty accessing information, restricting their freedom of manoeuvre. There is no law guaranteeing that public information will be published and no official information channel through which information is available. Journalists are therefore dependent on their sources and on the good will they show, and so the independence of the information and its impartiality is

threatened. The press has been caught by a system in which information is locked up. Informing the public depends on the willingness of journalists' sources.

## **The Media and Corruption**

Several factors explain the near absence of investigative journalism in Mauritius. The legal framework (law on defamation) and the cost of such investigations (which are long and very detailed) are the main factors explaining this situation.<sup>64</sup> The press does not have the financial and human resources to investigate properly cases of corruption other than those already under investigation by the relevant institutions (police, ICAC). It can only follow the flow of information that exists, ensuring that this information is widely available to the public and that it is not concealed. In addition, exclusive stories arising from matters made public by the press are not followed up with long-term actions on the part of civil society. Thus, the press lacks the follow-up that could have ensured that information is not forgotten or taken over by another news event.

A magistrate has never forced a journalist to reveal his/her sources during a court case. However, few people dare talk to the press regarding matters of corruption, even under the cloak of anonymity, for fear of being recognised and suffering reprisals. People are scared to talk to journalists despite the fact that sources remain confidential and protected.

## **Pressures on Media**

Various types of pressure explain the difficulties facing the media. Newspapers sometimes face the threat of judicial proceedings (for defamation, for example) to dissuade them to publish certain information. The cost and the duration of judicial procedures are significant pressures on the media (newspapers and radio stations). Financial blackmail linked to advertising revenues is noted by those running the press. Some media professionals highlight this as one of the main means of reprisals (following revelations of embezzlement or of bad business operations) as it has a direct impact on the profitability of the newspaper. Others think that publicity cannot be used as blackmail, as businesses are driven by economic logic and they need the support offered by advertising.

The media has an important role to play in ensuring that the National Integrity System operates effectively. It represents an irrefutable bulwark against attempts to bury matters linked to corruption. To this end, it must be able to carry out its work entirely independently and freely. But in Mauritius, the difficulty of researching information for the general public considerably limits their room for manoeuvre.

## **Business Sector: Private and Public Enterprise**

### **Public Enterprise**

The Mauritian business market is made up of public and private enterprises. A public enterprise is one in which the state controls, directly or indirectly, at least 50 per cent of the capital as well as all enterprises in which representatives of the state sit on the boards and can influence the decision-making process.<sup>65</sup> There are several public enterprises in Mauritius in which the state owns the majority of shares, for example Air Mauritius (the national airline), Mauritius Telecom (the telecommunications company), the post, etc.

As state companies, all these enterprises are subject to the POCA. Employees of these enterprises are not civil servants, but they must respect the provisions of the POCA in their work and activities. The ICAC mandate allows it to carry out investigations into acts of corruption that could arise from within this type of enterprise.

### **Private Sector**

Corruption in the public sector is often the result of a bribery attempt from the private sector. Bribery appears in the search for certain advantages, such as contracts, land, licences, etc.

There is also corruption within the private sector itself. One example are committees set up to win contracts in which decision-makers put their own personal interests before those of their companies. This type of corrupt practice is certainly a disadvantage for the enterprise because the cost of corruption is reflected in the price of the contract awarded. These bad practices (corruption,

clientelism) damage equality and fairness in a free-market economy. Furthermore, corruption in the private sector reduces confidence among foreign investors.

Laws to fight corruption in the private sector often collide with a principle put forward by entrepreneurs: the law cannot restrict companies' freedom of choice in terms of awarding contracts, and every attempt to regulate private sector practices is seen as a restraint on commercial freedom. Therefore, in Mauritius today, the preferred approach is voluntary initiative of the private sector to adopt methods of good governance.

The vast majority of the Mauritian economy is controlled by a limited number of financial groups. The Mauritian private sector is mainly characterised by pyramidal<sup>66</sup> and family-based economic structures.<sup>67</sup> The traditional model is a limited number of shareholders with family ties owning the majority of each of the large financial groups and sitting on their respective boards. These groups have diverse economic interests (textiles, tourism, cultivation of sugar cane). This highly concentrated situation is a legacy of the country's political and economic history. This leads to companies operating in a way that can be described as 'exclusive', autarkic and contrary to the principles of transparency. It is therefore difficult for companies who are not part of these networks (Mauritian and foreign small and medium-sized enterprises<sup>68</sup>) to find space in the Mauritian market.

The Financial Service Commission is charged with regulating the activities of 40 companies (in 2000) publicly traded on the Stock Exchange of Mauritius.

## **Framework for Private Sector Practices**

### *Legislation: The Private Sector and the POCA*

Mauritian legislation principally criminalises those corrupt acts of private sector that affect the public sector. The provisions of the POCA apply as much to the corrupter as to the person corrupted.

However, section 16 of the law, 'Corruption of agent', is concerned with private agents and can be used to secure convictions for acts perpetrated within the private sector itself (without any link to the public sector). This provision stipulates that a number of acts (fewer than for public officers) carried out without the consent of a hierarchical superior are illegal.

Nevertheless, the law stipulates that the same acts carried out with the consent of the hierarchical superior are legal. This poses something of an ethical problem. For example, receiving a gift to carry out an act or to do someone a favour (influence decision-making, allocate a contract, etc.) is illegal only if the hierarchical superior does not approve it. If the hierarchical superior approves this offering, it is no longer illegal to have tried to influence a situation in return for a gift. This situation could be remedied by amending the definition of the target group to which the law refers: 'public officer' would be changed to 'any person'.<sup>69</sup> Thus, all acts of corruption stipulated in the law would then apply as much to the public as to the private sector.

As a supplement to the POCA, certain internal practices in the private sector can be investigated in accordance with the dispositions of the Companies Act of 2001. Sections 229 to 243 of this law define the investigative powers of public inspectors working for the Registrar of Companies on private financial activities (section 237). The Registrar has not yet fully exercised her powers of inspection, however.

The Competition Bill intends to combat abuses relating to a dominant market position. However, the bill has not been completed and approved. It would criminalise abuses arising from a monopolistic situation and collusive agreements aiming to abuse a dominant position in the market (price fixing, agreement on the fees for awarding contracts). It envisages the creation of an institution charged with investigating those practices that have a negative impact on how the market works and on the rules of fair competition.

### *Good Governance and Ethical Codes*

The Ministry of Finance established a committee in 2001 to develop a code of good governance intended for businesses in Mauritius. This committee brought together representatives from the private sector and civil servants as well as representatives from civil society (trade unionists and professionals). The code that the committee drafted was added to the Financial Reporting Act in 2005 and as such has acquired force of law.<sup>70</sup> The provisions of this code must be respected by enterprises that fulfil certain criteria, such as those whose annual turnover is more than MUR 250 million. The code has been adopted by Rogers, one of the largest financial groups.<sup>71</sup> The boards of

these companies are responsible for ensuring respect for the provisions of the code within their own enterprises.<sup>72</sup>

The code stipulates, among other things, that the interests of all shareholders must be taken into account and independent directors must be able to sit on the management boards. The director cannot be a member of the immediate family (spouse, child, parent) of a shareholder, who could use this connection to influence the board or company directors. The idea is to change progressively how the private sector operates.

The incomes of directors must be made public in the company's annual report in order to increase transparency. Similarly, the financial relations between the group or its businesses and other enterprises controlled by a director or majority shareholder must be declared. Directors must avoid any situation that could represent a conflict of interest. These provisions aim to gradually reduce the autarkic way of working in certain financial groups in Mauritius.

The provisions of this code were not adopted without a certain amount of resistance from several private sector players (procedures were too complicated for some, implementation too burdensome for others). Nevertheless, all must respect the rules defined in the code.

Companies who must conform to the code do not risk legal sanction if they fail to do so. It is up to the shareholders to monitor respect for these rules; the company must report to the shareholders about good governance in practice. The law provides for the establishment of the Financial Reporting Council, which is not yet operational. One part of its mission (among other things, see below) is to monitor company respect for these provisions. In the absence of this council, the shareholders are charged with ensuring the implementation of the provisions of this law.

#### *Financial Reporting Act 2004*

Following major financial scandals at both the international and local level, it appeared necessary to review the system governing the accounting and auditing practices of private enterprises. The Financial Reporting Act regulates and monitors the auditing and public accounting profession to avoid the risk of financial bad practice. This law provides for the establishment of a Financial Reporting Council (not yet operational), which is charged with supervising the work of auditors and monitoring whether standards are observed when publishing the financial accounts of companies targeted by the law. This council will have the power to investigate companies and deliver sanctions against those who do not respect the law. In addition, this law provides for the establishment of a self-regulatory body for accountants; no accountant will be authorised to practise without a professional certificate from this body.

## **Civil Society**

Mauritian civil society is varied in terms of its nature and the objectives of its members. It includes officially registered associations, informal meetings of groups of people, opinion leaders and trade unions.

The Registrar of Associations is the body charged with registering associations and trade unions in Mauritius. It is responsible for ensuring respect for the provisions of the Registrar of Associations Act and the statutes of the associations. It has authority to inspect their accounts and minutes of meetings. It ensures, for example, that general assemblies are held regularly and that the accounts of the association or trade union are published annually. It can be called on to investigate an association's activities at the request of members who believe that the association is not obeying the law or the provisions of its statutes. The final sanction, in the event the association refuses to co-operate or in the event of proof that it has not respected the law, is de-registration.

Around 8,000 associations and trade unions have signed up for the services offered by the Registrar of Associations. These associations can have various objectives: cultural promotion associations, religious associations, worker associations, local associations, national associations, etc.

The law does not mention any principles of good governance (beyond general assemblies and the publication of accounts), thus each association can choose whether or not to include elements of transparency (rotation of members on the executive committee, regular information letters to members, etc.) in its statutes. Given that associations' financial procedures are insufficiently audited and restrictive, it is possible for an association to become involved in money laundering, fraud or corruption as long as the contributor and the receiver eliminate any trace of the transaction.

## Civil Society and Corruption

Two associations have the specific objective of informing the Mauritian public about corruption: the Mauritian branch of Transparency International (TI) and the Anti-Corruption Action Group, which was very active in 2004 and received intense media coverage.

Jack Bizlall, a trade unionist who has blown the whistle on corruption and bad financial management in various public institutions (in the public company Air Mauritius and in the Central Electricity Board, for example), is one of the Anti-Corruption Action Group's main protagonists. The positions he has taken publicly on these topics as well as the numerous exposures of acts of corruption he has made make him the leading figure in the fight against corruption in Mauritius. He defines himself as the 'working arm of the whistleblower'<sup>73</sup>, who most often stays in the shadows and provides him with the information he needs for his activities in this area. There are currently several defamation suits filed against him.

While there is a lack of associations continually committed to the fight against corruption, many Mauritian citizens chose to adopt an individual approach. They take up a position in the fight with equal resolution through opinion articles in newspapers or in debates on the radio. The matters investigated by the ICAC are often covered by the media and provoke public reactions, which are also covered in articles.

However, while citizens are quick to judge and condemn the prevailing situation relating to corruption in the country, those who take it upon themselves to blow the whistle on cases of corruption are still rare. As mentioned above, there is a real problem of relay between, on the one hand, institutions charged with combating corruption or those supporting this fight, and the general public on the other. Journalists have difficulty gathering witnesses (even when guaranteeing anonymity) and there is little readiness among citizens to report instances of corruption when they think these serve their personal interest. The fear of reprisals and the amount of time wasted on long judicial procedures are the principal factors that explain citizens' conduct.<sup>74</sup>

## International Institutions

Numerous international institutions are represented in Mauritius, such as the United Nations Development Programme (UNDP), the European Union (EU), the United Nations and the World Health Organisation (WHO). These institutions, along with representatives from the International Monetary Fund (IMF) and the World Bank, are significant donors for the country.

In addition, the state of Mauritius is a member of several regional and international groupings. The country is a member of the Commonwealth, the international organisation of French-speaking countries ('La Francophonie'), the South African Development Community (SADC), the African Union (AU), the Indian Ocean Commission (IOC) and the African Growth and Opportunity Act (U.S. law on growth and economic opportunity in Africa), among others.

The country has had a tradition of economic and political diplomacy since independence. This diplomacy has allowed Mauritius to benefit from a significant number of preferential economic agreements that guaranteed sustained economic development for the country during the 1980s and 1990s.

However, the traditional national economic system is today being called into question by the dismantling of these agreements (see above). The Mauritian state is therefore currently involved in negotiations with some institutions, for example the EU (to benefit from accompanying measures), to help the country with this economic transition.

During these negotiations, which are crucial for the economic future of the country, the Mauritian state is seeking to guarantee good conduct and effectiveness. In the negotiations with the European Union, the latter has recommended the implementation of numerous structural reforms aiming at increased transparency and respecting the principles of good governance promoted by this institution. Reform of the employment law, environmental management, anti-discriminatory measures, procedures for awarding licences, human rights activities, the judicial system, the fight against corruption and the public contracting system are targets of specific recommendations.<sup>75</sup> The state must undertake this reform in order to benefit from the expected financial support.<sup>76</sup>

## Evaluation of the NIS

Two conclusions can be drawn from the descriptions of how various sectors work.

1. Over the past few years, the fight against corruption has become a priority for the country, as much in public as in private institutions. A new awareness is visible in legislative measures, procedural reviews to improve transparency and private business initiatives aiming to find diverse but complementary means to combat the many forms of corruption that exist in the country.
2. There are still many challenges to overcome in order to perfect the overall anti-corruption system, in certain sectors in particular. These challenges require actions and efforts in order for the state of Mauritius to be able to stymie the continuation of corruption.

## The Realm of Politics

In recent years, there have been significant advances concerning the need to increase transparency in the funding of political parties. The first notable advance is the fact that this subject, for a long time considered taboo, has finally been addressed publicly and is now the subject of a number of interventions and public debates. Today, the funding of political parties is no longer considered uniquely as a problem for the parties; it has become a public question to which citizens seek clear answers. It is encouraging that the conclusions of the Sachs report and of the Select Committee on this issue have made clear and precise reform proposals. The question of the position of political parties with respect to the law has also moved onto the public agenda.

The recent case of electoral corruption in which the Supreme Court declared the election of a politician invalid (even if the matter is currently under appeal) has sent a clear signal reverberating around the whole of the political class. Reprehensible electoral practices that election candidates have been using for years have been unquestionably sanctioned. This was the first time this has happened in the legal and political history of the country; as such, this case alone represents a significant advance.

The decision taken by the private sector, through the Joint Economic Council's code of ethics and the code on good governance, to publish the total amounts given to political parties and to use cheques rather than liquid cash during elections is also to be welcomed.

But these moves forward must not hide the fact that further steps need to be taken in order to fully clean up the situation.

### Political Party Funding and the Legal Framework

Although certain advances have been made concerning how political parties are funded, parties are nonetheless facing a considerable obstacle in the absence of a political consensus on the type of reform to be implemented. It is of fundamental importance that political parties find a consensus on this matter and accept legal boundaries in their field of action in order to promote transparency at the highest levels of decision-making in Mauritius. Such a consensus is all the more necessary in order to break down the impression among the public that the entire political class is corrupt and that the highest levels are setting a bad example. The effort to improve transparency goes hand-in-hand with the need to draft clear rules for how parties operate on the basis of a legal framework for their activities.

### The Absence of Codes of Conduct

While members of Parliament are subject to the POCA and must respect the Standing Orders of the Mauritian Parliament, there is no specific code of conduct for their activities. Similarly, election candidates who are not yet invested with public authority (since they are not yet elected) are not yet subject to the POCA. Although there are certain legal provisions concerning their actions, they are not obliged to respect minimal rules for transparency.

## **The Responsibilities of the Transition Government**

The recent electoral corruption case brought to light the need to define more precisely the work a transition government can undertake ahead of legislative elections. This clarification is necessary to prevent public funds from being used to the benefit of candidates from the outgoing majority alliance who are still working in decision-making bodies (ministries and public service institutions). This would help the fight against corrupt electoral practices that are disguised as government or ministerial activities such as civil service recruitment, construction of public buildings or paving of roads.

## **Functioning of Public Services**

In recent years, the state has demonstrated a clear intent to deal with those public sector institutions most affected by corruption by reviewing their procedures and the way they operate.

Anti-corruption efforts are already under way at the Mauritius Revenue Authority and at the National Transport Authority. The Business Facilitation Act is another bid to reduce the risk of corruption by accelerating and clarifying the procedures for awarding licences and permits. The idea is to avoid any situation that could give rise to the payment of 'speed money' (or 'bakchich' as it is known locally) to expedite procedures.

Reform of public contracting procedures through the passage of the Public Procurement Act is one of the factors demonstrating the strong willingness to make state functions more transparent and to fight against practices that pervert public contracting procedures. This act, along with the passage of the POCA, the FIAMLA and the civil servant code of conduct, also represents proof that the state (independent of governments) wishes to attack the problem of corruption and promote greater transparency by working to reform several sectors at the same time. The resources the state is devoting to the establishment of a cleaner economic environment will moreover represent an additional guarantee to foreign investors and international donors of the will to tackle corruption.

The work of the Economic Crime Office, taken up by the first and subsequent members of the ICAC, is beginning to bear fruit. Some corruption cases have ended in legal convictions, even if most of them are currently under appeal. The Mauritian public regularly attends the courts of justice to see ministers, public sector engineers, police officers and election candidates convicted for their actions. All this contributes to a reduction in the perception of impunity that had hitherto prevailed. This will for increased transparency in the working of the state can be strengthened further, however.

## **Difficult Access to Public Information**

The media's difficulty in accessing public information in Mauritius supports the Mafia-esque vow of silence that pervades state activities and promotes the perception of the existence and permanence of reprehensible practices. Today, public accountability of civil service managers is a virtual concept because without access to the relevant information no one can request clarification on the reasons why civil service managers have taken up certain positions. Greater transparency in public information would furthermore support the Mauritian media's role as watchdog by giving them the ability to obtain the information necessary for their work.

## **Asset Declarations**

The declarations of assets made by civil servants in key posts is increasingly used as a method of optimising transparency in the management of public affairs. In fact, even if the asset declaration cannot in itself be enough to combat corruption and cannot fully reflect a person's financial situation, it is nonetheless a supplementary means of promoting the principle of transparency. It can also be used as a reference document in the event of suspicions of dubious wealth-creation among civil servants. Unfortunately a number of civil servants are still exempt from such a declaration.

## Private Sector Practices

The private sector in Mauritius, through its representative bodies, has demonstrated the will to take a public position on the various forms of bad practice prevailing within it. Local financial scandals have shaken the ivory tower to which the private sector used to retreat in relation to matters of corruption and financial bad practice. Having stayed out of the debate for a long time, over the last few years the private sector has been working to bring forward reform proposals and to promote the principles of good governance. In addition to the relations between the private and public sectors, the private sector has also been focussing on a better framework for relations between various private sector players, a gauge of a cleaner economy.

The private sector has therefore taken a position publicly in favour of reform of political party funding (much of this funding coming from the private sector itself) and has courageously adopted new financial practices (using cheques rather than liquid cash and publishing the total amount of money given to political parties). In addition, the JEC has undertaken the long task of drafting rules for proper and fair conduct of its members. This initiative was subsequently supported by the committee on good governance and reached its climax with the code of good governance, an intrinsic element of the Financial Reporting Act that imposes new rules for businesses to follow.

Despite these initiatives, however, certain practices remain that have a negative impact on the local economy. Therefore, the principles of free competition must be further supported in practice to ensure maximum transparency in private sector activities (tackling monopolies and businesses that are run on an exclusive basis).

In addition, the POCA as it currently stands gives rise to a certain unfairness in terms of what is legal (and ethical) in the public and private sectors. Some acts are considered illegal under the law when carried out by a civil servant but legal when carried out by a private individual. In fact, as only an extremely limited number of private sector acts are considered illegal, the POCA creates two sets of rules.

## The Judiciary

The legal sector is a fundamental pillar in the fight against corruption as it is the only sector with the power to convict in cases concerning illegal practices. The efficacy of its work is therefore an additional guarantee in terms of strengthening the fight against corruption. Loyal to its duty of professional discretion, the Mauritian legal profession does not participate in the public debate on corruption. Internally, however, this sector has also attempted to manage the conduct of its members better and to remind them of the principles they must respect and promote. The code of conduct adopted in 2002 is just one proof of the sector becoming aware of the issue. This initiative should be welcomed. However, the functioning of the Mauritian legal system is one of the reasons why members of the public are not likely to report instances of corruption.

## The Length of Judicial Procedures

The most often cited challenge is the length and complexity of judicial procedures. This slowness creates two perceptions: firstly that nothing is being done in terms of the fight against corruption and secondly that scandals are forgotten about after they have broken out publicly. There can be a gap of several years between the time when the scandal breaks and the time when the matter is judged, making people believe the matter has been buried. This impression is the result of the lack of follow-up by the press. When the public no longer hears about a scandal they believe it is being ignored, when in fact it could be passing through (lengthy) legal procedures.

In addition, the length of the procedures helps explain why people are not likely to blow the whistle on cases of corruption. People know that if they report an act of corruption they will spend years being summoned to give evidence in court and will be caught in a system of successive adjournments of the cases. As a result, they would prefer not to be involved.

## Lack of Specialist Training

Instances of corruption and money laundering can be the result of complex financial arrangements that are difficult to understand and even more difficult to prove. However, members of the

judiciary do not receive specialist training in these areas that would allow them to better understand the matters at hand and thereby work more effectively.

## **Resources in the Attorney General's Office**

Members of the Attorney General's Office are a key link in the legal chain. In a legal case, they represent the state and therefore the citizens of Mauritius. Their work can only truly effective if there is a sufficient number of properly trained staff to carry it out. But there are currently real shortcomings regarding training and human resources. These shortcomings can contribute to situations in which files are not treated with the necessary speed and effectiveness.

## **The Work of the ICAC**

The ICAC has experienced difficulties since its creation in 2002 that have damaged its credibility in the eyes of the public and among those in charge in both the public and private sectors. Since 2005, amendments to the POCA have been passed with the declared aim of facilitating the work of the ICAC and avoiding internal obstructions. Its work in relation to the prevention of corruption through reviews of how certain public services operate is starting to bear fruit; new, more transparent procedures are being adopted on the basis of its recommendations. This long-term task cannot bring immediate results but it is necessary nonetheless. It is worth noting in this regard the reduction in anonymous complaints, which allows the ICAC to carry out its investigative work more effectively.

The work of the ICAC falls under the mandate afforded to it by the POCA. Several loopholes in the law still exist in terms of its scope for intervention (private individuals, international consultants).

Following the amendment to the law in 2005, members of Parliament created an unbalanced situation that is potentially serious. By abolishing the Operational Review Committee without replacing it with another body, currently no organisation monitors the investigative work of the ICAC. The parliamentary committee that supervises the ICAC does not have the authority to request reports from the ICAC on the way in which investigations are carried out and on the reasons why some are stopped. This monitoring is essential to provide the necessary counterweight to guarantee that the work of the ICAC is carried out in accordance with the principles of ethics and transparency.

## **Citizen Engagement**

While it is undeniable that some citizens, helped by the Mauritian media, dare to take public positions against corruption, the lack of involvement of citizens (at both the individual and general public level) is nonetheless a fundamental obstacle to mounting an effective battle against corruption. In effect, although many people condemn corruption, few commit themselves resolutely to fighting it by reporting corruption they become aware of or practices in which they may have become directly implicated.

To encourage the commitment of everyone to reporting acts of corruption, all sectors charged with fighting corruption (ICAC, customs, police, FIU, etc.) have agreed to receive anonymous complaints. This decision is an attempt to respond to the fear of reprisals felt by the person who wants to blow the whistle on an act of corruption. This fear is also the main reason behind people's refusal to be quoted in press articles that may contain accusations of corruption.

The abuse that an unrestrained search for anonymous whistle-blowing constitutes can lead to a serious problem in terms of the founding principles of democracy and the legally constituted state as it may resemble the will to lead the public towards a generalised system of accusation. The people involved in this fight do not encourage the act of accusing but rather an act of responsibility among citizens. This would not be possible on a small island if those wishing to report an act of corruption were not able to do so anonymously.

The reduction in the number of anonymous complaints is positive, but members of the public who report cases of corruption are still rare.

## Priorities and Recommendations

The assessment of the Mauritian NIS as well the evaluation of its operational effectiveness bring to light several fundamental gaps in the system in various sectors. The following recommendations aim to tackle the weaknesses observed.

- The establishment of a **legal framework covering the activities of political parties** and how they operate is necessary, along with the adoption of a system of funding political parties, to improve the functioning of Mauritian democracy and to ensure that rules for transparency are respected.

This proposal has already been made in a number of reports and public debates. Politicians are therefore completely aware of this problem and have what it takes to ensure the proposal is implemented. Reform of this system would be appropriate after the next legislative elections, expected in 2010.

- The passage of a **Freedom of Information Act** would facilitate access to all public information, thereby indirectly increasing transparency in the management of public affairs.

This bill has already been publicly announced by the majority alliance in power but has not yet been debated in Parliament. The sitting government is in a position to see the bill through before the end of its term of office.

- **Extending the use of the declaration of assets** to civil servants holding key posts in the public contracting system would allow for stricter control to be exercised over the integrity of their conduct.

General reform of the way the Mauritian public administration operates is currently being drafted. This proposal could form part of the expected broader reform.

- The passage of a law **ensuring free competition and restricting the creation of economic monopolies** would help clean up how the Mauritian business market operates.

The Competition Bill has been expected and discussed on the public agenda for a long time. The sitting government is in a position to see the bill through before the end of its term of office.

- A series of **amendments to the POCA** are necessary to widen its scope for intervention and to create an external body to monitor the work of the ICAC.

There are a number of significant loopholes in the POCA as it currently stands that restrict the efficacy of its role in the fight against corruption. For example, the law should include the term 'any person' instead of 'public officer' and 'officer' to cover private individuals and the corrupt relations that exist within the private sector. This would moreover allow for international consultants and election candidates, who are currently not covered by the law, to be included.

The creation of a body to monitor the work of the ICAC would be an essential element of this legislative amendment. As the commission charged with fighting corruption, clientelism and conflicts of interest, the ICAC cannot itself be exempt from having a counterweight and guaranteeing the transparency of its actions.

- **Strengthening legal resources** (financial and human resources, specialist training) would allow the judiciary to play a full role in the fight against corruption.

A significant reform of the functioning of the judiciary has been put forward, becoming the subject of a report and recommendations. This proposal could be implemented as part of the wider reform that has long been intended.

- Including **civil education in the school syllabus** (understanding citizenship and its values) would influence the mindset of future generations and thereby allow for a more effective fight against corruption.

This proposal has been made by civil society many times. The minister for education has publicly declared his intention to put forward a programme centred on human rights in schools. Civil education could be included in this programme for schools. This should take place before the end of this Parliamentary term.

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## Notes

- <sup>1</sup> Mauritius claims sovereignty over the Chagos Archipelago.
- <sup>2</sup> First Schedule (section 31(2)) article 3. Communities.
- <sup>3</sup> In 'Building an Island of Integrity', Proceedings of a Workshop on National Integrity Systems in Mauritius, 1998, pp. 100-102.
- <sup>4</sup> In 'Building an Island of Integrity', Proceedings of a Workshop on National Integrity Systems in Mauritius, 1998, pp. 102-103.
- <sup>5</sup> National Survey on Corruption in Mauritius, ICAC, January 2004.
- <sup>6</sup> Statistic from the Straconsult study commissioned by the ICAC, 2004.
- <sup>7</sup> In Select Committee on Fraud and Corruption, 2001.
- <sup>8</sup> Quoted in the report of the Select Committee on Fraud and Corruption, 2001.
- <sup>9</sup> POCA, Amendment by Act 24 of 2005, published in Government Gazette No 103 of 1/10/05.
- <sup>10</sup> Recurrent Budget 2006–2007, on the Ministry of Finance website:  
[http://www.gov.mu/portal/site/MOFSite/menuitem.5b1d751c6156d7f4e0aad110a7b521ca/?content\\_id=360739f4fb4bb010VgnVCM1000000a04a8c0RCRD](http://www.gov.mu/portal/site/MOFSite/menuitem.5b1d751c6156d7f4e0aad110a7b521ca/?content_id=360739f4fb4bb010VgnVCM1000000a04a8c0RCRD).
- <sup>11</sup> The Declaration of Assets Act, 1991: section 3.
- <sup>12</sup> *Le Mauricien*, 1 December 2005.
- <sup>13</sup> Citizen's Charter, cf. [www.gov.mu](http://www.gov.mu), on the Mauritian government's website.
- <sup>14</sup> The Declaration of Assets Act, 1991: section 3.
- <sup>15</sup> Mauritius, Country Report based on Research and Dialogue with Political Parties, IDEA, 2006.
- <sup>16</sup> The Representation of the People Act stipulates in article 5 'Dépenses électorales' ['Electoral Expenditure'], section 51, that a party candidate cannot exceed an expenditure threshold of MUR 150,000 and an independent candidate a threshold of MUR 250,000. By way of comparison, the report of the Select Committee on the Funding of Political Parties believes that this threshold should be raised to MUR 1 million.
- <sup>17</sup> This report also includes electoral reform proposals to introduce an element of proportionality into the votes on, among other things, constitutional amendments relating to the office of the president and reforms relating to how the judiciary is run. The recommendations have not yet been implemented.
- <sup>18</sup> 'Vers un code de conduite politique' ['Towards a political code of conduct'], *L'express*, 1 April 2007.
- <sup>19</sup> 'La Cour suprême donne raison à Raj Ringadoo' ['The Supreme Court sides with Raj Ringadoo'], *L'Express*, 31 March 2007.
- <sup>20</sup> On the role of the EC and how it functions:  
<http://www.gov.mu/portal/site/eco/menuitem.9f73b64c918f0cb5d61f2e9848a521ca/>.
- <sup>21</sup> Section 110, indent 4 of the Constitution: 'In the exercise of his functions under the Constitution, the Director of Audit shall not be subject to the direction or control of any other person or authority'.
- <sup>22</sup> Constitution: '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 and other documents relating to those accounts'.
- <sup>23</sup> Report of the Director of Audit on the Accounts of the Republic of Mauritius for the Year Ended 30 June 2006, p. 97: 'This ministry is a peculiar one, unique of its kind. It is a ministry which has a tendency of believing that it is special and different from other Ministries and has self-proclaimed higher status for its offices that those of equivalent status in other Ministries. At times, exceptions become rules. Government policies are self-proclaimed and used as a screen to impose its own way of doing things and to justify non-implementation of others' recommendations. Application of rules, regulations, circulars and government policies currently in force are applied discretionarily, and instead of applying rules per se, the ministry tends to get round rules and to resort to 'case to case basis' completely outside prevailing rules and regulations'.
- <sup>24</sup> This situation will change in the coming months.
- <sup>25</sup> Extract from an article in *L'express*: 'Public Procurement Bill, vers plus de transparence dans le système d'appel d'offres' ['Public Procurement Bill, towards more transparency in the invitation to tender system'], 13 December 2006.
- <sup>26</sup> 'Re-engineering Public Procurement', *L'express*, 20 December 2006.
- <sup>27</sup> Section 27, Public service commission regulations: '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'.
- <sup>28</sup> Public Service Commission Regulations.
- <sup>29</sup> Report of the Public and Disciplined Force Service Commission, 2001 to June 2003, p. 29.
- <sup>30</sup> In Code of Ethics for Public Officers, 2000.
- <sup>31</sup> MRA website: <http://www.gov.mu/portal/sites/mra/index.htm>.
- <sup>32</sup> 'Questions à Sudhamo Lal, directeur général de la MRA' ['Questions to Sudhamo Lal, Director General of the MRA'], *L'express*, 27 January 2007.
- <sup>33</sup> 'Questions à Sudhamo Lal, directeur général de la MRA' ['Questions to Sudhamo Lal, Director General of the MRA'], *L'express*, 27 January 2007.
- <sup>34</sup> 'Best anti-corruption framework, la douane récompensée par l'ICAC' ['Best anti-corruption framework, the customs awarded by the ICAC'], *L'express* 2 October 2006.
- <sup>35</sup> Code of Conduct and Ethics, MRA, 2006.
- <sup>36</sup> 32rd Annual Report of the Ombudsman, Republic of Mauritius, January-December 2005.
- <sup>37</sup> Figures quoted by the Select Committee on Fraud and Corruption. These statistics were obtained from the Office of the Director of Public Prosecutions (DPP).

<sup>38</sup> Standing Order 21, 'Code of Offences Against Discipline in the Force' section 7 'Corrupt Practice' in 'Extrait de Building an Island of Integrity' [Extract from Building an Island of Integrity], Proceedings of a Workshop on National Integrity Systems in Mauritius, 1998, Presentation 'Mauritius Police Force and its Role in Fighting Against Corruption' pp. 57-61.

<sup>39</sup> 'Un trafic peut en cacher un autre' ['One racket can conceal another'], *L'express*, 7 January 2007.

<sup>40</sup> 'Inculpé pour avoir éventé une perquisition' ['Indicted for raid tip-off'], *L'express*, 8 November 2006.

<sup>41</sup> 'L'appel de Sunneechurra entendu' ['Sunneechurra's appeal heard'], *L'express*, 7 November 2006.

<sup>42</sup> Extract from the judgement on appeal of the Supreme Court: 'On the application of the proper rationale contained in the above quoted decisions, we are of the view that section 4(2) of the POCA does not infringe the principle of fair trial and more specially that of presumption of innocence enshrined in section 10(2) of the Constitution. For all the above reasons the appeal has no merit and is dismissed. With costs'.

<sup>43</sup> Code of Ethics for Barristers 1998: 'A practising barrister shall not permit his absolute independence and freedom from external pressure to be compromised'.

<sup>44</sup> Code of Ethics for Barristers 1998.

<sup>45</sup> Annual Report 2005 of the Judiciary, 2006.

<sup>46</sup> Thus, the Guidelines for Judicial Conduct, General Notice No. 2077 of 2002 stipulates in its introduction that, 'whereas the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all other rights ultimately depends upon the proper administration of justice. Whereas the real source of judicial power is public acceptance of, and confidence in, the moral authority and integrity of justice', a judicial code of conduct is necessary.

<sup>47</sup> Editorial: 'l'activisme judiciaire' ['judicial activism'], *L'express*, 2 April 2007.

<sup>48</sup> 'L'élection d'Ashok Jugnauth est nulle et doit être invalidée' ['Election of Ashok Jugnauth is meaningless and must be invalidated'], *le Mauricien*, 30 March 2007.

<sup>49</sup> ICAC annual report, 2003-2004.

<sup>50</sup> Section 23 of the POCA 'Termination of Appointment'. The parliamentary committee informs the Attorney-General of its decision, the latter in turn deciding whether to pursue these dismissal proceedings or not. The Director General will be given a hearing by a person appointed for the task and will be able to defend himself.

<sup>51</sup> 'L'aval du DPP attendu pour 15 enquêtes de l'ICAC' ['DPP endorsement expected for 15 ICAC investigations'], *L'express*, 22 February 2007.

<sup>52</sup> 'L'ICAC a-t-elle failli à son devoir?' ['Has the ICAC failed in its duty?'], *L'express*, 10 December 2006.

<sup>53</sup> In the ICAC annual report, 2003-2004.

<sup>54</sup> In section 3 of the POCA 'Application of Act': a person shall commit an offence under this act where (a) the act or omission constituting the offence occurs in Mauritius or outside Mauritius.

<sup>55</sup> ICAC annual report, 2003-2004.

<sup>56</sup> ICAC annual report, 2003-2004.

<sup>57</sup> Annual Report 2006, FIU.

<sup>58</sup> <http://www.gov.mu/portal/site/lgscsite>.

<sup>59</sup> Author interviews.

<sup>60</sup> 'Corruption alléguée' ['Alleged bribery'], *L'express*, 14 November 2006.

<sup>61</sup> Author interviews.

<sup>62</sup> comprising Radio One, *L'express* (daily), 5+ *dimanche* (weekly), *L'express dimanche* (weekly), *Essentielle* (monthly) among others.

<sup>63</sup> Author interviews.

<sup>64</sup> Author interviews.

<sup>65</sup> Definition extracted from the POCA Part 1.

<sup>66</sup> In 'Report on the Observance of Standards and Codes (ROSC)', Corporate Governance Country Assessment, Mauritius, October 2002.

<sup>67</sup> In an article by the Agora think tank, 'Démocratisation de l'économie, mythes et réalités I' ['Democratisation of the economy, myths and realities I'], appearing in the Forum section of *Le Mauricien*, 15 May 2007: 'Prominent Franco-Mauritian families are believed to have closed off to outsiders the Board and Top Management of their businesses. But are they the only ones?'

<sup>68</sup> In an article by the Agora think tank, 'Démocratisation de l'économie, mythes et réalités II' ['Democratisation of the economy, myths and realities II'], appearing in the Forum section of *Le Mauricien*, 16 May 2007. 'It is absolutely necessary to prevent large enterprises from standing in the way of these small businessmen, which the country genuinely needs'.

<sup>69</sup> Author interviews.

<sup>70</sup> Code of Corporate Governance, section 65 Financial Reporting Act, Mauritius Government Gazette, General Notice No 844, 2005.

<sup>71</sup> Rogers 'Code of Ethics', <http://www.rogers.mu/index.php?langue=eng&rub=4>.

<sup>72</sup> For example: 'A Rogers employee must not act in a corrupt manner or allow herself/himself to be corrupted. We, as employees of Rogers, must not solicit any favours in form of gifts or benefits from anyone if that favour could impact negatively on the way in which we as an employee do our job. The employee must at all times advise their immediate superior of any gift or benefits received or given. We should not offer any gift or favour to anyone in order to influence that person in the way in which he does his job. We generate, receive and store much information that is valuable to outsiders. We must not disclose such information without permission. The company's property and products belong to the company. They do not belong to us. If any employee takes company property or products for his/her own use to give, sell, rent, or dispose of, s/he commits a serious offence and is liable to dismissal and prosecution. We believe in fair and open competition'.

<sup>73</sup> Interview with Jack Bizlall.

<sup>74</sup> Author interviews.

<sup>75</sup> 'Les engagements envers l'Union Européenne' ['Commitments to the European Union'], *L'express*, 17 October 2006.

<sup>76</sup> 'Pour les beaux yeux de l'UE' ['For the love of the EU'], *L'express*, 15 October 2006.