



Embassy of the Republic of Mauritius and Permanent Mission of Mauritius to the United Nations and other International Organizations

Ambassade de la République de Maurice et Mission Permanente auprès des Nations Unies et des autres Organisations Internationales

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The Embassy and Permanent Mission of the Republic of Mauritius to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and with reference to its Note dated 12 December 2017 regarding the Questionnaire of the Special Rapporteur on the independence of judges and lawyers, , has the honour to attach herewith the inputs of the Government of Mauritius.

The Embassy and Permanent Mission of the Republic of Mauritius to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration. *lyf*

Geneva, 30 January 2018

The Office of the High Commissioner for Human Rights (OHCHR)
Palais des Nations
Geneva



QUESTIONNAIRE OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

QUESTION 1

1. The Constitution provides for the independence of the Judiciary not only vis-à-vis the Legislature and the Executive but also vis-à-vis other political or social forces, as illustrated by the entrenched provisions governing the appointment of Judges, their terms of office and security of tenure, the provisions governing their removal in case of misconduct and the oath which they are required to honour under Chapter VII of the Constitution. (*The relevant sections of the Constitution have been quoted hereunder.*)

77. Appointment of Judges of Supreme Court

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

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

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

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

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

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

(6) *Where the office of Senior Puisne Judge is vacant or the person holding that office is acting as Chief Justice or is for any reason unable to perform the functions of*

the office, such one of the Judges of the Supreme Court as the President, acting in accordance with the advice of the Chief Justice, may appoint shall act in the office of Senior Puisne Judge.

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

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

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

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

78. Tenure of office of Judges of Supreme Court

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

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

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

(3) A Judge of the Supreme Court shall be removed from office by the President

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

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

- (a) the President shall appoint a tribunal, which shall consist of a Chairperson and not less than 2 other members, selected by the President from among persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court;
- (b) the tribunal shall enquire into the matter and report on the facts to the President and recommend to the President whether the question of removing the Judge from office should be referred to the Judicial Committee; and
- (c) where the tribunal so recommends, the President shall refer the question accordingly.

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

- (a) where the tribunal recommends to the President that he should not refer the question of removing the Judge from office to the Judicial Committee; or
- (b) where the Judicial Committee advises that the Judge ought not to be removed from office.

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

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

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

79. Oaths to be taken by Judges

A Judge of the Supreme Court shall not enter upon the duties of his office unless

he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by the Third Schedule.

QUESTION 2

2. Sections 85 and 86 of the Constitution provide for the establishment of a National body, such as is referred in question 2, as follows:

85. Judicial and Legal Service Commission

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

- (a) the Senior Puisne Judge;
- (b) the Chairperson of the Public Service Commission; and
- (c) one other member (in this section referred to as "the appointed member") appointed by the President, acting in accordance with the advice of the Chief Justice.

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

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

86. Appointment of judicial and legal officers

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

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

Provided that—

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

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

3. **Note (i):** The Second Schedule to the Constitution lists the offices referred to under section 86 (referred to above) and these include:

Solicitor-General; Parliamentary Counsel; Judge in Bankruptcy and Master and Registrar (including Deputy Master and Registrar and Judge in Bankruptcy); Assistant Solicitor-General; Principal State Counsel (including Senior State Counsel and State Counsel), Magistrate (including the Presiding Magistrate or a Magistrate of the Intermediate Court or of the Industrial Court or a Senior District Magistrate) and Principal State Attorney (including Senior State Attorney, State Attorney and Assistant State Attorney)

4. **Note (ii):** Bold and underlining ours.

5. As regards information sought in relation to the human and financial resources of the Judicial and Legal Services Commission your Ministry is advised to seek inputs from the Master and Registrar (Supreme Court).

6. You may also wish to note that the Judicial and Legal Service Commission and Disciplined Forces Service Commission (Allowances) Act provide for the payment of allowances as follows: *"The appointed member of the Judicial and Legal Service Commission and the members of the Disciplined Forces Service Commission shall receive such allowances as may be specified by Order made by the President and approved by the Assembly."*

QUESTION 3

6. Please refer to inputs under question 1 above.

QUESTION 4

7. Please refer to inputs under questions 1 and 2 above.