

Mauritius

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No Constitutional recognition of ATI

No ATI Law

Ratification

African Charter on Human and Peoples' Rights

African Charter on Values and Principles of Public Service and Administration

African Union Youth Charter

African Charter on Statistics

African Charter on Democracy, Elections and Governance

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Mauritius has submitted all the reports.

2 recommendations related to RTI from UPR in 10/2013

Legal recognition of access to information in Mauritius

Despite the absence of access to information legislation in Mauritius, the country has been faring well in terms of rights, including freedom of expression and of the press. It has been categorised as generally free by Freedom House and has performed well in the Reporters Without Borders Press Freedom Index despite a decline in scores. Over the past two decades, different governing coalitions frequently have criticised and have sometimes verbally threatened the private media, but the government has not engaged in direct repression, such as arrests or other outrageous abuses, against the local media. In spite of the absence of freedom of information (FOI) and access to information (ATI) laws, the state does release a wealth of data, albeit not always complete, user friendly or well organised. The public believes that there is a high level of corruption, especially regarding the awarding of big government contracts. FOI legislation would help strengthen transparency and ensure that the maintenance of rights and freedoms does not merely rely on the goodwill of the governing parties. It would also allow the local media to provide more in-depth investigative reporting as opposed to its current surface-level reporting of news.

There is, as yet, no legislation pertaining to ATI in Mauritius. However, Section 12 of the Constitution¹ specifically guarantees freedom of expression, which it defines as the freedom to impart ideas and information, but it does not go any further in defining this freedom and in fact, refers to a long list of constraints such as national security, public safety, morality, and health, as well as the protection of reputation, privacy, court proceedings, confidential information, and regulation of public communication channels. It also clearly refers to the imposition of restrictions on public officers. Indeed, civil servants of Mauritius are governed by the Official Secrets Act² and the Human Resource Management manual³ (prepared by the Ministry of Civil Service and Administrative Reforms), and these laws clearly prohibit the dissemination of information related to government matters without authorisation from supervisory levels.

Section 12 states the following:

Protection of freedom of expression

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(c) for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

All winning political parties and coalitions have regularly referred to freedom of information as a goal in their electoral manifestos prior to being elected. The earliest documented instance is that of the 2005 *Alliance Sociale*, comprising the Labour Party (Parti Travailleiste – PTr), the Parti Mauricien Xavier Duval (PMXD), the Mouvement Républicain (MR), Les Verts Fraternelles, and the Mouvement

1 <http://mauritiusassembly.govmu.org/English/constitution/Pages/constitution2016.pdf>.

2 <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/O/OFFICIAL%20SECRETS%20ACT.pdf>.

3 http://civilservice.govmu.org/English/Documents/HRM%20Directory/HRMM_08042011.pdf.

Militant Socialiste Mauricien (MMSM). This winning coalition, with the Labour Party as the leading partner, specifically referred to freedom of information in its political manifesto.⁴ This was subsequently transcribed in the official government programme 2005–2010,⁵ which was then read by the president in Parliament. He said, “My government will provide citizens with a right of access to personal information held by state agencies and to information relating to government business by enacting a Freedom of Information Act.”

Following this pledge, an international NGO called the Commonwealth Human Rights Initiative⁶ wrote an official letter to Prime Minister N. Ramgoolam to propose its assistance in drafting the FOI legislation in August 2005.

In February 2006, the NGO wrote to the minister of information technology, Etienne Sinatambou, to reiterate its proposal.⁷ However, no legislation was introduced. In fact, new elections took place in 2010, and the winning coalition called *l’Alliance de l’Avenir* was comprised again of the Labour Party with the PMXD restyled as Parti Mauricien Social Démocrate (PMSD) and a new partner, the Mouvement Socialiste Militant (MSM). The manifesto for this winning coalition did not refer at all to the previous pledge for freedom of information.⁸

Over the years an antagonistic relationship has developed between political actors (ruling parties and opposition alike) and the country’s press. Political parties are used to having undisputed hierarchies within their own ranks (party leaders have never been replaced except by their own progeny, despite claims of having democratic elections within the party structures). Freedom of information legislation is thus a very difficult step for political parties to take because such legislation could result in constant scrutiny and questioning by the mass media and by ordinary citizens.

Due to government unhappiness with press coverage from the private media, Prof. Geoffrey Robertson was specially appointed as a consultant to review the media sector and to consolidate all media laws and regulations through the introduction of the Media Commission.

4 <https://www.lexpress.mu/article/lalliance-sociale-%C3%A0-la-crois%C3%A9e-des-chemins>.

5 <http://mauritiusassembly.govmu.org/English/Pages/Address%20by%20the%20President/Government-Programme-2005.aspx>.

6

http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/mauritius/mauritius_pm_letter_23aug2005.pdf

7

http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/mauritius/letter_to_info_min_offering_assistance_for_foi_bill_feb06.pdf

8 <https://web.archive.org/web/20100601212558/http://www.bleublancrouge.mu/files/Programme.pdf>

However, in April 2013 Robertson went beyond the mandate and made three main recommendations in his preliminary report “Media Law and Ethics in Mauritius,”⁹ suggesting:

- The review of all laws related to the media (sedition, defamation, contempt of court, etc.),
- The introduction of a code of ethics for the media and a media commission to regulate the media, and
- The introduction of freedom of information legislation.

To date, the final report has not been published.

At the last general elections organised at the end of 2014, the *Alliance Lepep*, comprising the MSM as leading partner in coalition with the PMSD and a new party called Mouvement Libérateur (ML), won. Surprisingly, the pledge for a Freedom of Information Act resurfaced in this coalition’s manifesto:¹⁰

*“Un ‘Freedom of Information Act’ sera introduit pour garantir la transparence et permettre la libre circulation des informations.” [A Freedom of Information Act will be introduced to guarantee transparency and allow the free circulation of information.]*¹¹

This was again transcribed in the official government programme of 2015–2019¹² and read by the president in Parliament. He said, *“The Constitution of Mauritius guarantees fundamental rights and freedom of a citizen of the country, such as: freedom of expression and speech, political opinion, assembly, and association. Government is determined to protect these rights and widen the contours of our democracy.”* And *“A Freedom of Information Act will be brought forward to promote transparency and accountability in public administration and more particularly in contract allocations.”*

Implementation of the legal framework

All governing parties have pledged to introduce such legislation, but none have made much visible progress. Under the present government, there is some movement forward; the Cabinet announced work on FOI legislation on 22 January 2016:¹³

“1. Cabinet has taken note that the Freedom of Information Bill, as announced in the Government Programme 2015-2019, is being prepared. The main objective of the Bill will be to promote transparency and accountability in public administration.”

9 <http://gis.govmu.org/English/Documents/Media%20Law%20-%20Preliminary%20Report.pdf>

10 <http://www.msmparty.com/manifeste-electoral/>.

11 Writer’s translation.

12 <http://mauritiusassembly.govmu.org/English/Documents/Add%20president/govprog2015.pdf>.

13

<http://pmo.govmu.org/English/Documents/Cabinet%20Decisions%202016/Cabinet%20Decisions%20%2022%20January%202016.pdf>.

The commitment has been reiterated within the last ACHPR Mauritius country report for 2009–2015 submitted in March 2016. The section on implementation of recommendations from previous periodic reports comprises the following item:

“20.0 To finalise the drafting of the Freedom of Information legislation and pass it into law. In the Government Programme 2015-2019, it is stated that a Freedom of Information Act will be enacted to promote transparency and accountability in public administration in contract allocations. Given that the nature and scope of such legislation is an evolving one, Government is presently doing the necessary ground work for the preparation of a legislation which will adopt innovative processes to improve access to information. Once this initial process is completed drafting instructions will be given to the Attorney-General’s Office to proceed with the preparation of the Bill.”

It is thus possible that the groundwork for the draft law is indeed currently being done at the level of the State Law Office, but there is no further information about the work’s status.

The last ACHPR country report also states that:

“42.0 Section 12 of the Constitution provides for freedom of expression, that is freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence. The local media enjoy a long tradition of freedom and pluralism with a number of dailies, weeklies, fortnightlies and monthlies whilst the audiovisual landscape consists of the national radio and television, the Mauritius Broadcasting Corporation and equally private radio stations. Freedom of the press is guaranteed and is an essential component of the right to freedom of expression provided for under section 12 of the Constitution.”

It is true to say that there is relative diversity in the Mauritian media landscape, except for television broadcasting. There has been a long tradition of private print media since colonial times. Broadcasting was liberalised in 2002 and saw the introduction of the Independent Broadcasting Authority (IBA), which approved licenses to three private radio stations in addition to the state broadcaster. However, television, though technically covered by the IBA Act, did not see the emergence of private stations due to restrictive conditions and limited viable applications for such licenses in a small domestic market. However, the question of private TV is increasingly becoming obsolete, and private media companies are slowly supplementing public television through the provision of web TV channels.

Despite the fact that there is no ATI or FOI legislation, the state does provide extensive information

on its official portal, <http://govmu.org/>, whereby all ministries, departments, parastatal, and other government bodies produce websites as part of the domain.

To date, there are 26 ministries, 44 government departments, 68 parastatal organisations, and 17 other bodies with dedicated websites. The portal gives access to an extensive database listing the laws and government notices as well as the Constitution of the country.

The National Assembly website contains the transcriptions of all parliamentary questions and answers as well as the Hansard for all parliamentary debates. Since mid-June 2016, the National Assembly of Mauritius carries live and archived coverage of National Assembly proceedings on a dedicated website at: <https://parliamenttv.govmu.org/>.

It is worth noting that the United Nations E-Government survey in 2016 classified Mauritius in the high E-Government Development Index (EGDI) category and as the top African performer. The country is among the three African countries that are in the Top 50 for e-participation thanks to high ratings on the Online Service Index (OSI) and the Human Capital Index (HCI) despite a lower performance in terms of telecommunications infrastructure.

Overall, the Mauritian government does engage in proactive disclosure of much of its official business despite the absence of ATI/FOI legislation. The main issue is that the disclosure does not systematically cover all areas of government business. Also, the information is not necessarily organised in a well-structured, user-friendly manner. The depth of content is not the same throughout the 155 websites listed on the government portal. Some government agencies provide minimal information on their websites, whereas others are more information-rich. Some provide their data in various formats (such as Statistics Mauritius); others only provide PDF forms, which need to be filled in and deposited at the physical office, defeating the purpose of an “e-application.” Finally, only 10 government services provide e-payment facilities to date.

As there is no provision for ATI currently, we have submitted requests for information through the official email addresses listed on the websites of ministries and other governmental departments as follows:

- **Ministry of Health and Quality of Life:** Request for information about safety of milk brands following communique by the Seychelles.
- **Ministry of Education:** Request for information about deductions on the paycheck of a pre-

service primary school educator.

- **Civil Status Division:** Request for information about the list of persons authorised by the Registrar of Civil Status to celebrate a Religious Marriage Having Civil Effect.
- **Flacq District Council:** Request for information about old photographs used at an exhibition on the Flacq old railway station.

Only one has responded to the query so far: the Flacq District Council replied that they have no such photos. None of the others have acknowledged receipt of the requests to date. As there is no legal obligation for government bodies to respond to any information request, there is no possibility of appeal for requestors. In fact, the legal constraints that are imposed on civil servants through the Official Secrets Act and the Human Resource Management manual may make it impossible for officials to respond to external requests for information. However, in the last edition of the government newsletter *GNews* in July 2017,¹⁴ an article mentioned that the recently launched Citizen Support Unit has “resolved” 1604 requests out of a total of 3894 received that is 41 percent since launching. No explanation is provided on the meaning of the term “resolved,” that is, whether those that were resolved were acknowledgments, provision of information requested, or resolution of complaints. No breakdown is provided in terms of which ministry or government body received requests.

Enabling environment

Overall, despite the absence of ATI in Mauritius, the country fares well in terms of governance trends with commendable performance in freedoms for political rights and civil liberties and average performance for press freedom and transparency.

The media enjoy good levels of freedom despite what look like estranged relationships with political actors due to the advent of regular confrontational episodes and violent verbal exchanges. In effect, close ties do exist between the political sphere and media workers, many of whom become employed as advisers on information matters during each election cycle. This love/hate relationship between the media and political actors (whether government or opposition parties) has been the prevailing sentiment for a very long time.

Confrontations have sometimes led to unpleasant attitudes and reactions on the part of politicians, including the symbolic burning of newspapers, intimidating actions by the police following media reports related to the health of a prime minister, and the short, temporary ban of one journalist to the

¹⁴ http://pmo.govmu.org/English/Documents/Gnews_July_2017_Edition.pdf.

National Assembly. On the other hand, the press has recourse via editorial content and even selective reporting and agenda-setting tools to retaliate against specific political actors and parties, depending upon their own prevailing interests, affinities, or biases.

We have currently reached a stage where such confrontations are a part of the system and are even secretly enjoyed by the press (as they are conducive to sensationalist content and thus heighten their reach and sales). This is undoubtedly unhealthy and constitutes an impediment to the realisation of a more mature democracy.

The revolving door of media workers to and from employment as spokespeople for government institutions has made the situation more complex. The affinities of such journalists towards a particular political candidate or party only become public after elections when they are recruited to become political advisers/mouthpieces. Then when election season comes around again, the press attachés go back to being journalists, leaving the public with legitimate questions about the journalists' objectivity. None of the journalists acknowledge their stints as political advisers to their audiences.

Cynically, one can say that within the ranks of journalists who have been political advisers, all mainstream political parties are represented, thus creating an artificial balance in coverage. The critical role of oversight/reporting by the media is existent, albeit in an unorthodox manner.

Regarding literacy and education rates, the Mauritian population enjoys very commendable performance on both indicators with a 90.6 percent adult literacy rate in 2015,¹⁵ a gross enrolment ratio of 97 percent in primary education, 72 percent in mainstream secondary education (the rest being in pre-vocational and vocational systems), and 47.4 percent in tertiary education.¹⁶ Education is compulsory until the age of 16 as per the Education Act.¹⁷

There is a vibrant civil society in the country which is quite vocal and visible in the public sphere, albeit at times fragmented and dispersed. Freedom of association is protected under Section 13(1) of the Constitution and the Registrar of Associations Act.¹⁸ Under the Public Gatherings Act,¹⁹ public

15 <https://www.cia.gov/library/publications/the-world-factbook/geos/mp.html>.

16 http://statsmauritius.govmu.org/English/Publications/Documents/EI1269/Edu_Stats_Yr2016.pdf.

17 <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/E/Page%201/EDUCATION%20ACT.pdf>.

18

<http://labour.govmu.org/English/Documents/Legislations/Registration%20Associations%20Act/THE%20REGISTRATION%20OF%20ASSOCIATIONS%20ACT%201978%20updated.pdf>.

19 <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/P/Page%201/PUBLIC%20GATHERINGS%20ACT.pdf>.

gatherings may be organised provided that written notice is given to the police commissioner seven days before the event. No such gatherings are authorised on National Assembly Day in the capital city of Port-Louis. However, since the law defines meetings as assemblies of 12 or more persons, public protests are often held by trade unions and other groups with up to 11 persons in front of Parliament.

Individuals and groups are also very active on social networking sites and do not hesitate to speak out about issues, sometimes in a very confrontational manner. Thus, there is significant potential for collective action.

There is no outright censorship (except for an unfortunate day in 2007 when the Information and Communication Technology Authority blocked access to Facebook because of a fake profile of the then prime minister). However, complaints about content that incites racial hatred are treated seriously and can lead to police arrests.

Recommendations

In order to achieve SDG 16 Target 10, the Government of Mauritius should:

1. Urgently adopt and effectively implement an access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information has to be consistent with international and regional standards on the right to information and the AU Model Law.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Insist on the need for the state (and whatever department is or becomes engaged in crafting the legislation) to organise public consultations of multiple stakeholders on FOI/ATI legislation, including, but not restricted to, media owners, representatives of journalists from multiple news desks, political actors from multiple parties whether in government or not, NGOs, civil society, etc. Ideally, consultation should be conducted as widely as possible with visibility on online platforms.
2. Ask for regular progress reports on the draft legislation and on consultations being planned

and held as well as participation levels for all stakeholder groups.

