

# Mouvement Militant Mauricien



## **The reform of institutions for a democratic Mauritius**

**Alan Ganoo**

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“Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it.”

Anon.

### Rationale

Based on an analysis of felt need of the people with regards to our democratic institutions, the purpose of this paper is to demonstrate the current dissonance between the democratic ideals to which all Mauritians aspire and the institutions that are meant to respect these democratic traditions. It will indicate how outright flouting of democratic ideals has led to an unquestioned and unquestionable opacity of workaday transactions in these institutions. This paper proposes a move away from the current 'widening' of a mostly inefficient and non-responsive democracy to a deepening and consolidation of democracy as the MMM has always promoted. From its early days and thereafter, in opposition or in power the MMM has been in the forefront of the struggle to consolidate the country's democratic foundations. The more informed and technology savvy Mauritian population suffers in the current rule of obscurantism characterized often by a lack of fairness and an overt disregard to basic human rights or even the manipulation of democratic mechanisms to serve the ends of a few. The recent amendment to the Public Procurement Act proposing 'emergency tendering' being used for unfair dealing and the amendments within the Finance Act which were in no way connected to any of the fiscal measures announced in the budget bears testimony to such manipulative strategy. The rebuke of Mr. Speaker in that regard highlights the extent to which this move was counter-democratic. This contributes to the rising suspicion of the effectiveness of democracy.

The MMM still firmly believes in a democratic political system that is inclusive, participatory, representative, accountable, transparent and responsive. Based on the felt need, it adheres to the view that a democratic system has to shift from national security and economic growth to human security and human development. However, democracy is becoming hype in Mauritius. Aligned with the proactive spirit of the MMM, the introduction of an innovative mechanism - *democratic audits*- is proposed to counteract corrupting the very basis of democracy. This proposal is the final aim of this paper.

### What is democracy?

**Democracy is a system or approach whereby the effort to make power accessible to a majority of individuals is seen. Democracy can denote either the power or complete rule by the people. Power differentials as distributed by the inherent political characteristics of our institutions determine access to resources in a given society.** Politically, *democracy* describes a small number of related forms of government and also a political philosophy. Even though there is no specific, universally accepted definition of

'democracy', there are two principles that any definition of democracy includes, equality and freedom.

Driven by current development and technological innovations, to these two above, the MMM insists that there should be a third – participation. Equality, freedom and participation are principles that are reflected by all citizens being equal before the law and have equal access to power. Thus democracy as we understand it entails participation whereby all citizens are able to enjoy legitimized freedoms and liberties, which are usually protected by the Constitution.

To support these principles, political power is necessary because it constitutes the very fabric of politics and of society itself. It determines how the benefits, opportunities and disadvantages are distributed. This justifies the long standing struggle of the MMM to uphold democratic ideals. However, if a democracy is not carefully legislated to avoid an uneven distribution of political power with balances, such as the separation of powers then a branch of the system of rule could accumulate power and become harmful to the democracy itself. The "majority rule" is often described as a characteristic feature of democracy, but without responsible government or constitutional protections of individual liberties from democratic power it is possible for dissenting individuals to be oppressed by the "tyranny of the majority". This is the situation that we are currently witnessing in Mauritius.

We are often led to believe that an essential process in representative democracies are competitive elections, that are fair both substantively and procedurally. Elections are an important exercise since they enable the representativeness of the people in decision making instances. There are however many other dimensions that show that elections are but one facet of the democratic experience, where questions of rights, inclusion, the media and political parties, among other things, must sit alongside the holding of regular elections. However, often the elected forget whose interests they are serving. As a result we get a warped democracy as is our current state.

### **Basis of democracy**

It must first be understood that democracy is central to human development. Individual development is seen as the crux of development in all other spheres of life including cultural, social, economic and so forth. This is universally acknowledged. Democracy is based on the UN-enshrined notion that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Principles of good governance and administration should permeate all human rights notions in order to achieve optimal democratic ideals to enable human development.

Democracy implicitly and explicitly recognizes the centrality of human development in social formations. In this information era, human development is

necessarily based on access to and efficient management of information. The definition of democracy requires frequent updating to be appropriately responsive to peoples' needs. Some key notions are immediately subsumed: representativeness, good governance, human dignity, the rule of law, equality and liberty, free universal education aiming at safeguarding peace as the major prerequisite for individual and national development. Democracy is self-improving in nature: it is constantly being perfected in the face of increasing sophistication of human needs and evolving attributes of human dignity. It is perfecting and perfectible. The MMM has always strived to align the changing definitions of democracy to current societal needs.

On that score, the current government has shied away from its responsibilities. Its unclear stance, ambiguous response together with its wavering attitude during question time in the House on certain constitutional and fundamental democratic issues such as the electoral reform, the law relating to the funding of political parties, the adoption of an electoral code of conduct, a Freedom of Information Act, the live coverage of the debates in the House, have weakened the process of reforming democratic institutions and governance structures.

### **Mechanisms of democracy**

Respect of Human Rights remains the salient characteristic of a democracy. Democracy functions optimally within certain parameters that are established by national parliaments that represent the basis for good governance. Good governance while centralized by the parliament is necessarily enshrined in democratic institutions that are responsive to the needs of the people. The rule of law establishes the parameters that enable the respect of fellow beings and contain the promise of rewards for 'democratically appropriate' behavior. In this section we will demonstrate: -

1. the ideal represented by our democratic institutions,
2. their current ineffective and inefficient functioning, and
3. we will discuss a major reform that will imply an automatic realignment mechanism to the democratic ideal as understood by the Mauritian population – which we will term a democratic audit mechanism.

### **1. Parliament: the Central Institution of Democracy.**

(i) Parliament is the central institution of democracy.

(a) It embodies the will of the people in government and the promise of responsiveness of their needs. It has the unique responsibility for reconciling the conflicting interests and expectations of different groups and communities through the democratic means of dialogue and compromise. Dialogue and compromise imply effective and efficient utilization of information.

(b) It is the arena for policy making, legitimating of collective decisions and policies, overseeing of government and other authorities, the maintenance of public space for discussion and reflection and finally the protection and maximum realization of the values of transparency, accountability and open democratic process with respect to parliament itself and the governance processes operating outside parliament. Effective participation in central and local government decision-making by the widest possible range of people is an important part of the government's commitment to democratic renewal, with change coming from the bottom up as much as top down.

(c) In effect, the above ideal is seriously flawed in Mauritius. The challenge for our Parliament is to engage more effectively with the public and to improve the way it works- to become more genuinely representative of the electorate, more accessible and accountable to the people, more open and transparent in its procedures and more effective in its key task of legislation and oversight of government.

(ii) *Electoral Reforms:*

But before seeking to respond to the challenges of the present age by improving its procedures, the urgency is to address the issue of electoral reform. Indeed, the current First Past the Post system perverts the basic rules of democratic representation. History demonstrates how it has failed to ensure a fair and adequate representation, more particularly in view of the huge disproportion between votes polled and seats received. The MMM has proudly pioneered the concept of such a reform since 1983. The purpose of introducing proportionality into our system is to correct the immediate imbalances created by the FPTP and only marginally compensated for by the Best Loser System.

The introduction of a measure of proportional system in our electoral system will also secure greater participation of women in Parliament and government besides facilitating the entry into Parliament of individuals with competencies who might be reluctant to run for office in constituency battles.

(iii) *Standing Parliamentary Committees:*

Parliament is the key legislative organ and also the body entrusted with the oversight of government. The only mechanism to ensure that our government is fully accountable to the people is the introduction of the Standing Parliamentary Committees. Throughout the world, Parliaments have developed the committee system. Their primary function is to ensure administrative and financial accountability. They exercise control and stewardship over ministers and the expanding bureaucracy of the modern state. Parliaments nowadays transact a great deal of their business through committees. This system allows for more freedom of information and empowers backbenchers of both sides of the House by allowing them to participate constructively in the works of Parliament.

The role of citizens in a democracy is not exhausted by the act of electing a government. The people need to be continually engaged in between two elections. In order to improve the quality and relevance of legislation, it is vital that Parliament works in close collaboration with civil society in finding solutions to problems facing the country. Thus, the Committee system enables the committee to gather the views of civil society and other stakeholders on the implication on any proposed legislation. Furthermore, the cross-party character of committees helps reaching consensus in the legislative process.

*(iv) Live Coverage of Parliamentary Proceedings:*

Parliament must be open and transparent. For a Parliament to be open means most obviously, that its proceedings are physically open to the public. This is not always straightforward in an age when the security of public figures is a pressing concern.

In our country, although the proceedings are open to the public, yet it may not be always possible to accommodate many people- because the sittings are held when the public is at work or citizens from distant places may not find it convenient to travel all the way to Parliament to follow the debates of the House.

Live broadcasting of the proceedings of the House is a solution to this problem. In fact it is considered that the National Assembly does not have the right to deny access to its proceedings to the large public unable to attend to its deliberations. A large part of the public relies exclusively on television for information about politics and the televising of the proceedings would lead to a better understanding of issues and the political process.

Democratic government means government in view of the public. Hence the recent and forceful requests of the MMM inside the House for live televising of the debates and proceedings in Parliament.

*(v) Private Members' Motion:*

A Parliament has to be representative of its citizens. Representativeness is not only a matter of its composition, it must also provide full opportunity to all its members to participate in its works. The Standing Orders of the National Assembly make provision for members to introduce private bills or Private Members' Motion.

While Private Bills can be taken at any sitting of the House, a separate sitting is set for Private Members' Motion once every Meeting.

However, as it is Government which sets the Agenda, the majority, if not all Private Members day begin at 1500 hours or 1530 hours and must end at 1900 hours, with a break of half an hour.

The result is that, as it is now, a motion which may have been of a national interest at the time it was lodged, loses all its interest during the debate and more so at the time when the question on the motion is put.

This outdated provision must be reviewed. The Standing Orders Committee must address this issue and propose a more modern and efficient mechanism to protect the rights of backbenchers and individual members against possible abuse by the Executive. The Speaker should be empowered to direct that a Private Members' Motion before the House be fully debated at the earliest until the question is put.

## **2. The Office of the President.**

When the Constitution was amended to provide for the accession of Mauritius to the status of a Republic, we had removed the last vestiges of colonialism and consolidated our political independence. But we had also paved the way for strengthening our democracy by investing the President with certain powers. The concept of check and balances is essential for a true democracy to function properly. The powers of an all-powerful executive controlling a strong majority in the House should be circumscribed in the interest of democracy. Subsequently new powers were given to the President by way of other constitutional amendments.

Inspired by the Indian constitution, it is suggested that our Constitution must confer upon the President the power to consult the Supreme Court upon a question of public importance as the President may think fit whether in law or in fact. In India the President has referred questions of the following nature to the Supreme Court:

- a) the constitutionality of an existing law;
- b) the constitutionality of a bill presented for the President's Assent;
- c) the constitutionality of a draft bill to be moved in Parliament.

The Supreme Court is bound to entertain such a reference and to report to the President its opinion thereon. It is felt that such a novel provision in our Constitution may constitute a check on an all powerful executive controlling a strong majority in the House to rush in controversial bills especially those suspected of not passing the test of constitutionality and which have been the subject of widespread public criticism.

## **3. Public Accounts Committee.**

The National Assembly having voted large sums of taxpayers' money has in their interest the obligation to expect a detailed account of how the money has been spent. It must be satisfied that the moneys so voted were directed to the intended purpose and were spent prudently and economically.

In Mauritius, the Constitution confers powers on the Director of Audit to audit the public accounts of Mauritius and of all courts of law and all authorities and officers of government. The Director of Audit submits his reports to the Minister of Finance who then causes it to be laid before the Assembly.

The question is what follows from the laying of the Report. It is difficult and, if not impossible for the National Assembly to examine in details the accounts which are complex and technical at times. Thus is therefore constituted the Public Accounts Committee. The setting up of the PAC was an additional means to bring public expenditure under parliamentary control. In this process the report of Director of Audit remains an invaluable tool for the PAC's work.

The PAC is an institution with inherent weaknesses. It has no powers of sanctions and its effectiveness is seen only through putting pressure on civil servants deponing before it during proceedings which take place in camera. This accounts for the fact why, year in and year out, the Director of Audit's reports do not reflect any improvement in the financial management of the different Ministries. The system is also flawed in as much as the problem of accountability of decision making is not clear and hence it is not easy to hold a person in particular to task for any fault. It is recommended that the Audit Committees recently set up at the level of different ministries be given the power to recommend appropriate sanctions against public officers for acts of malpractice.

In so far as private companies funded by government are concerned, it is in the interest of transparency that these companies should fall within the purview of public expenditure control since the National Assembly is voting funds for them. Thus they should be accountable to the National Assembly. It is recommended that an Oversight Committee be set up in the same way as the PAC to oversee all other organizations set up by public funds which do not fall under the purview of the PAC. The oversight committee shall have access to records of Executive accounts and related documentations sufficient to be able to meaningfully review the accuracy of Executive reporting on its revenues and expenditures.

With the advent of the Programme Based Budget, the powers attributed to the Public Accounts Committee will prove to be inadequate. If it is practically not possible for the House to debate the report of the Director of Audit, it is recommended that the powers of the Public Accounts Committee be widened to enable it to recommend, where appropriate, to hold senior officers and government departments accountable for the misuse of public money. This would require them to put in place systems and controls in their departments that would prevent abuse of state money.

To wage a war against the abuse of public resources, the PAC must build a relationship with other law-enforcement agencies. But to provoke this synergy there is need to increase the efficiency and effectiveness of the law-enforcement agencies in dealing with such abuse; but more importantly there is need also to adequately build capacities in these institutions.

#### **4. The Electoral Supervisory Commission.**

The Electoral Supervisory Commission is the highest constitutional body vested with general responsibility for the registration of electors and conduct of elections and also for supervising the entire electoral process. This body has to act independently and impartially. It is a mechanism that ensures the transparency in which elections are carried out and is highly accountable to the public by securing a level playing field for competing political parties and candidates.

The Electoral Supervisory Commission is independent and has functioned in a neutral manner in the past. Yet there is still need to consolidate its practices and vest it with more powers. To strengthen public confidence in the electoral process the following measures are unavoidable:

- (i) The Electoral Supervisory Commission has to draft a comprehensive electoral Code of Conduct with statutory force to which all parties and candidates should subscribe.
- (ii) Once Parliament has been dissolved the Electoral Supervisory Commission instead of the Prime Minister shall set the date for the elections.
- (iii) Air-time during elections is currently allocated by the Mauritius Broadcasting Corporation, a State Corporation. This is anathema to the democratic spirit of equity, fairness and transparency.
- (iv) No publication of opinion poll should take place during the period of 96 hours ending with the hour fixed for conclusion of the poll.

These four proposals will ensure that the party in power does not enjoy any undue benefit or advantage during the electoral campaign. To provide a level playing field to all the political parties, the Electoral Supervisory Commission in consultation with the Electoral Commissioner should be in a position to activate the electoral machinery for the holding of elections. This should not be the prerogative of the Prime Minister. The Electoral Supervisory Commission should have the power to sanction individuals who act in breach of law or an appropriately devised and adopted electoral code of conduct. It is recommended that the Electoral Supervisory Commission should formulate appropriate guidelines regarding airtime allocation on private and public TV and Radio as well as regulate these to further ensure that elections are fair and free. Media hegemony is a threat to democracy. In a country where the ownership of the press is concentrated in a few corporate hands and the broadcast media is controlled by the state, the publication of an opinion poll should be prohibited to prevent any undue influence on voter choice.

## **5. The Electoral Boundaries Commission.**

Under section 39 (2) of the Constitution, the Electoral Boundaries Commission has the duty to review the boundaries of the constituencies every ten years and to present a report to the National Assembly. The guiding principles to be followed by the Commission are contained in section 39 (3) of the Constitution. They provide that the number of inhabitants of each constituency should be as nearly equal as is reasonably practicable to the population quota.

Finally, under section 39 (4) of the Constitution, the Assembly may by resolution approve or reject the recommendations of the Electoral Boundaries Commission but may not vary them.

In view of the considerable importance of such a resolution, whose effect is to alter the boundaries of the constituencies and which can impact on the electoral process, it is felt that such a resolution should have been supported by the votes of not less than two thirds of all the members of the Assembly.

## **6. Registration and Public Funding of Political Parties.**

Elections become a mockery of the will of the people if no control is exercised on the possibility of political patronage by powerful companies and vested interests.

Hence the urgency in a democratic set-up of a regulatory framework for the public funding and the registration of political parties. In the case of election expenses, the prescribed ceilings on expenditure are observed only in their breach. Indeed the presently prescribed ceilings are totally unrealistic. They need to be reviewed.

Likewise, the law should be amended to cater for the appropriate regulation of parties in order to secure greater transparency and fairer competition of ideas. Any party intending to participate in an election and likely to benefit from any allocation of moneys from the State under the proposed Political Parties Funding Act should register as a party with the Electoral Supervisory Commission.

Once registered, it will acquire a corporate status and be subject to stringent requirements concerning its accounts. This will constitute the mechanism whereby political parties will be compelled to function in an open manner, without secret sources of finance.

## **7. Judiciary.**

Ideally, this comprises of a variety of tribunals and other formal mechanisms of accountability, complaint and redress.

The judiciary is the lynchpin of a true democratic state. In Mauritius, our judiciary prides itself of its fierce independence, a rich history and the high respect it commands within the population. But the need for reforms and the will to consolidate its independence can only help to modernize our judiciary. The proposal is to implement the whole Mackay Report in its entirety especially with regard to the proposal to set up an Appellate Division of the Supreme Court. The creation of this Appellate Court will address the current unsatisfactory situation and will annihilate the perception that judges are inclined to stand by each other.

The need to review and extend legal aid to all fields to ensure a freer access to justice is strongly recommended.

### **8. The Director of Public Prosecutions.**

It is also felt that the powers of the DPP should be reviewed. Accountability does not imply an erosion of the office. It is suggested that whenever the DPP decides not to proceed with a complaint, he should as a matter of course provide reasons for his decision. This office should be made accountable in the interest of the democratic ideals within which all our institutions should operate.

### **9. ICAC.**

The main strategy of ICAC is based on “**Integrity of Systems and People**”. The focus is on the promotion of integrity management, good governance, ethical operations and conduct, value-based education and trust building in public administration. It implements the corruption prevention strategies contained in the SADC Protocol and the UNCAC with regard to our Mauritian environment taking into consideration the regional and international initiatives in the fight against corruption. In addition, it promotes integrity, accountability, sound management of public affairs and responsible behavior at organizational and individual levels and prompts corruption prevention culture in the public sector.

In effect, the ICAC has failed in its independent actions. The present regime has warped the potential and scope of its operation. It is now perceived as a political instrument at the service of the masters of the day.

The functioning of the ICAC could be consolidated. This agency could have been spared of all the recent controversy it had been associated with. The MMM proposes that the initial mechanism of appointment of the director general and commissioners of the ICAC should be reinstated. The Appointments Committee composed of the President, the Prime Minister and the Leader of the Opposition, hailed as a non-partisan body which should have been extended to other appointments under the Constitution, was an index of the democratic operations and can restore confidence in the institution.

## 10. Local Government.

Its main aim is to foster a vibrant local democracy - to promote effective, transparent and proactive delivery of services by Local Authorities, to bridge the development divide between rural and urban areas and to achieve the highest standards of cleanliness and sanitation in the country through sound and effective infrastructural and solid waste management policies and practices.

In practice, the local Government sector rarely manages to implement its vision because of the centralization of power within the central Government.

Decentralization should help transfer power to local government to initiate, fund and implement programs meant for local development. It is based on the principle that public decisions should be made when possible, at the level of authority closest to the people. Devolution of power implies that local governments are given some discretionary authority in decision making and in the management of local affairs and delivery of services to their communities. It refers to a form of administrative decentralization.

Committed to the democratic ideals, the MMM has been successful in partly implementing this part of its electoral agenda by setting up a Regional Assembly for Rodrigues and the amendment of the Constitution for the creation of a mini-parliament. The full legislation for the municipalisation of the country and devolution of power to the local authorities was also addressed. The law was adopted but the current government has failed to proclaim it. This proposal still remains high on the MMM agenda.

## 11. The National Human Rights Commission

(i) The NHRC deals with the **human rights guaranteed** by the Constitution of Mauritius. It enquires into *written complaints* made (a) by any person who feels that any of the *human rights* mentioned above has been *violated* or is likely to be violated by the *act* or *omission* of a *public officer* or *employee* of a **public body**; (b) by any person against an act or omission of a member of the police force. The NHRC visits police stations, prisons and other places of detention. It organises and participates in educational and awareness campaigns for the protection and promotion of human rights. It also reviews the safeguards provided by various laws for the protection of human rights as well as review the factors or difficulties that inhibit the enjoyment of such rights.

(ii) This is not happening. The NHRC should be consolidated into being the watchdog of good governance across all our democratic institutions. It should be more active and visible. It should refocus its centre of interventions from prisoners to other citizens.

(iii) The Human Rights Commission should be vested with the powers to ensure good governance in all the existing mechanisms of democracy. It should cultivate a more perceptible presence.

It should contain within its broader function that of the Ombudsman. The mission of the Ombudsman is to serve the Mauritian community by addressing issues arising from maladministration in the public sector and redressing wrongs that may have been committed. The Ombudsman proceeds by way of independent and impartial investigations initiated upon receipt of written complaints or acting on his own initiative. The Ombudsman attempts to strike a fair balance between what the citizen expects from government services and the government that provides these services. The Ombudsman's objective is to develop a public service culture characterized by fairness, dedication, commitment, openness and accountability. The Ombudsperson in Mauritius is noticeably absent.

The NHRC should invest in effective information campaigns to raise awareness concerning the function of this powerful democratic mechanism. People should be aware that meeting the Ombudsperson implies establishing a single point of contact for impartial information on where to make a complaint or seek redress. This will democratically broaden the access to Human Rights redress mechanisms.

The NHRC should have an additional portfolio of public scrutiny. This is an essential attribute of modern, contemporary democracies. Increasingly educated and informed individuals may wish to turn to these organizations for information and even redress. Their existence also implies the efficiency and efficacy of the democracy in which they are anchored. Proposed portfolios based on actual complaints are Health and Safety; Sustainable Development; Education (especially with regards to children's rights in our current overloaded system weighed down by private tuition); Health and social care.

All the above should be delineated in a Citizen's Charter, which clearly spells out democratic rights of individuals in Mauritius. The Citizen's Charter that clearly addresses equality and liberty with regards to human rights, sex, race, color, language, religion, political or other opinion, social or national origin, remuneration, property and birth status. This should be done while recognizing the right to work, (to achieve steady economic, social and cultural development), the right to a safe and healthy working environment, equal opportunity as well as rest and reasonable leisure.

## **12. The Trade Union Movement.**

The mandate of the present government has been characterized by a series of attacks against the trade union movement. The first onslaught started with the unilateral elimination of the tripartite negotiations, a wage-setting mechanism which had guaranteed peace and social stability for decades in the country. The National Pay Council, set up by government as the new wage determination machinery, as expected was

unanimously denounced by the trade union movement and, if anything, provoked frustration and tension amongst the unions. The MMM in consultation with the different workers organizations will review this new set up.

The MMM will also honour its pledge to revisit the new labour legislation introduced by the government. Any piece of labour legislation must be built on the basis of social dialogues, negotiations and extensive consultation. The two pieces of legislation did not meet this criterion. Nor was the request made by the MMM on behalf on the trade union federations to refer the two bills to a Select Committee of the House for further examination acceded to.

### **13. Freedom of Information Act.**

The MMM has always been against the culture of secrecy in Government. As we walk into the twenty-first century, the people of Mauritius expects to be ruled by open, fair, frank and transparent Government. Security measures should not create a barrier to the implementation of Freedom of Information but without overlooking overriding principles of privacy.

Antiquated laws such as the Official Secrets Act and the provisions of the Criminal Code relating to criminal defamation or publishing false news, must be reviewed while protecting the privacy, character and reputation of the citizens by retaining the provisions of the Civil Code on defamation, insult and protection of privacy. At the same time, the provisions relating to data protection will be reinforced so that free access to information does not threaten the private lives of citizens.

Freedom of information is the sole bulwark against corruption. The present state of the law is such that the role of the press in investigating corruption is severely curtailed by legislation. At the same time, this has encouraged the press to indulge in wild speculations. No government can blame the press for publishing false news if, at the same time, it oppresses the press by forbidding it from free access to information. Only a proper Freedom of Information Act can discourage the press from relying on clandestine methods of obtaining information or on hearsay evidence.

But Freedom of Information will also discourage political or business corruption because of the fear of being exposed by any person who inspects the records of Government.

Freedom of Information is also essential to enhance the right of the community to access public information about the operations of departments and public authorities and, in particular, by ensuring that rules and practices affecting members of the public in their dealings with departments and public authorities are readily available to persons affected by those rules and practices

Documents in possession of Ministers, departments, parastatal bodies and public authorities must be made available to the public.

It is strongly felt that the Freedom of Information Act will also afford protection to the citizens so as to ensure that information which affects the rights of citizens can be challenged before the Ombudsman or another proper authority. Very often, records held by government on citizens are erroneous because they have been obtained through improper means. It is the right of the citizen to obtain that information and seek that such records be corrected.

#### **14. Telecommunications and Broadcasting.**

Technological development has broadened the spectrum of available opportunities to access, retrieve and manage information. The user-friendliness and pace of change of technology is unprecedented.

The digital era offers a world of possibilities at hand. It brings effectively the possibility of an enhanced democratization of the society through a “barrier less” access to information, culture, and knowledge. Paradoxically, these new avenues to knowledge and information, also demonstrates the high social inequalities of the country.

- Public Television is operated more as a State TV with little regards to viewers interest
- There is still no free to air Private TV channels
- The access to satellite television channels is meant more for the few privileged
- The access to Internet by Mauritians is still limited, especially when we speak of Mauritius being a Cyber- Island. Only an average of 20% of Mauritians use Internet, and its access at household levels is still very low.
- The access to digital television is subject to viewers having a decoder and there is no real study done to check its real accessibility to Mauritian families.

The success of the three radio channels which were launched under the MMM/MSM government testifies to the need and thirst of the Mauritian population for information, news, and the possibilities of expressing their different and diverging views. In a multicultural society like Mauritius, the private radio phenomena is an excellent mode of social therapy which enables people to express their satisfaction or their frustrations. Understandably, the access to private television is still a heavy source of frustration for our society. We are among the very few democratic nations without free to air private TV channels.

In government, we had embarked on a strategy to develop the digital television broadcast platform. The use of this platform by MBC today defeats at the very outset the initial purpose of the digital platform.

In order to enhance the democratization of this sector, decrease the social and cultural inequalities through access to information, culture and knowledge, and bridge the digital gap, it is proposed to:

- Give free access to Internet to all households,
- Subsidize PCs for low income groups,
- Allow free to air private TV channels to operate,
- Remove TV license fees for public channels,
- Review the MBC Act,
- Set up a TV/Radio Broadcasting Commission to replace IBA for monitoring content and quality of programmes and productions,
- Set up a Complaints Commission for Broadcasting (radio/ TV/ satellite/cable/ digital Internet, etc) presided by a Judge.

### **15. The Service Commissions.**

The purpose of the Public Service Commission, Disciplined Forces Commission, and the Local Government Service Commission is to identify and enlist persons of specified educational attainments with the drive and skill for efficient performance. They should also safeguard the impartiality and integrity of appointments and promotions in the Civil Service and Local Government to ensure that these are based on merits. Further they should take disciplinary action with a view to maintain ethical standards and to safeguard public confidence in the service

The processes of recruitment by these bodies are often called into doubt. Cases are common when recruits do not demonstrate the appropriate abilities with regards to the post which they fill. This makes the recruitment process suspicious.

In that regard, these Commissions should publish and gazette the list of successful candidates for increased transparency.

Another Commission should be set up to be responsible for the recruitment, appointment and promotion in all the parastatal bodies and companies set up with public funds.

## **16. Civil Service.**

The Civil Service in Mauritius aims to be a driver, catalyst and facilitator for the development of effective and efficient human resources in the Civil Service. It wishes to spearhead administrative reforms so as to enable the delivery of timely and quality services to the public as well as to provide training to Public Officers.

There is need to urgently re-establish citizens trust in public administration. To this end, public servants should be provided with a revised set of guiding principles that would help to meet citizens expectations and steer government action.

With the advent of globalization and the impact of information and communication technologies, we realise not only the importance of good governance but also the importance of the interconnected roles of the public sector, private sector and civil society.

At present, fear of Ministers and unwillingness to take decisions characterize the Civil Service. This is a counter-democratic approach that in the end stultifies development and prevents the country from enjoying a plethora of potentially good decisions that could help in its advancement but that are not forthcoming because of a certain mindset.

There is need for a Civil Service Act whereby the functions of the Civil Servants are clearly spelled out. This will surely encourage greater participation and voicing of opinions with regards to the country's development. Democratized interaction will ensure greater integration in and commitment of the Civil Servant to his office.

### **Democratic audits**

The following discussion is premised on the fact that true democracy is based on trust. Trust is both a pre-condition for and the result of, government actions. Maintaining public trust between governments and citizens is an essential element of democracy and a pre-requisite for good government. This will be the role of the democratic audits.

Democratic audits are the major proposal of the MMM for the coming years. These audits will be the watchdog of our democracy. They will allow us to measure and to redress undemocratic attitudes. We are now in an information-led era that has catapulted us into questioning whether democracy is becoming broader but shallower. The challenge remains deepening democracy.

Had such a framework been set up during the recent years, the bedrock of democracy - freedom of speech, freedom of the press and freedom of political expression would not have suffered such deadly blows. On the contrary, these freedoms would have been protected and enabled the safeguard of human dignity and the unfolding of human potentialities. Journalists would not have been harassed with so much impunity. Trade-unionists would have suffered less humiliation. The MBC TV would not have operated

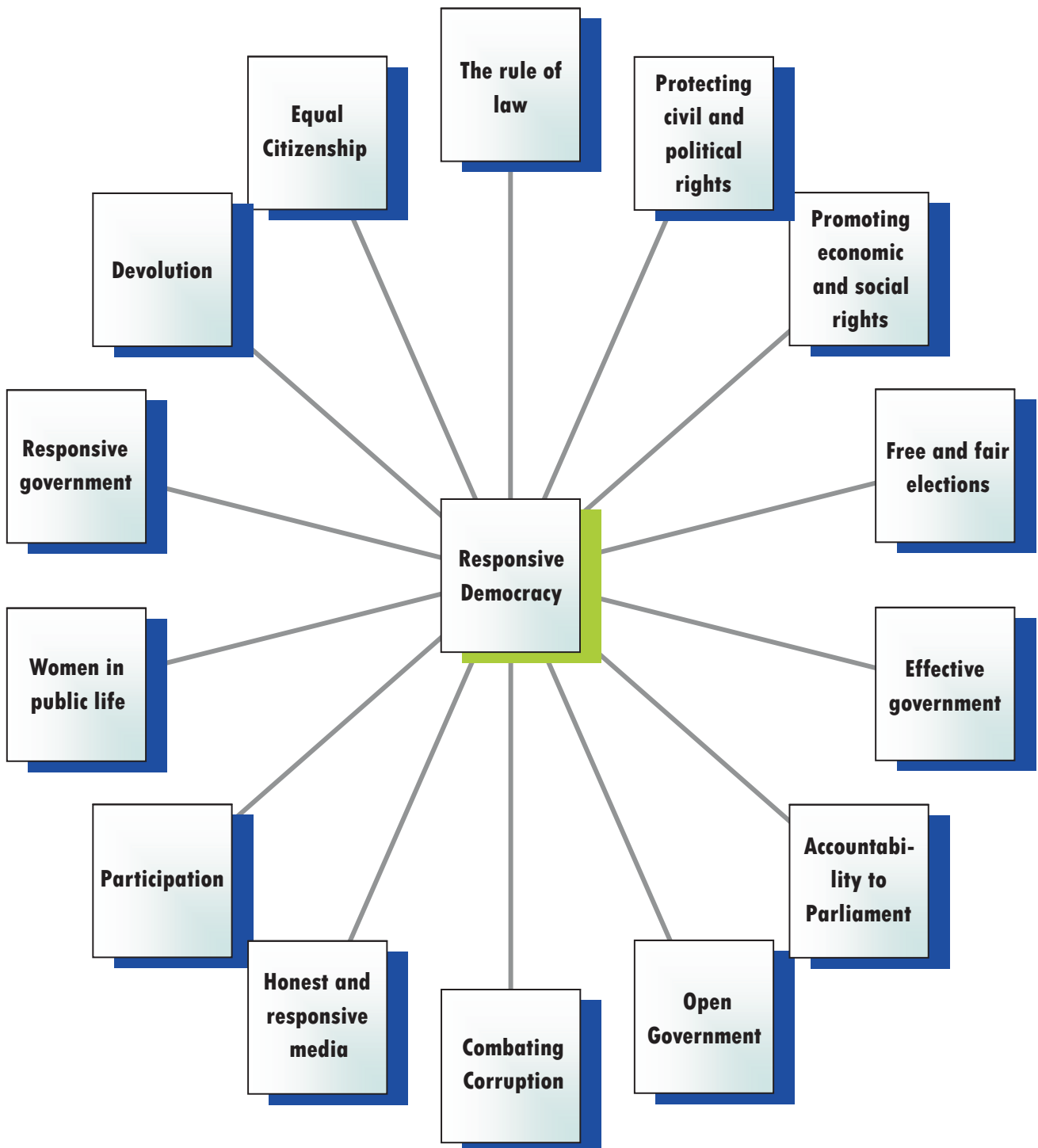
with so much partiality and effrontery. Other undemocratic practices such as the lavish distribution of government publicity according to party interest leading to state sponsorship of certain presses, the unashamed telephone tapping and the regular political manoeuvres of the National Security Services would have been kept in check.

The following grid carries indices of democracy that will be used to measure the level of prevailing democracy in the above delineated institutions. These indices will be put against the activities inherent in all the mentioned institutions and will provide indications for interventions for redress and will ensure good governance is the driving force of a responsive democracy that rests on the pillars of equality, liberty and participation.

*Disclaimer:* In its true democratic spirit, the indices described in the grid are non-exhaustive. The MMM will only arrive at a final list after consultation with members of the public and interested stakeholders.

A. This periodic assessment will be entrusted to a newly created body- the Democratic Audit Commission. This Commission will be made up of members drawn from the higher judiciary, intelligentsia with knowledge of democratic mechanisms and functions (including public and private sectors) and with a demonstrated commitment to democratic practice. This Commission will hold office within the NHRC premises but will be independent. It will be required to publish periodic Democratic Audits.

B. The following diagram delineates the recognized indices for democracy. The constituted commission will base its analysis of the democratic status on the following indices:



*Adapted from "Democracy Under Blair, the latest Democratic Audit of the UK".*

<p><b>Index 1</b> <b>Equal citizenship</b></p>	<ul style="list-style-type: none"> <li>• Defining clearly the rights and duties of citizenship apart from the right to reside in and return to Mauritius.</li> <li>• Decision on immigration, nationality and naturalization and implications</li> <li>• Equality status and equal opportunities</li> <li>• Disability Rights</li> <li>• Decision on foreigners acquiring land and other property in Mauritius, current status and implications for the future</li> </ul>
<p><b>Index 2</b> <b>The rule of law</b></p>	<ul style="list-style-type: none"> <li>• Improving investigations and conditions for questioning and convictions</li> <li>• Making access to civil law simpler and quicker for smaller claims and providing legal aid to reduce inequality in this regard</li> <li>• Independence of Court of Appeal from Supreme Court</li> </ul>
<p><b>Index 3</b> <b>Civil and political rights</b></p>	<ul style="list-style-type: none"> <li>• Applying the Human Rights Act to remedying any existing inadequacies including deaths in prisons and rehabilitation exercises</li> <li>• Appropriate handling of Official Secrets Act that currently circumscribes freedom of expression</li> <li>• DNA Act</li> </ul>
<p><b>Index 4</b> <b>Economic and social rights</b></p>	<ul style="list-style-type: none"> <li>• Addressing inequities regarding access to resources; poverty driven inadequacies, homelessness; life chances of individual with lesser income including employment and health and pension issues</li> </ul>
<p><b>Index 5</b> <b>Free and fair elections</b></p>	<ul style="list-style-type: none"> <li>• Registration of electors/ adequate supervision</li> <li>• Electoral code of conduct</li> <li>• Securing a level playing field</li> <li>• Access to equal air-time</li> <li>• Electoral expenses</li> </ul>

<p><b>Indices 6 and 7</b>  <b>Effective and accountable government</b></p>	<ul style="list-style-type: none"> <li>• The trend towards prime ministerial government and decline in collective cabinet decision-making has gained further ground. This will help prevent fiascos like the STC flour and the DESBRO Steel scandals which derive from the unchecked arrogance of ministers and senior civil servants, the weakness of the opposition parties and a “hollowed-out” civil service. There are also concerns about the inability of ministers and Parliament to keep the quangos state and regulatory bodies under scrutiny, and implications for the future</li> </ul>
<p><b>Index 8</b>  <b>Combating corruption</b></p>	<ul style="list-style-type: none"> <li>• Public sector corruption tends to be subterranean. ICAC to be perceived as less partial</li> </ul>
<p><b>Index 9</b>  <b>Honest and responsive media</b></p>	<ul style="list-style-type: none"> <li>• The dominance and control of government of broadcast media and attempts of hegemony of private media are noted.</li> <li>• This is anathema to our democratic traditions and will have to be kept in check.</li> </ul>
<p><b>Index 10</b>  <b>Participation</b></p>	<ul style="list-style-type: none"> <li>• Participation will include activities in charities, voluntary organizations, pressure groups, protest and direct action movements. Their independence from government should be maintained. The same applies to participation of women in political, economic, social and cultural spheres of living.</li> </ul>
<p><b>Index 11</b>  <b>Responsive government</b></p>	<ul style="list-style-type: none"> <li>• Government procedures for public consultation on policy and legislation have to be revisited. Additionally, government should demonstrate commitment to such consultation to avoid bogus consultations.</li> </ul>
<p><b>Index 12</b>  <b>Devolution</b></p>	<ul style="list-style-type: none"> <li>• The concept of municipalisation will be more appealing since it will be more representative and closer to the population. The case of the Regional Assembly for Rodrigues to be looked at.</li> </ul>

*Adapted from*

*“Assessing the quality of democracy: A practical Guide” (International IDEA).*

## **Conclusion**

This paper has addressed the issues that will be raised during the debates at the Congress on the occasion of the 40th Anniversary of the MMM. These proposals do not necessarily reflect the position of the MMM. They are the outcome of a collective reflection of some militants whose foremost wish has been to rethink our democracy and also to enrich the debates in order to consolidate the democratic ideals that have always ignited our hearts.

The struggle continues!

### Summary of Proposed Reforms:

1. Reform of the electoral system by introducing a dose of proportionality in order to correct the imbalances created by the first Past the Post system.
2. Introduce Standing Parliamentary Committees in Parliament to empower backbenchers to participate more fully in its work and ensure participation of civil society.
3. Introduce live coverage of parliamentary proceedings.
4. Review Standing Orders of the House with regard to Private Members' Motion to enable backbenchers to play their role more effectively.
5. Amend the Constitution to enable the President to refer doubtful legislation to the Supreme Court for its opinion.
6. Empower the Audit Committees set up at the level of different ministries to recommend appropriate sanctions against public officers for acts of malpractice.
7. Set up an Oversight Committee on the same basis as the PAC to oversee all organizations set up by public funds.
8. Widen the powers of the PAC to enable it to hold senior officers accountable for the misuse of public money.
9. The PAC must collaborate with other law enforcement agencies to wage war against the abuse of public resources.
10. The Electoral Supervisory Commission(ESC) must draft a comprehensive electoral code of conduct with statutory force to which all parties and candidates should subscribe.
11. Amend the legislation so that the ESC and not the Prime Minister to set the date for elections.
12. The ESC must formulate appropriate guidelines regarding airtime allocations on private and public TV and radio to ensure that elections are free and fair.
13. No publication of opinion poll should take place during the period of 96 hours ending with the hour fixed for conclusion of the poll.

14. Amend the Constitution so that the resolution of the House in order to approve the recommendations of the Electoral Boundaries Commission must be supported by the votes of not less than two thirds of all members of the Assembly.
15. Introduce a Political Parties Funding Bill.
16. Legislate so that political parties have to register and be subject to stringent requirements concerning their accounts in order to enhance transparency in the finances of political parties.
17. Recommend the implementation of the whole Mackay report in its entirety.
18. Amend the Constitution to set up an Appellate Division of the Supreme Court.
19. Review and extend legal aid to all fields for a freer access to justice.
20. Review the powers of the DPP for the sake of accountability.
21. Restore confidence in the ICAC by reinstating the Appointments Committee composed of the President, the Prime Minister and the Leader of the Opposition.
22. Promulgate the relevant sections of the Local Government Act so that the municipalisation of the country and devolution of power to the local authorities be achieved.
23. Transform the National Human Rights Commission into the watchdog of good governance and giving to the Commission a portfolio of public scrutiny.
24. Draft a Citizen Charter which spells out the democratic rights of citizens in Mauritius.
25. Review the role of the National Pay Council and reestablish the annual tripartite negotiations.
26. Revisit the Employment Relations Act and the Employment Rights Act.
27. Introduce a Freedom of Information Act.
28. Free access to Internet to all households.

29. Subsidize PC for low income groups.
30. Allow free to air private TV channels to operate.
31. Removal of TV licence fees for public channels.
32. Review the MBC Act.
33. Set up a TV/Radio Broadcasting Commission to replace IBA for monitoring content and quality of programmes and productions.
34. Set up a Complaints Commission for Broadcasting presided by a judge.
35. All Service Commissions must publish and gazette the list of their new recruits
36. Set up a new Service Commission for the recruitment, appointment and promotion in all parastatal bodies and organizations set up with public funds.
37. Introduce a Civil Service Act whereby the functions of the civil servants are clearly spelled out.
38. Conduct democratic audits which will be an essential element to measure and to redress undemocratic attitudes.
39. Create a Democratic Audit Commission which will assess on a periodic basis level of prevailing democracy and which will publish the periodic democratic audits.

