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‘An ombudsman for Mauritius?’ Decolonization and state human rights institutions in the 1960s

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Abstract

Mauritius had a pivotal role in the evolution and spread of state human rights institutions in the 1960s. The island offered an influential model for how an ombudsman, a Scandinavian mechanism, could be transported to postcolonial, economically developing, and multi-racial countries. However, this was a compromised mechanism that fell short of local ambitions for an effective guarantee of individual rights, minority protections, and socioeconomic justice. This article argues that the Mauritian ombudsman embodied the uneven power-laden struggles of the postcolonial transition, where British colonial imperatives and jealousy over sovereign authority predominated. With the use of private papers, British archival records, and Mauritian legislative debates, the article examines the relationship between decolonization and the early precursors to national human rights institutions, later popularized in the 1990s. The findings are critical for recognizing the inherent limitations of these institutions and the forgotten possibilities imagined by some anti-colonial actors for remaking postcolonial society.

Keywords: 1960s; decolonization; Global South; human rights; Mauritius; national human rights institutions

Mauritius in the 1960s had an opportunity to create an innovative human rights mechanism. Sookdeo Bissoondoyal, a Hindu politician, demanded an institution that would address an expansive set of issues related to rights and socioeconomic justice. His ‘high-powered tribunal’ promised to secure individual protections, democratic freedoms, integrity in government, and reductions in inequality. It would have placed a serious check on executive authority and applied pressure on the government to uphold international standards of human rights. Religious and ethnic minorities on Mauritius were drawn to the idea, believing that it would help protect the rights of vulnerable groups. Instead, Mauritius adopted an ombudsman. This was a disappointing device with more limited powers and a narrower mandate than Bissoondoyal’s high-powered tribunal. Mauritius’ story is significant for two reasons. Firstly, this was the first time an ombudsman had been proposed for a postcolonial, multi-racial, and economically developing territory. Mauritius could have set a much higher benchmark when its model for a new rights mechanism was applied in other Global South geographies. Secondly, the Mauritian ombudsman initiated a much wider trend in the 1960s that continues today. Domestic human rights institutions became popular among postcolonial governments wishing to insulate executive authority by fostering the appearance rather than the substance of a rights-respecting state. When Mauritius seemingly broke new ground in formulating an ombudsman, it foreclosed more ambitious options for renegotiating the relationship between the individual, the state, and society.

Mechanisms like the Mauritian ombudsman were a foundational precursor to current-day national human rights institutions (NHRIs), such as a ‘human rights ombudsman’ or national

human rights commission. The ombudsman spread outside Scandinavia during the 1960s via discussions on human rights at the United Nations (UN) and through the advocacy of the International Commission of Jurists (ICJ). The office is commonly defined as an independent and impartial government body that acts as a watchdog on the executive branch's administrative actions and decisions. It receives, investigates, and reports on complaints by citizens over abuse of power or unfair treatment by public officials.¹ Scholars in the 1970s identified the ombudsman as a human rights mechanism suited for an era when the welfare state had expanded its activities and interactions with citizens.² The term 'NHRI' was not widely used until the UN General Assembly adopted the 1993 Paris Principles to govern their performance.³ The Mauritian ombudsman is not defined today as an NHRI because standards of compliance have been updated, but it was state-of-the-art of the 1960s for state human rights institutions.⁴ Its key innovation was to permit the office to investigate breaches of constitutional rights. The global dissemination of the ombudsman was interlinked with the process of decolonization through Mauritius.

Mauritius was a dynamic site for constitutional experimentation in the lead-up to independence from British rule in March 1968. The island was geographically remote in the Indian Ocean, socially divided, and dependent on sugar as a monocrop economy. Communalism dominated Mauritius' political landscape, where parties split along ethnic and religious lines.⁵ The 1966 census estimated the population at 768,692, recording the ethnic make-up as 67.7% Indo-Mauritian (51.3% Hindu and 16.4% Muslim), 29.1% 'General Population' (including whites, 'mixed', and Africans), and 3.2% Sino-Mauritian.⁶ Bissoondoyal came from an increasingly powerful ethnic group, the Hindu population. Yet he represented poor, rural, and lower-caste Hindus as leader of a minor party, the Independent Forward Bloc (IFB), from April 1958.⁷ Professor Stanley de Smith, a British constitutional adviser, played a decisive role in reinterpreting Bissoondoyal's demands into a proposal for an ombudsman. Unlike Bissoondoyal's original ideas, de Smith's plan advanced the colonial imperative to maintain political stability on the island.

The Colonial Office favoured the ombudsman as an alternative to communal electoral arrangements and to reassure minority groups that they would be safeguarded under a Hindu-led government. The British wanted a stable postcolonial transition, while cleaving off

¹Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Leiden: Martinus Nijhoff Publishers, 2004), 1–2.

²Donald C. Rowat, *The Ombudsman Plan: Essays on the Worldwide Spread of an Idea* (Toronto: The Canadian Publishers, 1973), 118–19; Bernard Frank, 'The Ombudsman and Human Rights', *Administrative Law Review* 22, no. 3 (1970): 492; Bernard Frank, 'The Ombudsman – Revisited', *International Bar Journal* 6, no. 1 (1975): 48.

³Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Oxford: Hart Publishing, 2007), 1, 4.

⁴On the recent distinction between a 'classical ombudsman' and a 'human rights ombudsman', see Victor O. Ayeni, 'Ombudsmen as Human Rights Institutions', *Journal of Human Rights* 13, no. 4 (2014): 498–502; Jeong-Woo Koo and Francisco O. Ramirez, 'National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966–2004', *Social Forces* 87, no. 3 (2009): 1324–5; Thomas Pegram, 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions', *Human Rights Quarterly* 32, no. 3 (2010): 733–4, 736–7; Reif, *Ombudsman*, 2–4, 7–9.

⁵Thomas Hylland Eriksen, 'Ethnicity Versus Nationalism', *Journal of Peace Research* 28, no. 3 (1991): 263–78; Thomas Hylland Eriksen, 'A Future-Oriented, Non-Ethnic Nationalism? Mauritius as an Exemplary Case', *Ethnos* 58, no. 3–4 (1993): 197–221; Eliphas G. Mukonoweshuro, 'Containing Political Instability in a Poly-Ethnic Society: The Case of Mauritius', *Ethnic and Racial Studies* 14, no. 2 (1991): 199–224; Barbara Wake Carroll and Terrance Carroll, 'Accommodating Ethnic Diversity in a Modernizing Democratic State: Theory and Practice in the Case of Mauritius', *Ethnic and Racial Studies* 23, no. 1 (2000): 120–42.

⁶Foreign and Commonwealth Office, *Mauritius: Report on Mauritius: 1966* (London: Her Majesty's Stationary Office, 1968), 13.

⁷R. Jeetah, *Sookdeo Bissoondoyal: Life and Times* (Port Louis, Mauritius: G. Gangaram, 1980), 46; A. R. Mannick, *Mauritius: The Development of a Plural Society* (Nottingham: Spokesman, 1979), 127, 130; Anthony Greenwood, 'Mauritius – Constitutional Developments', Cabinet: Defence and Overseas Policy Committee paper, 25 May 1965, Dominions Office 213/178, The National Archives of the United Kingdom, London (hereafter cited as TNA).

from Mauritius the Chagos Islands for use as a future American military base. The Labour Party was the dominant nationalist party, led by Dr Seewoosagur Ramgoolam and followed mainly by Hindus. It sponsored the ombudsman as a non-communist safeguard that would not impede its sovereign authority in government. Political groups representing ethnic or religious minorities endorsed the ombudsman as an apparently new and special form of constitutional protection. This included the Parti Mauricien (PM, later Parti Mauricien Social Démocrate or PMSD) supported by the 'General Population'; Muslim parties like the Muslim Committee of Action (MCA); Sino-Mauritian representatives; and other ethnic, religious, and caste minorities. Mauritius gained an ombudsman, but lost the potential for a device more capable of stemming abuses of political, economic, and social power.

This article argues that Mauritius installed an ombudsman rather than an institution more proximate to Bissoondoyal's high-powered tribunal for three reasons. Firstly, the British had much control over the design and development of the constitution. Local politicians had freedom to pursue their ideas and interests during constitutional conferences, but colonial officials dictated the terms and shaped the outcome of these discussions. Secondly, de Smith had a privileged status as a trusted constitutional expert from the colonial metropole, thereby giving him considerable authority to enact his ombudsman plan. Bissoondoyal did not have the legal knowledge or willingness to contest de Smith's detailed proposals, and was content to depict the ombudsman as one of his few political victories. Thirdly, the Labour Party recognized that sponsoring the ombudsman would enhance its legitimacy as a rights-respecting government after independence while giving up little executive control. Ramgoolam was in the seat of government as the incumbent leader. This enabled him to make crucial changes to the ombudsman legislation to effectively exempt government ministers from the office's mandate. Bissoondoyal hoped that the Mauritian ombudsman would be a device to curb or redistribute power. Yet, the office ultimately embodied the uneven power-laden struggles of the postcolonial transition. This resulted in a compromised institution.

These compromises were replicated in subsequent state human rights institutions as they appeared elsewhere in the Global South. Sonia Cardenas, a political scientist, argues that since the 1990s African states have emulated popular NHRIs to retain or reinforce sovereign authority. This has often occurred during 'regulatory moments' when public norms were ambiguous or open to question, such as periods of constitutional reform or regime change.⁸ However, Cardenas misses a key regulatory moment during the era of decolonization. The 1960s saw the largest transfer of sovereignty in history and the consolidation of executive power across much of the Global South. Mauritius initiated the trend that Cardenas describes in the postcolonial world, whereby states adopted accountability mechanisms to extend and preserve their control.⁹ The Ramgoolam government wanted the confidence of minorities while doing little to constrain its sovereign powers after independence. The weaknesses of NHRIs are not a recent phenomenon but a design flaw inherited from the late stages of colonial rule.

Mauritius' story shows that, while many anti-colonial actors saw human rights as a priority during decolonization, the quest for sovereign power trumped efforts to restrain it. In Adom Getachew's account of anti-colonial thought, 'post-colonial independence set the foundation for the gradual implementation of human rights as the rights of citizenship within new states', and she argues that anti-colonial nationalists ranked national self-determination above individual human rights.¹⁰ Samuel Moyn similarly contends that anti-colonialism was primarily a movement

⁸Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (Philadelphia: University of Pennsylvania Press, 2014), 1–2, 60–1, 350–2.

⁹*Ibid.*, 58–62.

¹⁰Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton: Princeton University Press, 2019), 92–6.

for sovereignty, emphasizing the 1970s as the ‘breakthrough’ period for human rights.¹¹ Steven Jensen, in contrast, demonstrates how decolonization in the 1960s enabled Global South actors to make innovative contributions to international human rights diplomacy, laws, and norms.¹² Mauritius’ postcolonial transition offers a nuanced perspective on this debate. Mauritian politicians saw the sovereign state as the primary vehicle for securing human rights. They also recognized that statehood could bring new vulnerabilities, especially for minorities. The plan for a state human rights institution promised to respect both sovereignty and human rights, without prioritizing one over the other. The Mauritian ombudsman would allow flexibility for the postcolonial regime in achieving development targets and improving social services, while also curbing unfair discrimination and abuses of individual liberties. This was a false hope, as the office proved incapable of countering state power with effective rights guarantees. Mauritius’ story shows how decolonization opened new opportunities for anti-colonial advocates of human rights to promote their agenda. Yet, these ideas were distorted during a political transition where colonial priorities and jealousy over sovereign authority predominated.

Mauritius’ postcolonial transition was interconnected with debates over human rights in international forums, non-governmental organizations, and fellow colonial territories approaching statehood. The island’s role has been neglected in the scholarship on NHRIs because its ombudsman was first enshrined in the 1967–68 constitutions and appointed in 1970. Some countries established an ombudsman before Mauritius, including Guyana and Tanzania in 1966. However, such a focus on legal outcomes omits important political and legal developments in the preceding years.¹³ The question of ‘An ombudsman for Mauritius?’ was examined in the 1961 constitutional conference. The reports that emerged out of these ongoing deliberations had broader influence by the mid 1960s. Guyana was the first to execute de Smith’s designs for a Mauritian ombudsman upon the recommendation of the ICJ. Trinidad and Tobago, Dominica, and Jamaica copied from de Smith’s framework in the late 1970s. De Smith’s plan proved to be more influential than the implementation of the office in Mauritius itself, despite his proposals being tailor-made for the island’s sensitive political context. The localized bargaining between colonial and anti-colonial actors in Mauritius shaped a blueprint that found popularity overseas. These findings reveal how decolonization both enabled and impaired the early development of NHRIs, spotlighting the forgotten possibilities for alternative designs like Bissoondoyal’s high-powered tribunal.

The research for this article is based on Mauritius’ legislative proceedings and debates, UN and ICJ reports, and material from the National Archives of the United Kingdom, which includes the private papers of Stanley de Smith.¹⁴ It accounts for perspectives from Mauritius’ diverse political class, the colonial power, legal scholarship, and transnational advocates for human rights. The article begins with discussions about the ombudsman at the UN in 1959, followed a year later by Bissoondoyal’s call for a high-powered tribunal. The second section explores de Smith’s reinterpretation of Bissoondoyal’s institution as an ombudsman. The article then examines Bissoondoyal’s public embrace of de Smith’s plan by mid 1962, even as his original ideas were becoming marginalized. Meanwhile, the Labour Party and the British endorsed the ombudsman

¹¹Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: The Belknap Press of Harvard University Press, 2010), 84–119. See also Jan Eckel and Samuel Moyn, eds., *The Breakthrough: Human Rights in the 1970s* (Philadelphia: University of Pennsylvania Press, 2014); Jan Eckel, *The Ambivalence of Good: Human Rights in International Politics since the 1940s*, trans. Rachel Ward (Oxford: Oxford University Press, 2019), 117–51.

¹²Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (New York: Cambridge University Press, 2016). See also Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010).

¹³This critique draws from Steven L. B. Jensen and Roland Burke, ‘From the Normative to the Transnational: Methods in the Study of Human Rights History’, in *Research Methods in Human Rights: A Handbook*, ed. Bård A. Andreassen, Hans-Otto Sano, and Siobhán McInerney-Lankford (Cheltenham: Edward Elgar, 2017), 124, 132.

¹⁴Barbara de Smith, correspondence with author, 19 July 2018.

as a device to appease minorities. The fourth section studies de Smith's mid-1964 visit to the island, which resulted in the final draft of his model for a Mauritian ombudsman, soon recommended in Guyana by the ICJ. The article then summarizes the underwhelming performance of the institution in Mauritius itself. The conclusion considers the ongoing ramifications of the Mauritian ombudsman for subsequent institutions elsewhere in the Global South up to the 1990s. Decolonization in the 1960s was a consequential time, when the idea of a remedy for rights violations that actually entrenched sovereign authority began to attract widespread appeal.

A 'high-powered tribunal' for Mauritius? 1959–61

The ombudsman attracted international interest in May 1959 at a UN seminar in Kandy, Ceylon (Sri Lanka). The UN Commission on Human Rights favoured such conferences in the late 1950s and early 1960s, as Roland Burke explains, in an attempt to bypass 'political conflict on rights with the wisdom of specialist knowledge'.¹⁵ The UN's Advisory Services programme offered a technocratic approach toward protecting international human rights, bringing regional experts together to share ideas and address common problems. The Kandy seminar focused on remedies against the abuse of administrative authority. It was attended by ministers of law, judicial officers, and legal scholars from across the Asia-Pacific. Only three countries had an ombudsman, also known as a parliamentary commissioner: Sweden since 1809, Finland since 1919, and Denmark since 1955. Professor Stephan Hurwitz, the Danish ombudsman, was not in attendance but submitted a compelling working paper on his job.¹⁶ It ignited a discussion on the ongoing expansion of government responsibilities and the sufficiency of citizen protections against error, neglect, abuse, or discrimination by public officials. The growth in complexity and reach of the modern welfare state brought new challenges in preserving individual rights. Judicial review was limited to the legality not the propriety of bureaucratic decisions. Socioeconomic disadvantage was an acute problem in the region, where few had the funds and legal expertise to contemplate litigation. P. D. Phillips QC, an academic at Melbourne University, prophetically noted that Hurwitz's remedy could one day be applied in all countries.¹⁷

Sookdeo Bissoondoyal raised similar concerns in Mauritius to those considered in Kandy regarding government excesses. Sookdeo and his brother, Basdeo, became prominent figures in 1943, when they led a Hindu cultural revival movement inspired by Mahatma Gandhi's Satyagraha campaign.¹⁸ Sookdeo was first elected in 1948 upon the establishment of a legislative council, and was jailed at least three times for public disobedience.¹⁹ He railed against the Labour Party, which won in coalition with the MCA the first elections in Mauritius under universal adult suffrage in 1959, alleging that the government was guilty of gross misuse of public funds, incompetent administration, upscaling in civil service salaries, and abuses of civil rights.²⁰

Bissoondoyal frequently referred to international human rights ideals in his political rhetoric for three reasons. Firstly, they could be weaponized against the Labour Party by showing citizens

¹⁵Roland Burke, 'Disseminating Discord and Discovering the World: UN Advisory Services on Human Rights and the Illusory Faith in Specialist Knowledge', *International Journal of Human Rights* 21, no. 5 (2017): 590–2.

¹⁶Stephan Hurwitz, 'The Experience of Parliamentary Commissioners in Certain Scandinavian Countries', May 1959, United Nations document (hereafter cited as UN doc.) ST/TAO/HR/6, WP/2.

¹⁷1959 UN Seminar on Judicial and Other Remedies Against the Illegal Exercise or Abuse of Administrative Authority: Peradeniya (Kandy), Ceylon, 4–15 May 1959', UN doc. ST/TAO/HR/4.

¹⁸Deborah Sutton, 'The Political Consecration of Community in Mauritius, 1948–68', *Journal of Imperial and Commonwealth History* 35, no. 2 (2007): 239–62; Larry W. Bowman, *Mauritius: Democracy and Development in the Indian Ocean* (Boulder: Westview Press, 1991), 32.

¹⁹Adele Smith Simmons, *Modern Mauritius: The Politics of Decolonization* (Bloomington: Indiana University Press, 1982), 111; Mannick, *Mauritius*, 57.

²⁰See, for example, Sookdeo Bissoondoyal, 10 May 1960, in *Mauritius Legislative Council: Second Session* (Port Louis: The Standard Printing Establishment, 1960), 906; Sookdeo Bissoondoyal, 5 April 1960, in *ibid.*, 199.

where the government was underperforming. This aimed to embarrass other Hindu politicians with greater political power, economic security, and social standing. Secondly, individual human rights claims suited Bissoondoyal's policy agenda to improve the wellbeing of the poorest Hindus, his main supporter base. Bissoondoyal was a member of an increasingly powerful ethnic group but was not at the centre of economic and social power. Equality of rights between Hindus, according to Bissoondoyal, would help to reduce these socioeconomic disparities. Bissoondoyal, in contrast, shied away from discussing minority or collective rights, which were more relevant for exposing non-Hindu discrimination. Thirdly, Bissoondoyal's upbringing in poverty and career in child education allowed him to draw on personal experience to speak about socioeconomic rights and children's rights.²¹ These factors led Bissoondoyal to produce a far-reaching list of entitlements.

Bissoondoyal located numerous sources in books and newsletters to articulate his human rights agenda, drawing from such sources as the *UNESCO Courier*. He cited Gandhi as inspiration for his repeated call for all to have two meals a day; he upheld Franklin D. Roosevelt's 'Four Freedoms'; he referenced Thomas Paine's 1791 *Rights of Man*; and he called on the government to comply with the 1959 UN Declaration of the Rights of the Child, including Principle Four on 'the right to adequate nutrition, housing, recreation and medical services'. Bissoondoyal saw Eleanor Roosevelt's leadership on children's rights as another step in a longer history of rights struggles, including William Wilberforce, Abraham Lincoln, and Mauritius' own liberation from slavery on French-owned sugar plantations.²² African slavery was abolished on the island in 1835 under British rule, followed by a system of Indian indentured labour until 1910.²³ Bissoondoyal proposed legislation to meet the UN's 'instructions to the government that children should be properly fed'.²⁴ He wanted a welfare state with enough authority to fulfil economic and social rights, with adequate checks to prevent abuses of administrative power.

Bissoondoyal interpreted corruption, maladministration, and waste as leading directly to violations of economic and social rights. He argued that funds lost due to bad government practices could otherwise be spent feeding the hungry and housing the homeless. 'Let us strengthen the hand of the public', he suggested, 'to control public money in the interests of the public.'²⁵ Judicial remedies were inadequate in a context of socioeconomic disparity: 'Everyone knows that if a poor man takes 5 grogs [units of alcohol] he is more sure to go to prison', Bissoondoyal insisted, 'but if a rich man embezzles [5 million rupees] he will remain free.'²⁶ Bissoondoyal concentrated his policy programme on a call for a 'High Powered Tribunal', first mentioning the term at a political meeting at Rose Hill on 31 July 1960.²⁷ He was inspired by a similar call for the Indian prime minister, Jawaharlal Nehru, in November 1959 to establish a 'high-powered tribunal' to investigate corruption and maladministration, and thereby target powerful Indian politicians.²⁸ Bissoondoyal's solution promised to root out 'universal rottenness' in the administration, guarantee 'individual security',

²¹Jeetah, *Sookdeo Bissoondoyal*, 9, 14.

²²Sookdeo Bissoondoyal, 14 March 1961, in *Mauritius Legislative Council Debates: Third Session* (Port Louis: The Standard Printing Establishment, 1961), 128–30, 133; Sookdeo Bissoondoyal, 19 April 1960, in *Mauritius Legislative Council: Second Session*, 607; Sookdeo Bissoondoyal, 8 November 1960, in *ibid.*, 2598; Sookdeo Bissoondoyal, 15 December 1961, in *Mauritius Legislative Council Debates: Third Session*, 4110–11; Sookdeo Bissoondoyal, 22 June 1965, in *Mauritius Legislative Assembly Debates: Second Session* (Port Louis: Legislative Assembly, 1965), 1197; Sookdeo Bissoondoyal, 26 July 1966, in *Mauritius Legislative Assembly Debates: Third Session* (Port Louis: Legislative Assembly, 1966), 1881.

²³Mannick, *Mauritius*, 45–6; Bowman, *Mauritius*, 18, 23.

²⁴Bissoondoyal, 19 April 1960, in *Mauritius Legislative Council: Second Session*, 607.

²⁵Sookdeo Bissoondoyal, 25 October 1960, in *Mauritius Legislative Council: Second Session*, 2286.

²⁶Sookdeo Bissoondoyal, 31 May 1960, in *ibid.*, 1339.

²⁷Jeetah, *Sookdeo Bissoondoyal*, 46–7; Sookdeo Bissoondoyal, 11 November 1960, in *Mauritius Legislative Council: Second Session*, 2721.

²⁸R. J. Venkateswaran, *Cabinet Government in India* (London: George Allen & Unwin, 1967), 182–6; Kewal L. Panjabi, *Rajendra Prasad: First President of India* (London: Macmillan and Company, 1960), 190–1; 'The President's Suggestion: Crusade Against Corruption', *Eastern Economist*, 18 December 1959, 975; 'Chronology: Political Developments', *Indian Affairs Record* 6, no. 2 (1960): 31.

restore public confidence, enhance the political status of opposition parties, and secure greater socioeconomic progress and equality.²⁹ Bissoondoyal was less clear on the institution's mandate, structure, and operation. The IFB used the high-powered tribunal as a catchy slogan to gain public attention and traction. Nonetheless, Bissoondoyal's idea would have major consequences for Mauritius' constitutional development.

Constitutional change in Mauritius was linked to the wider transfer of sovereignty across the British empire.³⁰ The British granted independence to India and Pakistan in 1947, followed by Ceylon and Burma the following year. In the same period, the Indian community on Mauritius gained political momentum through the 1947 constitution, which expanded the franchise and gave elected members a majority in the legislature.³¹ Britain still aimed to remain a major global power after the Second World War, wishing to devolve sovereign authority in Africa only over an extended time period. This gradualist approach was rushed by the emergence of transnational anti-colonial ideologies and movements by the mid 1950s. The British granted concessions to African nationalists to maintain influence and protect their own interests in the former colonies. Mauritius acquired universal adult suffrage under a new constitution in 1958, a year after independence was granted in Ghana and Malaya.³² Prime Minister Harold Macmillan's 1960 'Wind of Change' speech in South Africa signalled Britain's acceptance of the swift handover of power across Africa, yet the British hoped to depict this as a managed and orderly process.

A series of independence ceremonies were held across the Global South between 1960 and 1967, but not in Mauritius. Colonial liberation on the island was complicated for Britain by the need to carefully broker an agreement between various racial, ethnic, religious, and social groups. The British had more time to resolve these issues as Mauritius did not have a mass independence movement strong enough to accelerate the postcolonial transition. The island was not unlike other colonial dependencies in East Africa and southern Africa in having a powerful white minority seeking to retain political and economic privilege, as in Kenya or Botswana.³³ Yet the Franco-Mauritians were just one group who could provoke political disturbances within the island's small geographic space, alongside Africans, Creoles, Muslims, and Hindus. Bissoondoyal's 'high-powered tribunal' would be integrated into this protracted constitutional and political negotiation.

Bissoondoyal took his proposal to the June–July 1961 constitutional conference in London, where talks on self-government were dominated by communal politics. The IFB's memorandum to Iain Macleod, the Colonial Secretary, demanded a '*high-powered tribunal* properly composed and enjoying extensive powers'.³⁴ The mechanism would look into an exhaustive list of issues, such as corruption, discrimination, nepotism, neglect, incompetency, waste, unemployment,

²⁹Bissoondoyal, 8 November 1960, in *Mauritius Legislative Council: Second Session*, 2608, 2616; Bissoondoyal, 11 November 1960, in *ibid.*, 2721–3; Bissoondoyal, 14 March 1961, in *Mauritius Legislative Council Debates: Third Session*, 132; Sookdeo Bissoondoyal, 3 October 1961, in *ibid.*, 2853–4.

³⁰Sarah Elizabeth Stockwell, 'Britain and Decolonization in an Era of Global Change', in *The Oxford Handbook of The Ends of Empire*, ed. Martin Thomas and Andrew S. Thompson (Oxford: Oxford University Press, 2018), 65–84; Frederick Cooper, *Decolonization and African Society: The Labor Question in French and British Africa* (Cambridge: Cambridge University Press, 1996); John Darwin, *Britain and Decolonization: The Retreat from Empire in the Post-War World* (Basingstoke: Macmillan Education, 1988); John Darwin, *Unfinished Empire: The Global Expansion of Britain* (London: Penguin Books, 2012), 342–85.

³¹Simmons, *Modern Mauritius*, 100–1; Mannick, *Mauritius*, 56.

³²Bowman, *Mauritius*, 35–6; Hansraj Mathur, *Parliament in Mauritius* (Stanley: Éditions de l'Océan Indien, 1991), 20.

³³David Anderson, "'Yours in Struggle for Majimbo': Nationalism and the Party Politics of Decolonization in Kenya, 1955–64", *Journal of Contemporary History* 40, no. 3 (2005): 547–64; James Kirby, "'Conditional on a Bill of Rights": Race and Human Rights in the Constitution of Botswana, 1960–66", *Law & History (Journal of the Australian and New Zealand Law and History Society)* 4, no. 1 (2017): 30–61.

³⁴K. Tirvengadam, memorandum to Iain Macleod, April 1961, TNA, Colonial Office (hereafter cited as CO) 1036/631, emphasis in original.

and price rises.³⁵ The high-powered tribunal was not the only constitutional innovation. PM, later PMSD, was formed in 1955, with support mainly from whites and Creoles.³⁶ It raised fears over 'Hindu domination' under a Hindu-led, Labour Party government after independence. PM wanted constitutional protection from racial and religious discrimination, proposing to Macleod that a council of state was needed closely modelled on one established in the 1958 constitution of Kenya. The council of state had advisory powers to delay, review, and revise proposed legislation that could be potentially discriminatory.³⁷

The Colonial Office took interest in both constitutional devices while resisting pressure to establish a communalist electoral system. The British concluded by the early 1960s that communal representation perpetuated social divisions and political volatility.³⁸ PM, the MCA, and Sino-Mauritian groups wanted separate electoral lists and reserved seats along ethnic lines. The Labour Party and the IFB also indicated a readiness to shift from their otherwise non-communalist stances.³⁹ Colonial Office officials paired the high-powered tribunal and council of state proposals together as acceptable alternatives for minority protections. This reframed the IFB's memorandum to suit British imperatives. What might have begun as an institution aimed at empowering poorer Hindus swiftly turned into a mechanism that promised to protect all minority groups on the island.

A 'high-powered individual' for Mauritius? 1961–62

The Colonial Office asked Stanley de Smith, a law professor at the London School of Economics, to serve as Constitutional Commissioner to Mauritius.⁴⁰ De Smith is known to Commonwealth constitutional historians for his 1964 book, *The New Commonwealth and Its Constitutions*, which examined the exportation of the Westminster model and British constitutional forms in Asia and Africa.⁴¹ He observed the use of bills of rights to protect the economic interests of white minorities under the guise of individual rights.⁴² The Colonial Office trusted de Smith not to depart from British interests and preferences. De Smith shared a distaste of communalist mechanisms in constitutions and electoral systems.⁴³ He agreed to participate in the London conference and visit Mauritius to consult further with political leaders.⁴⁴ His job was to advise the Colonial Secretary on the council of state and high-powered tribunal as additional safeguards for minorities.⁴⁵

³⁵Mauritius constitutional conference, note of discussion with IFB, 28 June 1961, TNA, CO 1036/643; Mauritius constitutional conference, report of proceedings, 4 July 1961, TNA, CO 1036/643.

³⁶Simmons, *Modern Mauritius*, 112–13, 118.

³⁷L. Raymond Devienne to Iain Macleod, 7 April 1961, TNA, CO 1036/630; Mauritius constitutional conference, note of discussion with PM, 28 June 1961, TNA, CO 1036/643; Y. P. Ghai, 'The Kenya Council of State and the African Affairs Board of the Central African Federation: An Experiment in the Protection of Minorities', *International and Comparative Law Quarterly* 12, no. 4 (1963): 1092–3.

³⁸Sir Colville Deverell to Reginald Maudling, 18 June 1962, TNA, CO 1036/624; Simmons, *Modern Mauritius*, 95, 199.

³⁹Reaction to constitutional talks, July 1961, TNA, Foreign and Commonwealth Office (hereafter cited as FCO) 141/12060; Pacific and Indian Ocean Department (hereafter cited as PIOD), 'Mauritius Constitutional Conference June 1961', note on memoranda, May 1961, TNA, CO 1036/623; note of talks between Governor, A. R. Thomas, and political leaders, 27 March 1963, TNA, CO 1036/1095.

⁴⁰A. R. Thomas to Stanley de Smith, 21 March 1961, TNA, CO 1036/623.

⁴¹H. Kumarasingham, 'Written Differently: A Survey of Commonwealth Constitutional History in the Age of Decolonization', *Journal of Imperial and Commonwealth History* 46, no. 5 (2018): 884.

⁴²Stanley de Smith, *The New Commonwealth and Its Constitutions* (London: Stevens & Sons, 1964), 179, 210–11.

⁴³J. E. Marnham to John Shaw Rennie, 21 December 1962, TNA, CO 1036/624; N. Fisher to Duncan Sandys, 8 May 1964, TNA, CO 1036/1092; A. H. Poynton to Sandys, 17 April 1964, TNA, CO 1036/1092.

⁴⁴PIOD, 'Mauritius Constitutional Conference June 1961', note on memoranda, May 1961, TNA, CO 1036/623.

⁴⁵Mauritius constitutional review, statement by Colonial Secretary, June 1961, TNA, CO 1036/643.

De Smith favoured a bill of rights based on the European Convention on Human Rights as an uncontroversial measure, given its prior application elsewhere in former British dependencies.⁴⁶ Yet he noted possible risks in raising its expectations too high in protecting groups and individuals, and putting too much pressure on the judicial system.⁴⁷ He doubted the usefulness of a council of state because of the poor outcomes of the Kenyan experiment. The Kenyan council of state ceased to exist by 1963, after it proved to be unpopular among African politicians, the main group it was designed to appease.⁴⁸ De Smith's attention was immediately drawn to the idea of a 'high-powered individual', as he named it. His early impression on 9 June 1961 was that this would be a non-Mauritian styled as an ombudsman-type figure, tasked with handling complaints about discrimination in legislative and administrative acts.⁴⁹

De Smith wrote down his thoughts on the question, 'Why Not an Ombudsman for Mauritius?'⁵⁰ He was inspired by the proposal for an ombudsman in the UK, following Hurwitz's 1958 lecture tour of the country. JUSTICE, the British section of the ICJ, launched a study in 1960–61 into the idea of a UK ombudsman. Sir John Whyatt QC, a former attorney general of Kenya and Chief Justice of Singapore, led the enquiry and concluded in favour of adopting the mechanism.⁵¹ The Whyatt Report was initially received poorly in Britain, but was later accepted by Harold Wilson's Labour government, which installed a parliamentary commissioner in 1967.⁵² New Zealand's example was also topical at the time, being the first Commonwealth country to adopt an ombudsman, in 1962. De Smith observed that Mauritius' political discourse was tainted by charges of corruption, favouritism, and racial discrimination. The 'Hindu domination' fear overtook debate on socioeconomic reform, making further accusations likely on the path to statehood. De Smith pitched an independent parliamentary commissioner to examine allegations of discrimination in the administration. This would cover ministerial action and behaviour, which later became a contentious provision for Ramgoolam.⁵³

Some officials in London and Mauritius voiced mixed views or outright scepticism about de Smith's scheme. Sir Colville Deverell, the Governor, opined that an ombudsman risked being overwhelmed by petitions and controversy. Regardless, he believed that the ombudsman was worth scrutinizing further and wanted de Smith to visit Mauritius for consultations.⁵⁴ Sir Rampersad Neerunjun, the Chief Justice, resisted the proposal. He pointed out that Mauritius did not have the same extension and delegation of government responsibilities as in developed countries and would not share the same associated risks of abuse for many years to come. Ministers would see the ombudsman as an obstacle to creating an efficient and secure administration, and would resent the use of investigative reports by political opponents for 'nuisance value'.⁵⁵ Colonial officials also questioned whether the Scandinavian office could function effectively in a racially and culturally diverse society. However, these doubts far from outweighed Britain's aversion to communal rolls and reserved seats.⁵⁶

The Governor propelled public debate forward on the subject during a speech in the Legislative Council in February 1962. The Colonial Secretary's despatch on the 1961 constitutional

⁴⁶A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (New York: Oxford University Press, 2001); Charles O. H. Parkinson, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories* (Oxford: Oxford University Press, 2007).

⁴⁷Stanley de Smith, 'Constitutional Safeguards – Middle-Term and Long-Term', 13 June 1961, TNA, CO 1036/643.

⁴⁸Ghai, 'Kenya Council of State', 1099, 1132.

⁴⁹Note of meeting in Hall's Room, 9 June 1961, TNA, CO 1036/639.

⁵⁰De Smith, 'Constitutional Safeguards'.

⁵¹Stanley de Smith, 'Anglo-Saxon Ombudsman?', *Political Quarterly* 33, no. 1 (1962): 9–10.

⁵²Glen O'Hara, 'The Parliamentary Commissioner for Administration, the Foreign Office, and the Sachsenhausen Case, 1964–1968', *Historical Journal* 53, no. 3 (2010): 771.

⁵³De Smith, 'Constitutional Safeguards'.

⁵⁴Sir Colville Deverell to A. R. Thomas, 3 November 1961, TNA, CO 1036/646.

⁵⁵Sir Rampersad Neerunjun, 'Ombudsman', February 1962, TNA, FCO 141/12187.

⁵⁶R. Terrell to J. E. Marnham, 26 January 1962, TNA, CO 1036/646.

conference mentioned proposals for a council of state and a high-powered tribunal, noting that further consultation with de Smith would be undertaken.⁵⁷ Deverell linked the despatch to recent events in the UK, where the ICJ urged the establishment of a parliamentary commissioner similar to a Scandinavian ombudsman.⁵⁸ The assumed connection between the high-powered tribunal and an ombudsman puzzled some members, including Jules Koenig QC, a Franco-Mauritian barrister and the leader of PM.⁵⁹ Bissoondoyal was encouraged by the Governor's address, interpreting the reference to a high-powered tribunal as 'a fresh breeze'. He ignored any differences between his mechanism and the ICJ study, and avoided mentioning any specific benefits for protecting non-Hindu minority groups.⁶⁰ Harold Walter, a Creole barrister and Labour Party member, saw the direction of the 'fresh breeze' as misjudged. He argued that Bissoondoyal wanted to 'cast aspersions and make violent attacks on Members', while a parliamentary commissioner 'allow[ed] the man in the street the facility . . . to have his complaint investigated without all the ado and the fuss'.⁶¹ Bissoondoyal's original conceptualization of a high-powered tribunal was now being superseded by the ombudsman. This may have been the intention of the Governor, yet it did not stop Bissoondoyal from claiming ownership over the institution, regardless of the direction the breeze was blowing.

A Scandinavian mechanism for Mauritius? 1962–64

International discussions on human rights continued in Stockholm, which hosted a UN Seminar in June 1962 with a special focus on parliamentary institutions. The Colonial Office advised the Governor to send two Mauritian politicians who would hear about the issues involved in setting up a 'high powered tribunal'. The British saw it as 'good politics' to have insight on the institution originating from Mauritians when de Smith made his visit.⁶² The Governor and the Labour Party agreed to send Bissoondoyal and Guy Forget, a Creole solicitor and Labour's Minister of Health. Most delegates did not see the ombudsman as compatible with their political systems and local conditions. Sir Harold S. Kent, the UK's procurator general, concluded that the UK's present safeguards in Parliament were adequate and that the ombudsman would be unworkable for British institutions, especially given the traditions of ministerial responsibility.⁶³ Mauritius was close to having installed an office that the UK and many other developed countries were yet to fully support.

Bissoondoyal would have known the differences between his proposal and the Scandinavian mechanism after observing the Stockholm conference in person. Yet he continued to merge the two institutions in his rhetoric. He claimed that his attendance at the UN 'Seminar on the High Powered Tribunal' (as he called it) was informative for discussions on 'economic justice'.⁶⁴ On the one hand, this shows the limitations of the UN's Advisory Services programme in guiding human rights observance among member states. As much as the seminars intended to be a depoliticized space for knowledge exchange, Bissoondoyal could embellish his account of the UN's talks for his own political purposes. On the other hand, Bissoondoyal conceded much

⁵⁷ Colonial Office communique, 8 July 1961, TNA, CO 1036/624.

⁵⁸ Sir Colville Deverell, 27 February 1962, in *Mauritius Legislative Council Debates: Fourth Session* (Port Louis: The Standard Printing Establishment, 1962), 8.

⁵⁹ Jules Koenig, 6 March 1962, in *ibid.*, 64–6.

⁶⁰ Sookdeo Bissoondoyal, 6 March 1962, in *ibid.*, 96–7.

⁶¹ Harold Walter, 6 April 1962, in *ibid.*, 613–16.

⁶² J. E. Marnham to Sir Colville Deverell, 26 February 1962, TNA, FCO 141/12187; R. Terrell to Marnham, 26 January 1962, TNA, CO 1036/646.

⁶³ '1962 UN Seminar on Judicial and Other Remedies Against the Abuse of Administrative Authority with Special Emphasis on the Role of Parliamentary Institutions: Stockholm, Sweden, 12–25 June 1962', UN doc. ST/TAO/HR/15; Harold S. Kent, 'The Seminar at Stockholm', note on Scandinavian ombudsman, June 1962, TNA, TS 58/605.

⁶⁴ Sookdeo Bissoondoyal, 9 October 1962, in *Mauritius Legislative Council Debates: Fourth Session*, 2337.

ground in connecting his original proposals to the Scandinavian mechanism. He chose not to insist on having a high-powered tribunal with strong capacities to check executive power, address socioeconomic disparities, and advance the rights of the poor. Rather, he suggested that the ombudsman had the same powers as a high-powered tribunal. The ombudsman gained domestic legitimacy in Mauritius by being tied to the IFB's proposals. In the process, it displaced the original objectives of the high-powered tribunal while offering modest political gains for Bissoondoyal.

The Labour Party more effectively appropriated the Scandinavian mechanism for their own agenda. The October 1963 election saw the party retain power in coalition with the MCA, while losing their absolute majority owing to PMSD and IFB gains.⁶⁵ The country had two stages of constitutional advancement: the first after the 1961 constitutional conference; the second after the 1963 elections and later effected by the 'Mauritius (Constitution) Order 1964'.⁶⁶ An all-party government held office from February 1964 to November 1965. It fell apart after PMSD's resignation, mainly over Britain's policy of taking Mauritius to independence without a referendum.⁶⁷ Dr Seewoosagur Ramgoolam, a Hindu leader of the Labour Party and later Mauritius' first prime minister, was the most forceful advocate for national self-determination. He studied medicine in London after an early life in poverty and lived with a disability, losing his left eyesight after a childhood accident.⁶⁸ Ramgoolam was embarrassed by the teasing he faced on Mauritius' slow progress toward independence when meeting East African leaders, such as Kenya's Jomo Kenyatta and Tanzania's Julius Nyerere.⁶⁹ He pushed for independence, but accepted that it required the support of minority groups and other parties. Ramgoolam was reluctant to adopt communalist measures, seeing the ombudsman as a viable alternative.

Ramgoolam supported an ombudsman to the extent that it suited his political aims. He expressed interest in February 1962, nominating a mechanism based on the New Zealand model.⁷⁰ He 'did not particularly want any Ombudsman arrangement', one colonial official observed, but saw it as useful to address minority anxieties.⁷¹ The party was hesitant over the institution. Walter questioned the merits of the ombudsman in the British Commonwealth, given that the inherited system offered remedies in court and via a motion in Parliament.⁷² This reveals the paucity of Labour Party enthusiasm for the office when considered outside the issue of minority rights and the art of political compromise, a quality for which Ramgoolam was renowned.⁷³ The Labour Party endorsed the ombudsman owing to their lack of social force as an independence movement, compared with many successful nationalist movements and parties in Africa. Hastings Banda in Nyasaland (Malawi) opposed the white-led, United Federal Party's suggestion of an ombudsman as a means of protecting minority groups, dismissing the ombudsman and a council of state as racially divisive and a threat to ministerial responsibility.⁷⁴ The Labour Party could not afford to be so intractable.

⁶⁵Eliezer S. Poupko, 'An Exploratory Study of Constitutional Design in Three Island States: Seychelles, Comoros, and Mauritius', *Journal of Contemporary African Studies* 35, no. 3 (2017): 337; Anand Mulloo, ed., *Our Struggle: 20th Century Mauritius* (New Delhi: Vision Books, 1982), 104; Colonial Office brief, 1963 Mauritius Legislative Council election results, 9 February 1964, TNA, CO 1036/1082.

⁶⁶Simmons, *Modern Mauritius*, 151; Mathur, *Parliament in Mauritius*, 21–2.

⁶⁷Simmons, *Modern Mauritius*, 158; John Rennie to Herbert Bowden, 23 January 1967, TNA, FCO 32/268.

⁶⁸Mulloo, ed., *Our Struggle*, 13–18, 33.

⁶⁹Seewoosagur Ramgoolam, 10 November 1964, in *Mauritius Legislative Council Debates: First Session* (Port Louis: The Standard Printing Establishment, 1964); John Rennie to A. J. Fairclough, 11 January 1965, TNA, FCO 141/12078.

⁷⁰J. E. Marnham to Sir Colville Deverell, 26 February 1962, TNA, FCO 141/12187.

⁷¹A. R. Thomas to J. E. Marnham, 16 May 1963, TNA, CO 1036/1082.

⁷²Harold Walter, 4 June 1963, in *Mauritius Legislative Council Debates: Fifth Session* (Port Louis: The Standard Printing Establishment, 1963), 1380–1. See also note of talks between John Rennie, A. R. Thomas, and political leaders, 27 March 1963, TNA, CO 1036/1082.

⁷³Simmons, *Modern Mauritius*, 49.

⁷⁴Central African Office, *Report of the Nyasaland Constitutional Conference* (London: Her Majesty's Stationary Office, 1962), 7–8.

The smaller parties saw the ombudsman from a different political angle. Koenig wanted both a council of state and a high-powered tribunal, demanding the latter even as the former became less likely to gain either Labour Party or Colonial Office backing.⁷⁵ Bissoondoyal continued to present the high-powered tribunal and the ombudsman as the same institution. He framed the new device as an innovation for human rights protections, wanting it installed as soon as stage two.⁷⁶ The 'High Powered Tribunal' would address the 'question of safeguards of rights of all individuals in this country', Bissoondoyal emphasized, without which there 'will be no efficiency, no integrity' in government.⁷⁷ Abdool W. Foondun, a fellow IFB member, quoted Reverend William Temple's 1942 articulation of six principles for Christian society, including socioeconomic, political, and civil entitlements.⁷⁸ 'These are the human rights [*sic*] put in a nutshell', according to Foondun, and 'the establishment of a High Powered Tribunal' was necessary to fulfil these ideals.⁷⁹ Bissoondoyal depicted the 'high-powered tribunal' as 'a constitutional right . . . granted by what will be covered by legislation regarding human rights'.⁸⁰ The IFB promised more than the office could deliver on either human rights protections or socioeconomic justice.

The Colonial Office surmised that it was better to support the idea, given its apparent popularity among minority groups and its acceptability to the Labour Party.⁸¹ The alternative, officials saw, was to risk being stuck with an unworkable device that might further entrench communalist feelings.⁸² More vitally, the ombudsman would help meet Britain's objective of minimizing political volatility in Mauritius and the Indian Ocean. Britain gradually re-evaluated its 'East of Suez' role as a military and naval power in the 1960s. Harold Wilson formally announced in 1968 a complete withdrawal of troops from mainland Southeast Asia.⁸³ The US increased its strategic role in the Indian Ocean, while the Soviet Union also escalated its naval presence. The US and Britain saw the Chagos Islands as central to the emerging transition of Western military commitments in the region.⁸⁴ The British persuaded Ramgoolam to give up territorial rights over the archipelago, with Ramgoolam settling on a deal in 1965 that involved Britain publicly supporting independence in Mauritius and offering some financial compensation to accommodate the UK's forcible relocation of Chagos Islanders to Mauritius and elsewhere.⁸⁵ This allowed Britain to remain in possession of the islands and to permit the US to establish a military base on the atoll of Diego Garcia.⁸⁶

The ombudsman had geopolitical relevance as a mechanism designed mainly to ease ethnic tensions. Britain's strategic concern in colonial dependencies was to have a smooth transition

⁷⁵John Rennie to Seewoosagur Ramgoolam, 1 July 1963, TNA, FCO 141/12075; Rennie, note on talks with PM, 6 January 1964, TNA, CO 1036/1082; Jules Koenig to Rennie, 9 February 1964, TNA, CO 1036/1082.

⁷⁶Note of talks between John Rennie, A. R. Thomas, and political leaders, 27 March 1963, TNA, CO 1036/1095.

⁷⁷Sookdeo Bissoondoyal, 7 June 1963, in *Mauritius Legislative Council Debates: Fifth Session*, 1518–20.

⁷⁸Chris Baker, 'Faith in the Public Sphere: In Search of a Fair and Compassionate Society for the Twenty-First Century', *Journal of Beliefs & Values* 37, no. 3 (2016): 262.

⁷⁹Abdool Foondun, 19 November 1963, in *Mauritius Legislative Council Debates: First Session* (Port Louis: The Standard Printing Establishment, 1963), 63.

⁸⁰Sookdeo Bissoondoyal, 19 November 1963, in *ibid.*, 83.

⁸¹A. R. Thomas to Trafford Smith, James McPetrie, and A. H. Poynton, 6 August 1963, TNA, CO 1036/1092.

⁸²N. Fisher to Duncan Sandys, 8 May 1964, TNA, CO 1036/1092.

⁸³David M. McCourt, 'What was Britain's "East of Suez Role"? Reassessing the Withdrawal, 1964–1968', *Diplomacy & Statecraft* 20, no. 3 (2009): 453–72.

⁸⁴David Vine, *Island of Shame: The Secret History of the U.S. Military Base on Diego Garcia* (Princeton: Princeton University Press, 2009), 56–98; Christopher J. Lee, 'The Indian Ocean during the Cold War: Thinking through a Critical Geography', *History Compass* 11, no. 7 (2013): 526.

⁸⁵Anthony Greenwood, 'Defence Facilities in the Indian Ocean', 5 November 1965, TNA, CO 936/824; M. Z. Terry to A. J. Fairclough, 14 February 1967, TNA, FCO 32/268.

⁸⁶'Base's Future Hinges on Constitution Talks', *The Guardian*, 6 September 1965; Foreign Office to UK UN Mission, 6 November 1965, TNA, CO 936/824; Bowman, *Mauritius*, 157, 160–1.

to independence. This would minimize opportunities for Communist interference and help Britain maintain diplomatic relations with member states of the Commonwealth.⁸⁷ Stability in Mauritius had greater importance in case uncontrolled violence or disturbances altered the domestic political landscape, with unpredictable consequences for Britain's sensitive and secretive deal over the Chagos Islands. The International Court of Justice and rights networks today condemn the UK's action as an abuse of the rights of Chagos Islanders and a violation of international law.⁸⁸ It was the minorities with political clout on Mauritius that counted, not those on distant but administratively connected islands. The ombudsman presented a solution to a specific problem of ensuring a single, peaceful, and stable postcolonial transition, not a moment of colonial-era inspiration for protecting minorities or human rights in the British Commonwealth. It was on those terms that, in mid 1964, the Colonial Office deemed that it was time to send de Smith to begin serious talks over the ombudsman.⁸⁹

An ombudsman for Guyana? 1964–65

De Smith's report on 'An Ombudsman for Mauritius?' became one of the most important documents for the global dissemination of the institution. He authored two drafts before his visit in July–August 1964, using New Zealand's ombudsman as a model and making a case for the mechanism to supplement the Mauritian judicial system. De Smith recognized that there was no precedent for an ombudsman explicitly focused on appeasing minority concerns, yet New Zealand's example improved relations between 'the administrators and the administered'. The ombudsman enhanced the notion of ministerial responsibility, despite the concerns of some ombudsman-sceptics in Mauritius and the UK. Nonetheless, de Smith thought that the ombudsman should be entitled to investigate the personal actions and decisions of ministers. He declared that 'An Ombudsman cannot be bought off the peg; he must be made to measure', and suggested that the Mauritian ombudsman should be equipped to investigate complaints of discrimination that could otherwise be heard in court as breaches of the bill of rights, which was enshrined in the 1964 constitution.⁹⁰ The professor influenced colonial officials and ministers to adopt a political and constitutional experiment unprecedented in a British postcolonial transition.

De Smith's capacity to guide the discussion was revealed in his brief interactions with Bissoondoyal. He initially described his visit as 'merely to find out what Bissoondoyal [*sic*] means by his high-powered tribunal'. De Smith recalled how in the 1961 constitutional conference he failed to get Bissoondoyal to properly explain his proposal.⁹¹ The de Smith papers show that the two men avoided conversation on the ombudsman during the professor's visit. Instead, they discussed changes to the electoral system.⁹² This leaves open the question of whether de Smith evaded any mention of a departure of views on the ombudsman or if Bissoondoyal was satisfied to depict as his own victory any version of the ombudsman authored by de Smith.

Other groups advocated upfront for a 'high-powered tribunal', especially those representing ethnic, religious, and caste minorities. A group representing the Shudras sent a memorandum to de Smith stating that '*Casteism and Untouchability*' can only be eliminated when there is an observance of 'democratic principles' and the UN's 'Charter of Human Rights'. This included the Shudras having a 'fair share in the Government', and seeing improvements to social welfare

⁸⁷Darwin, *Britain and Decolonization*, 227.

⁸⁸International Court of Justice, 'Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965', 25 February 2019, <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf>.

⁸⁹N. Fisher to Duncan Sandys, 8 May 1964, TNA, CO 1036/1092.

⁹⁰Stanley de Smith, 'An Ombudsman for Mauritius?', 8 July 1963, TNA, CO 1036/1082; Stanley de Smith, 'An Ombudsman for Mauritius?', 22 July 1964, TNA, FCO 141/12078.

⁹¹Stanley de Smith to A. R. Thomas, 15 March 1963, TNA, CO 1036/1082.

⁹²Stanley de Smith, interview with Sookdeo Bissoondoyal, 31 July 1964, TNA, FCO 141/12078; Stanley de Smith, interview with Sookdeo Bissoondoyal, 10 August 1964, TNA, FCO 141/12078.

and development to ensure that ‘oppressed people’ were brought ‘up to the level of the rest’. The group believed that a plural society ‘with stronger and stronger caste propensities’ like Mauritius required ‘The institution of a high Powered Tribunal [*sic*] with an *English-man* as Ombudsman’.⁹³ The Shudras may have called for an ombudsman and seen it as synonymous with a high-powered tribunal. Yet their concern with socioeconomic inequality indicated that they favoured a device closer to Bissoondoyal’s original ideas. De Smith received further written memoranda on the high-powered tribunal from the Moka Flacq Small Planters Association, the Islamic Circle, the Union Sino-Mauricienne, the Comité d’Action Tamoule, and the Comité de Vigilance Creole.⁹⁴ The call for a high-powered tribunal gained traction among minority groups, but this gave momentum to de Smith’s and not Bissoondoyal’s proposals.

Talks with de Smith in person featured thorough deliberations over his report. Koenig argued that the ombudsman should investigate not only claims of discrimination that violated the bill of rights, but all alleged violations of constitutional rights otherwise covered by the judicial system.⁹⁵ The ombudsman did less to inspire the MCA, a party led by Abdul Razack Mohamed, a Muslim merchant, alongside A. H. Osman, a planter.⁹⁶ Osman anticipated a danger in the ombudsman disrupting government efficiency and policy-making, and he argued that the ombudsman would displace the traditional role of legislative members and the population’s right of petitioning them.⁹⁷ Neither Osman nor Mohamed were against the ombudsman in principle, though they may have wished to avoid detracting from other protections such as separate electoral rolls and reserved seats. However, the MCA joined all other parties by the end of de Smith’s visit in agreeing to the introduction of an ombudsman.⁹⁸ British colonial officers recorded that de Smith was so persuasive because he was becoming a known, respected, and trusted figure among Mauritian politicians.⁹⁹

De Smith submitted his report to Anthony Greenwood, the Colonial Secretary, in November 1964. He emphasized the need to strike the right balance between minority safeguards and state authority. Mauritius had difficult areas of policy-making in addressing high unemployment and a rapidly growing population.¹⁰⁰ It ‘would be the worst of evils’, de Smith warned, ‘to imprison in an institutional strait-jacket those who will have the duty of governing’.¹⁰¹ The report’s subsection on the ombudsman featured a third and final rewrite of the ‘An Ombudsman for Mauritius?’ paper. De Smith stated that no minister rejected the idea and many heavily supported it. Local consultations were productive, as de Smith added the PMSD’s wish for the ombudsman to investigate both discriminatory and non-discriminatory complaints that potentially breached the bill of rights.¹⁰² The report mentioned that there was division over whether the ombudsman should look

⁹³D. Dookharam and others, memorandum to Stanley de Smith, 27 July 1964, TNA, FCO 141/12196, emphasis in original. See also Oddvar Hollup, ‘The Disintegration of Caste and Changing Concepts of Indian Ethnic Identity in Mauritius’, *Ethnology* 33, no. 4 (1994): 297–8, 313–14.

⁹⁴Stanley de Smith, synopsis of memoranda, 29 July 1964, TNA, FCO 141/12078; André Bazerque, Comité de Vigilance Creole, memorandum to Stanley de Smith, 9 February 1965, TNA, CO 1036/1083. See also Stanley de Smith, note on interview with Ah Chuen, 10 August 1964, TNA, FCO 141/12078; Bazerque to Anthony Greenwood, 30 August 1965, TNA, CO 1036/1144.

⁹⁵Stanley de Smith, interview with PM, 3 August 1964, TNA, FCO 141 12078.

⁹⁶Simmons, *Modern Mauritius*, 136.

⁹⁷Stanley de Smith, interview with A. H. Osman, 30 July 1964, TNA, FCO 141/12078; Stanley de Smith, interview with Abdul Razack Mohamed and A. H. Osman, August 1964, TNA, FCO 141/12078.

⁹⁸Abdul Razack Mohamed, memorandum on de Smith report, April 1965, TNA, CO 1036/1401.

⁹⁹N. Fisher, ‘Case for Visit by Professor de Smith’, note for Colonial Secretary, 8 May 1964, TNA, CO 1036/1092.

¹⁰⁰John de St Jorre, ‘An Impoverished Independence’, *Round Table* 58, no. 230 (1968): 217–19.

¹⁰¹Stanley de Smith, ‘A Constitutional Council?’, 31 July 1964, TNA, FCO 141/12078.

¹⁰²Stanley de Smith to Anthony Greenwood, final report, November 1964, TNA, CO 1036/1100; Stanley de Smith, interview with A. H. Osman, 30 July 1964, TNA, FCO 141/12078; Stanley de Smith, interview with Labour Party ministers, 5 August 1964, TNA, FCO 141/12078; Stanley de Smith, interview with Jules Koenig and Gaëtan Duval, 3 August 1964, TNA, FCO 141/12078.

into the personal acts and decisions of ministers. De Smith proposed that the ombudsman should not be permitted to intervene in such areas in the first instance. The report was also significant in the domestic context for rejecting proportional representation and other explicit forms of communalism in the electoral system. De Smith supported multi-member constituencies and nominations by the Governor.¹⁰³ The Colonial Office approved the report for publication in Mauritius, hoping that it would shape the domestic political discourse before an upcoming constitutional conference.

If Mauritius' constitutional development was slow to enact de Smith's findings, another British dependency was willing to apply it sooner. The ICJ found de Smith's report to be essential for their own study on racial tensions in British Guiana (Guyana). Forbes Burnham, the prime minister, wrote to the ICJ in April 1965 to look into racial disparities in public administration as the country approached independence. Seán MacBride, the secretary general of the ICJ, visited Georgetown before appointing a three-person Commission of Inquiry. Burnham's request followed complaints by Cheddi Jagan, leader of the opposition People's Progressive Party, over racial discrimination in the public service and security forces. The commission arrived in Guiana in August 1965 to hear evidence and receive written submissions. The ICJ saw the issue as largely an Indian grievance against favouritism towards Africans. The commission recommended increasing the share of Indians in public life to ensure fairness, efficiency, and integrity in recruitment and operations. Their report rejected communalist measures like quotas as a long-term solution, believing that they would further entrench racial divisions.¹⁰⁴

Mauritius and Guiana faced mutual challenges in achieving inter-ethnic harmony. Guiana's outbreaks of racial violence in 1962–64, leading to the intervention of British troops, were echoed in later scenes in Mauritius in 1965 and 1967–68.¹⁰⁵ Both were sugar colonies with histories of African slavery and Indian indentured labour. Political stability in Guiana was another geopolitical concern for the Americans. The Central Intelligence Agency (CIA) worked to unseat Jagan's government in 1964, preferring to have Burnham in office as a Cold War ally.¹⁰⁶ These geopolitical concerns would have been apparent to the ICJ, as it indirectly received funding from the CIA.¹⁰⁷ The Commission of Inquiry disagreed on some areas, but recognized the benefits of having a quick, clear, and efficient remedy for maladministration and racial discrimination.¹⁰⁸ De Smith's paper was most influential for recommending that the Mauritian ombudsman be permitted to investigate violations of constitutionally enshrined human rights. This aspect was later copied in the ombudsman legislation of Trinidad and Tobago, Dominica, and Jamaica in the late 1970s.¹⁰⁹ The government of Guiana agreed to entrench an ombudsman in the 1966 independence constitution.¹¹⁰ De Smith's version of the Mauritian ombudsman had a profoundly transnational character: it was based on a Scandinavian institution, modelled on New Zealand

¹⁰³Stanley de Smith, report for Anthony Greenwood, February 1965, TNA, CO 1036/1100. The latter recommendation was turned into a densely formulaic minority safeguard known as the 'Best Loser System', following the 1966 Banwell Commission and 1967 talks with John Stonehouse, Parliamentary Undersecretary for the Colonies. Raj Mathur, 'Parliamentary Representation of Minority Communities: The Mauritian Experience', *Africa Today* 44, no. 1 (1997): 63–4, 74–5.

¹⁰⁴ICJ, *Report of the British Guiana Commission of Inquiry: Racial Problems in the Public Service* (Geneva: International Commission of Jurists, 1965). See also Howard B. Tolley Jr, *The International Commission of Jurists: Global Advocates for Human Rights* (Philadelphia: University of Pennsylvania Press, 1994), 122–4.

¹⁰⁵Simmons, *Modern Mauritius*, 162, 186–8; Bowman, *Mauritius*, 39, 41.

¹⁰⁶Colin A. Palmer, *Cheddi Jagan and the Politics of Power: British Guiana's Struggle for Independence* (Chapel Hill: University of North Carolina Press, 2010), 191–240; Cary Fraser, 'The "New Frontier" of Empire in the Caribbean: The Transfer of Power in British Guiana, 1961–1964', *International History Review* 22, no. 3 (2000): 583–610.

¹⁰⁷Meredith Terretta, 'Anti-Colonial Lawyering, Postwar Human Rights, and Decolonization across Imperial Boundaries in Africa', *Canadian Journal of History* 52, no. 3 (2017): 477.

¹⁰⁸ICJ, *Report of the British Guiana Commission of Inquiry*, 119, 195–9.

¹⁰⁹M. De Merieux, 'The Ombudsman in the Commonwealth Caribbean', *Anglo-American Law Review* 10, no. 1 (1981): 11–12, 22.

¹¹⁰Harold A. Lutchman, 'The Office of Ombudsman in Guyana', *Caribbean Studies* 13, no. 1 (1973): 62–77.

legislation, meshed with Mauritian proposals for a ‘high-powered tribunal’, and was directly applicable in new geographic terrains as far away as Guyana.

Making a Mauritian ombudsman, 1965–68

The IFB claimed the decision to establish an ombudsman in Mauritius as a political victory.¹¹¹ Bissoondoyal glorified the ombudsman at the September 1965 constitutional conference in London, which set a framework for self-government and independence, and secured the establishment of an ombudsman based on de Smith’s recommendations.¹¹² The ombudsman would, Bissoondoyal declared, ‘secure social, economic and political justice for all’.¹¹³ He persisted in his argument that ‘the creation of an Ombudsman would help to level out economic disparities’.¹¹⁴ Bissoondoyal’s rhetoric softened after he was appointed Minister of Local Government and Co-operative Development in 1965.¹¹⁵ The ombudsman was a notable achievement for the IFB. Yet the mechanism brought the party less political momentum once its arrival was confirmed and Bissoondoyal was no longer in a position to launch attacks over alleged corruption.

The Labour Party continually exploited the ombudsman as a political asset.¹¹⁶ It framed the institution as an exceptional safeguard for minorities in the constitutional architecture of the state, and the party leadership claimed the ombudsman owed its existence to the Labour Party.¹¹⁷ Dr L. R. Chaperon, President of the Labour Party, asserted that the ombudsman was first proposed by his organization and then adopted by the IFB before going into the All-Party Government.¹¹⁸ Ramgoolam reaffirmed this exaggerated narrative, stating that the ‘Ombudsman is the creation of the Labour Party’. He recounted that he first heard of the ombudsman while reading an article in *The Economist*, and that Bissoondoyal only supported it after returning from the 1962 UN seminar in Stockholm.¹¹⁹ Other party members were more gracious in naming Bissoondoyal as the originator of the ombudsman. Bissoondoyal ‘sometimes builds castles in the air’, Labour’s Beekrumsing Ramlallah noted, ‘but he had the knack to put a foundation underneath and he did well’.¹²⁰ Yet, even Ramlallah stressed that the ombudsman was a Labour Party triumph for ‘the rights and privileges of the humblest citizen’.¹²¹

The Labour Party saw the ombudsman as an instrument for winning votes and building public trust before a major constitutional transition. It combined with the MCA and the IFB to form the ‘Independence Party’, winning the 1967 elections in a vote widely regarded as a referendum on national self-determination.¹²² The Labour Party also secured a critical exemption in the ombudsman’s purview, preventing the office from posing a considerable threat to state authority. The 1965 Mauritian constitutional conference report stated that the ombudsman would not be

¹¹¹Anerood Jugnauth, 30 March 1965, in *Mauritius Legislative Assembly Debates: Second Session*, 124.

¹¹²Constitutional conference: record of meeting, 21 September 1965, TNA, CO 1036/1167.

¹¹³Constitutional conference: record of meeting, 8 September 1965, TNA, CO 1036/1167.

¹¹⁴Record of meeting between Anthony Greenwood and IFB representatives, 7 April 1965, TNA, CO 1036/1400. See also Sookdeo Bissoondoyal, 29 October 1965, in *Mauritius Legislative Assembly Debates: Second Session*, 1486.

¹¹⁵Sookdeo Bissoondoyal, 29 March 1966, in *Mauritius Legislative Assembly Debates: Third Session*, 146–7; Sookdeo Bissoondoyal, 11 April 1968, in *Mauritius Legislative Assembly Debates: First Session* (Port Louis: Legislative Assembly, 1968), 270; Sookdeo Bissoondoyal, 26 July 1966, in *Mauritius Legislative Assembly Debates: Third Session*, 1890.

¹¹⁶Labour Party memorandum for constitutional conference, September 1965, TNA, CO 1036/1166; constitutional conference: record of meeting, 7 September 1965, TNA, CO 1036/1167.

¹¹⁷Seewoosagur Ramgoolam, 14 June 1966, in *Mauritius Legislative Assembly Debates: Third Session*, 1290–1.

¹¹⁸L. R. Chaperon, 23 March 1965, in *Mauritius Legislative Assembly Debates: Second Session*, 59–60.

¹¹⁹Seewoosagur Ramgoolam, 15 September 1967, in *Mauritius Legislative Assembly Debates: First Session*, 1514.

¹²⁰Beekrumsing Ramlallah, 27 April 1965, in *Mauritius Legislative Assembly Debates: Second Session*, 388–9. See also V. Govinden, 23 April 1965, in *ibid.*, 252; R. Gujadhur, 30 March 1965, in *ibid.*, 106–7.

¹²¹Beekrumsing Ramlallah, 29 August 1967, in *Mauritius Legislative Assembly Debates: First Session*, 1014–15.

¹²²Poupko, ‘Exploratory Study of Constitutional Design’, 337–8.

permitted to investigate the individual actions and decisions of ministers.¹²³ De Smith's final report recommended this restriction as a temporary or transitional measure only.¹²⁴ However, the 1968 independence constitution of Mauritius still retains the exemption today: it bars inquiries when the prime minister has given written notice that the alleged action was an exercise of the minister's personal judgement.¹²⁵

This was significant because ministers would have more decision-making power in a small administrative system, as in Mauritius. The UK's parliamentary commissioner and New Zealand's ombudsman were similarly restricted, yet Guyana's ombudsman was empowered to investigate ministers.¹²⁶ Colonial officials argued that the result of the clause in Mauritius could be to undermine the effectiveness of the ombudsman as a safeguard for minorities.¹²⁷ Joseph Minattur, a legal analyst, commented in 1969 that the provision was potentially dangerous: all a minister had to do to shield their department over a questionable decision was to claim that they gave the order themselves.¹²⁸ De Smith was uncomfortable with this aspect in drafts of the constitution. He felt 'the reasons for excluding the personal conduct of Ministers are, I fear, pretty bad'.¹²⁹ Ramgoolam refused to change the exemption when the Colonial Secretary expressed both his own and de Smith's misgivings.¹³⁰ It is arguable whether Ramgoolam wanted to enshrine his government's executive authority while setting an ambitious policy agenda toward establishing a welfare state based on Fabian Socialist principles.¹³¹ Gaëtan Duval, a Creole barrister who replaced Koenig as PMSD leader, raised his opposition to giving ministers such a privilege. He thought that it made the institution too weak, repeating the PMSD manifesto's line that the party did not want the ombudsman 'to cut a poor figure, to be a "bouffon" [jester]'.¹³² If the ombudsman intended to walk a tightrope between executive power and rights protections, it was tweaked in the final stages to lean towards the state.

Mauritius' early experiences with the appointment and functioning of the ombudsman were underwhelming compared with the office's inflated expectations. The ombudsman was first entrenched in the August 1967 constitution and the independence constitution of 12 March 1968, with a 1969 Ombudsman Act setting out further details on the complaints procedure.¹³³ The first ombudsman, appointed in March 1970 was a non-Mauritian, Judge Gunnar Lindh from Sweden. Lindh resigned from office in January 1972 after clashes with Ramgoolam over his tendency to investigate ministers. While perhaps unsurprising, this was not the only factor. Public perception over Lindh's impartiality was disrupted by disagreements over the terms of his employment, diplomatic privileges, and paid leave entitlements.¹³⁴ His replacement, S. Mootoosamy, a retired judge of the Mauritius Supreme Court, died in July 1974, only eighteen months into the job. The institution only built a notable caseload after the appointment of Ramawad Sewgobind,

¹²³Extract from Mauritius constitutional conference report, 1965, TNA, CO 1036/1101.

¹²⁴Joseph Minattur, 'Ombudsman in Mauritius', *Modern Review* 124, no. 8 (1969): 581.

¹²⁵Mauritius National Assembly, 'The Constitution of the Republic of Mauritius', <http://mauritiusassembly.govmu.org/English/constitution/Pages/constitution2016.pdf>; Veda Bhadain, 'The Institution of the Ombudsman in Mauritius', in *Human Rights Commissions and Ombudsman Offices: National Experiences Throughout the World*, ed. Kamal Hossain, Leonard F. M. Besselink, Haile Selassie Gebre Selassie, and Edmond Völker (The Hague: Kluwer Law International, 2001), 315–29.

¹²⁶Minattur, 'Ombudsman in Mauritius', 581; Frank, 'Ombudsman and Human Rights', 472.

¹²⁷Mauritius constitutional conference: Brief on the Ombudsman, 1965, TNA, CO 1036/1101.

¹²⁸Minattur, 'Ombudsman in Mauritius', 582.

¹²⁹Stanley de Smith to A. R. Rushford, 9 November 1966, TNA, FCO 141/12079, emphasis in original.

¹³⁰Herbert Bowden to John Rennie, 23 November 1966, TNA, FCO 141/12079.

¹³¹Mulloo, ed., *Our Struggle*, 42, 111, 183–5; Mannick, *Mauritius*, 125; Seewoosagar Ramgoolam, 28 May 1965, in *Mauritius Legislative Assembly Debates: Second Session*, 906.

¹³²Gaëtan Duval, 12 September 1967, in *Mauritius Legislative Assembly Debates: First Session*, 1346.

¹³³Ramawad Sewgobind, *The Ombudsman Institution in Mauritius* (Edmonton: International Ombudsman Institute, 1980), 14–15; Bhadain, 'Institution of the Ombudsman in Mauritius', 315.

¹³⁴*The Ombudsman: Circumstances Leading to the Resignation of Mr. Gunnar Lindh* (Port Louis: Mauritius Legislative Assembly, 1972); Mannick, *Mauritius*, 137.

a former Mauritian barrister, who held the post for fifteen years until 1990. Sewgobind reported in 1980 that he received less than 200 complaints a year, with very few justified cases. The ombudsman received around 500 complaints annually by the late 1990s.¹³⁵ From a transnational perspective, the blueprints thus proved to be more influential than the implementation of the office in Mauritius itself.

An ombudsman for the world? 1960s–1990s

Many scholars praise modern-day Mauritius as a political and economic ‘success story’, allowing the government to perpetuate a narrative of maintaining ‘unity in diversity’.¹³⁶ Such accounts mask latent inequalities and social tensions, as Julia Waters writes, and ignore the ‘trauma, divisions, violence and secretive deals of the independence period’.¹³⁷ The ombudsman deserves greater prominence in such critical accounts of Mauritius’ history. Local politicians and smaller parties during the independence period expected an effective mechanism capable of securing individual rights, minority protections, and socioeconomic justice. They placed their faith in the ombudsman under the belief that it would afford vulnerable groups adequate safeguards. Yet the office was incapable of seriously checking state power, remedying social divisions, or exposing structural imbalances. The government established a Truth and Justice Commission in 2009. Its report demonstrated how Mauritius’ history of slavery and indentured labour produced severe inequities that persist into the present day. Creoles face particular disadvantages in housing, education, employment, and political representation.¹³⁸ The African continent continues to lack adequate constitutional mechanisms to protect minorities.¹³⁹ De Smith could have recommended more explicit minority rights safeguards in the ombudsman or the constitution. This was a significant failing shared by colonial officials and some Mauritian leaders during the country’s most critical period of constitutional reform.

Minority rights and human rights were not a priority for those with political power during Mauritius’ postcolonial transition. The colonial imperative for minimizing any risk of political volatility, and the incumbent postcolonial leadership’s insulation of sovereign authority, led to the instalment of an appealing but innocuous constitutional device. The British overpowered anti-colonial actors on this issue throughout the constitutional talks, until the Labour Party rejected de Smith’s advice for the ombudsman to place a check on ministerial powers. The Ramgoolam government had a relatively strong human rights record compared to most African states, yet it showed some authoritarian tendencies.¹⁴⁰ The regime curtailed liberal-

¹³⁵Sewgobind, *Ombudsman Institution in Mauritius*; S. M. Hatteea, ‘The Ombudsman in Mauritius: Thirty Years On’, *International Ombudsman Yearbook* 3 (1999): 166–7.

¹³⁶See, for example, Deborah Bräutigam, ‘The “Mauritius Miracle”: Democracy, Institutions, and Economic Policy’, in *State, Conflict, and Democracy in Africa*, ed. Richard A. Joseph (Boulder: Lynne Rienner, 1999), 158; Adam Aft and Daniel Sacks, ‘Mauritius: An Example of the Role of Constitutions in Development’, *University of Miami International and Comparative Law Review* 18, no. 105 (2010): 132, 136; Henry Srebrnik, ‘Can an Ethnically-Based Civil Society Succeed? The Case of Mauritius’, *Journal of Contemporary African Studies* 18, no. 1 (2000): 15; Richard Sandbrook, ‘Origins of the Democratic Developmental State: Interrogating Mauritius’, *Canadian Journal of African Studies* 39, no. 3 (2005): 549–81.

¹³⁷Julia Waters, ‘“Les années de braise” Reconsidered: Literary Representations of Mauritian Independence, Fifty Years On’, *South Asian Diaspora* 10, no. 2 (2018): 75–90.

¹³⁸*Volume 1: Report of the Truth and Justice Commission* (Port Louis: Government Printing, 2011); Richard Croucher, Mark Houssart, and Didier Miche, ‘The Mauritian Truth and Justice Commission: Legitimacy, Political Negotiation and the Consequences of Slavery’, *African Journal of International and Comparative Law* 25, no. 3 (2017): 326–46.

¹³⁹John Mukum Mbaku, *Protecting Minority Rights in African Countries: A Constitutional Political Economy Approach* (Cheltenham: Edward Elgar, 2018).

¹⁴⁰Embassy, Port Louis, to Department of State, 15 September 1978, Central Foreign Policy Files, 1973–79 Electronic Telegrams, 1978PORTL01065, Record Group 59, National Archives and Records Administration, College Park, MD, USA.

democratic freedoms in response to labour disputes and incidents of racial violence by delaying elections until 1976 and declaring a state of emergency.¹⁴¹ Far from an exception to the consolidation of executive control across the Global South, the first proposal for a postcolonial ombudsman in the 1960s exemplified the triumph of state power over rights protections.

Mauritius' story has broader significance, given how pivotal it was in the design and dispersal of an early precursor to modern-day NHRIs. De Smith's paper 'An Ombudsman for Mauritius?' was quickly copied in Guyana and preceded the drafting of similar offices in Tanzania and Ghana in 1966, Sudan in 1970, Zambia in 1973, and Nigeria in 1974.¹⁴² This was hardly an endorsement of the office's capacity to promote and protect human rights. The ombudsman found popularity with one-party states in Africa that ruled with differing degrees of authoritarianism. Human Rights Watch published a scathing report of African NHRIs in 2001 entitled *Protectors or Pretenders?* The report concluded that 'they have proved to be a disappointment', as many 'have been created to foster only the appearance of concern and to forestall domestic or international pressure'.¹⁴³ African NHRIs did more to reaffirm the legitimacy of state authority than to protect citizens. The Mauritian ombudsman preceded the mass popularization of NHRIs in Africa in the 1990s by three decades, but its fundamental weaknesses were still prevalent.

The fulfilment of de Smith's ombudsman plan in Mauritius was a missed opportunity, considering the alternative ideas left behind in the 1960s. Bissoondoyal's high-powered tribunal was obscure and motivated by the political objectives of his minor Hindu party. Yet the concept gained traction among minority groups. The high-powered tribunal encapsulated their hopes for a robust and far-reaching regime of rights protections. The broader human rights movement would never live up to such an expansive but worthy promise. As Samuel Moyn writes, by the 1970s Western human rights activists had 'unceremoniously purged attention to economic and social rights, to say nothing of a fuller-fledged commitment to distributive equality'.¹⁴⁴ State human rights institutions were narrowly concerned with infringements of civil and political rights until at least the end of the Cold War.¹⁴⁵ Mauritius' story shows that, in the era of decolonization, there were both innovations and broken visions for constitution-making, the dissemination of state human rights institutions, and the international human rights movement. The ombudsman, as it entered new worlds via Mauritius and elsewhere, was a fateful compromise between the tensions of the 1960s – between the assertion of colonial power, anti-colonial demands for human rights, and postcolonial jealousy over sovereign power. A better accommodation, as Bissoondoyal's utopia indicated, may have been achievable for human rights advocates, postcolonial leaders, and citizens.

¹⁴¹Mathur, *Parliament in Mauritius*, 3–4, 218–19; Mukonoweshuro, 'Containing Political Instability', 206–7; Bowman, *Mauritius*, 73–4; Mannick, *Mauritius*, 17, 140.

¹⁴²Robert Martin, 'The Ombudsman in Zambia', *Journal of Modern African Studies* 15, no. 2 (1977): 249; Annemarie Jacomy-Millette, 'Is the Institution of the Ombudsman Applicable to Africa? Legislation and First Results', *Canadian Journal of African Studies* 8, no. 1 (1974): 147; John Hatchard, 'The Institution of the Ombudsman in Africa with Special Reference to Zimbabwe', *International and Comparative Law Quarterly* 35 (1986): 257.

¹⁴³Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa* (New York: Human Rights Watch, 2001). Scholars and non-governmental organizations are generally critical of the performance of NHRIs, particularly in Africa. See Cardenas, *Chains of Justice*, 29–30; Murray, *Role of National Human Rights Institutions*; Amnesty International, *National Human Rights Institutions: Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights*, 30 September 2001, 1–2, 13, <https://www.amnesty.org/en/documents/ior40/007/2001/en/>; Anne Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?', *Human Rights Quarterly* 28, no. 4 (2006): 905–10.

¹⁴⁴Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: The Belknap Press of Harvard University Press, 2018), 122.

¹⁴⁵C. Raj Kumar, 'National Human Rights Institutions and Economic, Social, and Cultural Rights: Toward the Institutionalization and Developmentalization of Human Rights', *Human Rights Quarterly* 28, no. 3 (2006): 755–79.

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