

SPECIAL RAPPORTEUR CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

The Constitution, which is the supreme law of the country, prohibits discrimination on inter alia, the ground of caste, colour, creed and race. It also provides that no law shall be discriminatory either in itself or in its effect.

Section 3 of the Constitution entitled "Fundamental rights and freedoms of the individual" reads as follows -

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms -

- (a) the right of the individual to life, liberty, security of the person and the protection to the law;*
- (b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and*
- (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,*

and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Section 16 of the Constitution provides that no law shall make any provision that is discriminatory either of itself or in its effect. The term "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

Section 17 of the Constitution provides that a citizen who alleges that his right under, inter alia, section 16 of the Constitution is being or is likely to be contravened, may apply to the Supreme Court for redress.

Any victim and/or affected community may enter a case in damages against any alleged perpetrator of a racial discrimination, based on Section 17 of the Constitution. This section provides an effective judicial remedy for breaches of rights under Chapter II of the Constitution (which includes section 16). For example, in the case of **S. Tengur and others v. Bishop of Roman Catholic Diocese**

of *Port-Louis and Others* [2002 SCJ 298], the Supreme Court held that an agreement between the Government and operated by the Ministry of Education and Scientific Research on the one hand and Catholic Colleges owned by the Defendants on the other was discriminatory as the agreement allowed the Catholic Colleges to allocate 50% of their seats to students of Roman Catholic faith. The catholic schools received their funding, mainly, if not wholly, from Government and thus were performing a public function. The defendants were unable to show any justification for the differentiation in allocation of 50% of their seats. The judgment of the Supreme Court was confirmed on appeal to the Judicial Committee of the Privy Council.

The Equal Opportunities Act prohibits against any direct or indirect discrimination on the basis of status. Status means age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation.

1. Steps taken to ensure that access to citizenship and naturalisation is granted on an equal basis i.e. without discrimination on grounds of race, colour, descent, or national and ethnic origin;

Sections 20 to 24 of the Constitution provide for the circumstances in which a person may acquire Mauritian citizenship or may be naturalised. (extracts of the relevant sections have been listed below). These provisions are subject to sections 3 and 16 referred to above.

20. *Persons who became citizens on 12 March 1968*

(1) Every person who, having been born in Mauritius, was on 11 March 1968 a citizen of the United Kingdom and Colonies became a citizen of Mauritius on 12 March 1968.

(2) Every person who, on 11 March 1968, was a citizen of the United Kingdom and Colonies—

(a) having become such a citizen under the British Nationality Act 1948,¹ by virtue of his having been naturalised by the Governor of the former Colony of Mauritius as a British subject before that Act came into force; or

(b) having become such a citizen by virtue of his having been naturalised or registered by the Governor of the former Colony of Mauritius under that Act,

became a citizen of Mauritius on 12 March 1968.

(3) Every person who, having been born outside Mauritius, was on 11 March 1968 a citizen of the United Kingdom and Colonies, if either of his parents became, or would but for his death have become, a citizen of Mauritius by virtue of subsection (1) or subsection (2), became a citizen of Mauritius on 12 March 1968.

(4) For the purposes of this section, a person shall be regarded as having been born in Mauritius if he was born in the territories which were comprised in the former Colony of Mauritius immediately before 8 November 1965 but were not so comprised immediately before 12 March 1968 unless either of his parents was born in the territories which were comprised in the Colony

of Seychelles immediately before 8 November 1965.

21. Persons entitled to be registered as citizens

(1) Any person who, on 12 March 1968, was or had been married to another person—

(a) who became a citizen of Mauritius by virtue of section 20; or

(b) who, having died before 12 March 1968 would, but for his death, have become a citizen of Mauritius by virtue of section 20,

shall be entitled, upon making application and, if he is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that, in the case of any person who, on 12 March 1968, was not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security or public policy.

(2) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application.

22. Persons born in Mauritius after 11 March 1968

Every person born in Mauritius after 11 March 1968 shall become a citizen of Mauritius at the date of his birth:

Provided that a person shall not become a citizen of Mauritius by virtue of this section if at the time of his birth—

(a) neither of his parents is a citizen of Mauritius; or

(b) either of his parents is an enemy alien and the birth occurs in a place then under occupation by the enemy.

23. Persons born outside Mauritius after 11 March 1968

A person born outside Mauritius after 11 March 1968 shall become a citizen of Mauritius at the date of his birth if at that date either of his parents is a citizen of Mauritius otherwise than by virtue of this section or section 20 (3).

24. Marriage to a citizen of Mauritius

Any person who, after 11 March 1968, marries another person who is or becomes a citizen of Mauritius shall be entitled, upon making application in such manner as may be prescribed and, if he is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

2. Efforts to combat gender discrimination affecting racial, ethnic and other minorities with regards to access to citizenship and nationality;

Please refer to inputs under question 1 above. There is no gender discrimination in relation to the access to citizenship and nationality and these safeguards are provided for in the Constitution and in our laws.

3. Efforts made to remove barriers for the naturalisation of long term or permanent residents belonging to ethnic and racial minorities and other groups, including people with nationality;

Please refer to inputs under questions 1, 7 and 8.

4. Steps taken for the regularisation of former citizens of predecessor States;

Not applicable.

5. Measures taken to ensure that provisions to strip individuals of their nationality comply with State's obligations to ensure the non-discriminatory enjoyment of the right to nationality;

Section 11 of the Mauritius Citizenship Act provides for cases where a person may be deprived of his citizenship

11. Deprivation of citizenship

(1) A citizen of Mauritius who has acquired citizenship by registration or naturalisation under this Act shall cease to be a citizen of Mauritius if he is deprived of that citizenship by an Order of the Minister made under this section.

(2) Subject to this section, the Minister may, by Order, deprive of his citizenship a citizen of Mauritius who has acquired citizenship by registration or naturalisation where he is satisfied that the registration or certificate of naturalisation in relation to that citizen, was obtained by means of fraud, false representation or the concealment of any material fact.

(3) (a) Subject to paragraphs (b) and (c), the Minister may, by Order, deprive of his citizenship a citizen of Mauritius who has acquired citizenship by registration or naturalisation under this Act where he is satisfied that the citizen—

(i) has shown himself by act or speech to be disloyal or disaffected towards the State or is, or has been declared, a suspected international terrorist under the Prevention of Terrorism Act;

(ii) has, during any war in which Mauritius was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(iii) has within 7 years after his registration or naturalisation under this Act been sentenced in any country to imprisonment for a term of not less than 12 months.

(b) The Minister shall not deprive any person of his citizenship where it appears to him that the person would become stateless.

(c) In the case of a person who is declared a suspected international terrorist as specified in subparagraph (a) (i) —

(i) the Minister may, subject to paragraph (b), deprive him of his citizenship irrespective of the manner in which he acquired both the citizenship of Mauritius and that of another State;

(ii) subsections 5, 6 and 7 shall not be applicable.

(4) (a) Subject to paragraph (b), the Minister may, by Order, deprive of his citizenship a citizen of Mauritius of full age and capacity, who has acquired citizenship by registration or naturalisation where he is satisfied that the person has been ordinarily resident in another country for a continuous period of 5 years and, during that period, has not—

(i) at any time been in the service of Government of Mauritius or of an international organisation of which Mauritius was a member;

(ii) registered in the prescribed manner at a consulate of Mauritius his intention to retain his citizenship of Mauritius; or

(iii) given notice in writing to the Minister of his intention to retain his citizenship of Mauritius.

(b) The Minister shall not deprive any person of his citizenship of Mauritius where it appears to him that the person would become stateless.

(5) Before making an Order under this section, the Minister shall give the person against whom the Order is proposed to be made notice in writing, informing him of the ground on which it is proposed to be made and, where the Order is proposed to be made on any of the grounds specified in subsection (2), of his right to an inquiry under this section.

(6) A notice under subsection (5) may be given—

(a) where the address of the person is known, by causing the notice to be delivered to him personally or by sending it to him at that address by registered post; or

(b) where the address of the person is not known, by sending it to his last known address and in such other manner as the Minister thinks fit.

(7) Where it is proposed to make an Order on any ground specified in subsection (2), the Minister shall, where the person against whom the order is proposed to be made so requests, refer the case for inquiry and report to a committee appointed by him for the purpose.

6. Measures taken to prevent and reduce statelessness of persons belonging to racial, national and ethnic minorities;

Mauritius is not a party to the Convention relating to the Status of Refugees, the Protocol relating to the status of Refugees, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Mauritius, being a small and densely-populated island with stretched limited resources, has not yet adopted a policy (as far as this Office is concerned) or laws to grant refugee status to foreigners or to stateless persons. It does

however attempt to treat applications for refugee status or political asylum on a humanitarian, case-to-case basis by facilitating their settlement in a friendly country willing to receive them.

Furthermore, section 11 (4)(b) of the Mauritius Citizenship Act provides that *"The Minister shall not deprive any person of his citizenship of Mauritius where it appears to him that the person would become stateless."*

Further inputs may be sought by your Ministry from the PMO

7. Laws and policies imposing restrictions on immigration on the basis of nationality;

Section 4 of the Immigration Act: "Entitlement to admission to Mauritius", provides that "Subject to this Act, a citizen, a permanent resident, a resident or an exempted person, shall be allowed to enter Mauritius or, being in Mauritius, to remain there so long as he holds his status of citizen, permanent resident, resident or exempted person, as the case may be."

8. Safeguards designed to ensure that immigration laws, policies and practices do not discriminate – in purpose or effect – against certain groups of non-nationals.

The relevant sections of the Immigration Act are as follows:

7. *Exempted persons*

(1) *Subject to section 8, the immigration officer may admit to Mauritius, on such conditions and for such period as he thinks fit in any particular case—*

(a) *persons who are diplomatic or consular officers or representatives or officials, duly accredited to a country other than Mauritius, of the United Nations or any of its agencies or of any inter-governmental organisation in which Mauritius participates, coming to Mauritius to carry out their official duties or passing through in transit, or members of the families or suites of such persons;*

(b) *members of any naval, army or air force who come to Mauritius in connection with the defence and security interests of Mauritius;*

(c) *persons who come to Mauritius pursuant to any treaty or agreement between Mauritius and another country and whose admission to Mauritius is approved by the Minister, together with such members of their families or suites as may be so approved;*

(d) *persons appointed to the public service of Mauritius and the members of their families;*

(e) *tourists or other visitors or persons coming for business;*

(f) *persons passing through Mauritius in transit to another country;*

(g) *students coming to Mauritius for the purpose of attending and, having entered Mauritius, are in actual attendance at any college or at the University of Mauritius;*

(h) *persons who have been accepted as students by an educational or training establishment approved by the Minister of Education and, having entered Mauritius, are in actual attendance at that educational or training establishment;*

(i) members of dramatic, artistic, cultural, athletic or other groups entering Mauritius or who, having entered, are in Mauritius for the purpose of giving performances or exhibitions of an entertaining or instructive nature;

(j) members of crews entering Mauritius or who, having entered, are in Mauritius for shore leave or some other legitimate and temporary purpose;

(k) persons who are investors under the Permanent Resident Scheme prescribed under the Economic Development Board Act 2017;

(l) shipwrecked persons; and

(m) such persons or classes of persons as the Minister thinks fit and proper.

(1A) —

(2) The immigration officer shall issue to a person admitted to Mauritius under subsection (1) (g), (h) and (i) a certificate stating the conditions subject to, and the period for, which the admission to Mauritius is authorised.

(3) The immigration officer may, with the approval of the Minister, vary the conditions attached to the admission of an exempted person to Mauritius or extend or limit the period of his stay in Mauritius.

(4) Where, in relation to an exempted person, the Minister—

(a) is satisfied that it is in the public interest to do so; or

(b) is of the opinion that the exempted person is a person described in section 8 (1), he may, in his absolute discretion, by Order, declare that the exempted person has ceased to be an exempted person and thereupon the exempted person shall be deemed to be a prohibited immigrant for the purposes of this Act and of the Deportation Act.

(5) An order made under subsection (4) shall be served by post at the last known address of the person who has ceased to be an exempted person.

9. Permanent residence permits and residence permits

(1) The Minister may issue, subject to such conditions as he thinks fit to impose, a written permit authorising any person other than an exempted person to enter Mauritius or, being in Mauritius, to remain there.

(2) A residence permit shall be expressed to be in force for a specified period and shall also specify the conditions subject to which it is issued.

(3) The Minister may, in writing, extend, vary or cancel a permit.

(4) Upon the cancellation or expiration of a permit or upon failure to comply with any condition subject to which it has been issued, the holder shall be deemed to be a prohibited immigrant for the purposes of this Act and of the Deportation Act.

(5) Any period of residence in Mauritius in pursuance of a permit shall be taken into account for the purposes of the Mauritius Citizenship Act.

9A. Occupation permit

(1) Notwithstanding section 5 and the Non-Citizens (Employment Restriction) Act, any investor or self-employed non-citizen or employer of a professional, registered with the Economic Development Board, shall, through the Economic Development Board, apply to the immigration officer for an occupation permit authorising the investor, self-employed non-citizen or professional, as the case may be, to become a resident and—

(a) in the case of the investor or self-employed non-citizen, to carry on any occupation in Mauritius for reward or profit;

(b) in the case of the professional, to take up employment in Mauritius;

or

(c) in the case of an investor who is a company, an application for an occupation permit may be made in respect of each shareholder who is also a

director of the company, provided that the criteria referred to in item 1 of Part I of the First Schedule to the Economic Development Board Act 2017 is applied to each applicant.

(1A) Notwithstanding section 5 and the Non-Citizens (Employment Restriction) Act, any investor registered with the Board of Investment, may, through the Board of Investment, apply to the immigration officer for an occupation permit authorising the investor to become a resident, provided that the criteria referred to in the entry corresponding to item 1F of Part I of the Schedule to the Investment Promotion Act are satisfied.

(...)

9B. Residence permit for retired non-citizen

(1) Notwithstanding section 5 and the Non-Citizens (Employment Restriction) Act, any retired non-citizen shall, through the Economic Development Board, apply to the immigration officer for a residence permit.

(2) The application under subsection (1) —

(a) shall be made in such form and manner as may be approved by the immigration officer; and

(b) shall include such information, documents and particulars as may be required and specified in the form of application; and

(c) shall be accompanied by the prescribed fee.

(3) The provisions of section 9A (2) to (7) shall apply to a retired non-citizen as they would have applied to an investor or a self-employed non-citizen, with such modifications, adaptations and exceptions as may be necessary to bring them in conformity with this section.