



**PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS AND
OTHER INTERNATIONAL ORGANISATIONS**

**MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS INTERNATIONALES**

No. 236/2014 (MMG/HR/28/1)

The Permanent Mission of the Republic of Mauritius to the United Nations and other International Organisations in Geneva presents its compliments to the Secretariat of the Office of the High Commissioner for Human Rights and with reference to the latter's Note Ref: YB/GN/TT dated 21 July 2014 pursuant to the resolution 21/30 entitled "*Elaboration of International complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination*" has the honour to attach herewith the duly-filled in questionnaire by the Government of the Republic of Mauritius.

The Permanent Mission wishes to inform the Secretariat that additional responses to the questionnaire will be submitted to the OHCHR in due course.

The Permanent Mission of the Republic of Mauritius to the United Nations and other International Organisations in Geneva avails itself of this opportunity to renew to the Secretariat of the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



UKA.
Geneva, 18 September 2014

**The Secretariat of the Office of the
High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva**

**Ad Hoc Committee on the elaboration of complementary standards to the International
Convention on the Elimination of All Forms of Racial Discrimination**

QUESTIONNAIRE (Paragraph 4 of A/HRC/21/30)

(i) Kindly provide information on the phenomenon of xenophobia in your national context including any general trends

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(ii) How is xenophobia addressed in your country (include any legal and judicial frameworks and practices, substantive and procedural measures)?

Xenophobia is not defined or specifically addressed in our legal and judicial frameworks. However freedom from discrimination which encompasses various types of discrimination is deeply entrenched in the Constitution of Mauritius. Subject to certain provisos, any discriminatory law or discriminatory treatment by public officials or bodies and which are based on race, caste, place of origin, political opinions, colour, creed or sex is strictly prohibited.

(a) The Constitution

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 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 another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(b) Relevant Legislation

One of the main enactments in respect to the protection of the right against discrimination is the Equal Opportunities Act (EOA). This Act provides further for the establishment of a full-fledged Equal Opportunities Commission and of an Equal Opportunities Tribunal to ensure better protection from discrimination as it prohibits both direct and indirect discrimination on the grounds of age, caste, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation. This legislation also prohibits discrimination by victimisation.

(c) Case Law (Summaries)

1. In case of **Raj Dayal v. Gilbert Ahnee [2002] SCJ 303**, the plaintiff was the Commissioner of Police when in 1995 the defendants wrote and caused to be published an article which, in the plaintiff’s view, conveyed to the readers that there is a grotesque conflict between his role as Commissioner of Police and the performance of public rituals pertaining to his faith. According to the plaintiff, he was sincerely involved in the practice of his religious faith and this did not in any way with his obligations and duties as Commissioner of Police. The plaintiff also argued that there was

nothing which prevented him from going about with his spiritual practice in public and or in private in the company of other people.

The defendant, however, deposed in Court to the effect that he was “shocked and scandalised” to see the plaintiff on television actively participating in religious rituals on the occasion of Hindu festivals. According to the defendant, the plaintiff’s position as Commissioner of Police imposed on him “a *devoir de reserve*” and that as a high ranking officer of the State, the plaintiff should have refrained from actively and publicly participating in religious rites.

The Court held that the article in issue went much beyond the mere expression of the author’s views on secularism. The Court noted that the sincerity of purpose of a person who is involved in the practice of his religious faith was being questioned, and that the plaintiff’s conduct was being referred to as “*une indigne exploitation populiste des sentiments religieux*”.

The article was held to be highly defamatory, and damages were awarded to the plaintiff.

2. In the case of **Government Teachers Union v Catholic Education Authority** [1987 MR 88 at page 94], as he then was, said:

“Further our State being secular in character, even where the Constitution in section 14(1) confers a fundamental right on religious denominations or religious, social, ethnic or cultural associations or groups to establish and maintain schools at their own expense, the responsibility of regulating such schools is reserved to the State, by section 14(2), in the interests of students to an extent reasonably justifiable in a democratic society.”

3. In the case of **Roman Catholic Diocese of Port-Louis v Minister of Education** 1991 MR 176, the Court said:

“Section 14 only formally protects the right of certain classes of persons in the religious, cultural and social fields to establish schools at their own expense. We are not in a situation where the right to establish denominational, or minority group, schools is guaranteed simpliciter, a situation which has resulted in the formulation, in certain foreign texts and decisions, of the principle that the State then has a constitutional duty to provide funds, where necessary, to enable that right to be exercised, and to do so with no unnecessary strings attached.”

4. In the case of **Bishop of Roman Catholic Diocese of Port-Louis and others v Suttihudeo Tengur and others, Privy Council Appeal No. 21 of 2003**, it was held that sections 3(b) and 14(1) of the Constitution, read together made it plain that denominational groups were entitled, without discrimination between one group and another, to establish and maintain schools, but it was limited right, protected only if schools were maintained and established without expense to the State. The Catholic colleges were originally established without expense to the State but had, by the time Mr. Tengur commenced his action, ceased to be so maintained. The appellants were thus no longer exercising a right protected by sections 3 and 14. As section 16(2) made it clear, it was discrimination in the public domain, through the involvement of the State, which brought the prohibition on discriminatory treatment into play. If the catholic colleges were still self-financing, their admission policy would not have attracted the operation of section 16(2) since although some potential pupils would still be treated in a discriminatory manner, such treatment would not be “by any person acting in the performance of any public function conferred by any law” or “otherwise in the performance of the functions of any public office or any public authority”.

The following excerpts from the case of relevance-

“Since the catholic colleges now receive a regular grant in aid from public funds, section 35 of the Education Act also requires that they be open to pupils of any religion: while they have always admitted non-Roman Catholic pupils, the section must require that they be equally open to pupils of any religion as was made clear by regulation 52(1)(a) of the 1957 Regulations, which forbade refusal of admission to any pupil on the grounds of religion. Such refusal would inevitably be the result in the case of any non-Roman Catholic applicant to the Catholic colleges who would qualify for admission on the basis of his or her CPE grading but is refused admission to accommodate the Catholic colleges’ policy of filling 50 percent of places with Roman Catholic pupils”.

As section 16(2) of the Constitution makes it clear, it is discrimination in the public domain, through the involvement of the state, which brings the prohibition on discriminatory treatment into play. If the catholic colleges were entirely self-financing, the appellants' admission policy would not attract the operation of section 16(2) since although some potential pupils would still be treated in a discriminatory manner, such treatment would not be "by any person acting in the performance of any public function conferred by any law" or "otherwise in the performance of the functions of any public office or any public authority".

(iii) Which national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance dose your country have in place? Kindly indicate the(ir) mandates and powers, including any proposals for improvement on the basis of national experience.

a. The National Human Rights Commission (NHRC) was established under the Protection of the Human Rights Act 1998 to, *inter alia*, enquire into human rights complaints, complaints against the Police, visits to any Police station, prison or place of detention, to study the living conditions of inmates and the way they are being treated and to ensure that the legislative framework promotes and protects human rights. The NHRC became operational as from April 2001.

b. The Protection of Human Rights (Amendment) Act 2012 was passed in the National Assembly to amend the Protection of Human Rights Act, to provide for the National Human Rights Commission to operate through three Divisions, namely the Human Rights Division, the Police Complaints Division and the National Preventive Mechanism Division. The structure and functioning of the National Human Rights Commission have been reviewed with the aim of broadening its mandate and increasing its efficiency. The Protection of Human Rights (Amendment) Act is however not yet into operation.

c. In addition to the above legislation, two new acts: **The Police Complaints Act (PCA)** and the **National Preventive Mechanism Act (NPMA)** and are in force since 1 July 2013.

1. The main object of the **PCA** is provide for the setting up, within the National Human Rights Commission of an Independent Police Complaints Division to investigate complaints made against members of the Police Force, other than allegations of corruption and money laundering which offences fall under the Prevention of Corruption Act.

2. The **NPMA** was passed to enable Mauritius to comply with its international obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT provides for a system of regular visits by mechanisms at the international and national levels to prevent all forms of ill-treatment of people who are deprived of their liberty. It establishes the Subcommittee on Prevention of Torture and other Cruel, Inhuman or degrading Treatment or Punishment (SPT) as the international preventive mechanism with a global remit. It was granted accreditation by the International Coordination Committee of National Human Rights Institution in 2002 and is governed by the Principles Relating to the Status of National Institutions, Competence and Responsibilities ("Paris Principles"). The Sub-Committee on Accreditation of the International Coordination Committee of National Human Rights Institutions re-accredited Status A to the National Human Rights Commission in 2008 and the latter is so accredited as at date.

The actual law provides that the Commission has within its mandate the power to receive and enquire into any written complaint from any person alleging that any of his human rights has been, is being likely to be violated by the act or omission of any other person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public body. The NHRC mainly enquires into complaints from persons alleging violation of their rights under Chapter II of the Constitution by the acts of public bodies or public officers and complaints against acts of members of the police force. Any complaints in respect of alleged violations of the rights against discrimination may therefore also be looked into by the Commission. It can further enquire of its motion into such acts.

d. The Equal Opportunities Act (EOA) provides for the establishment of a full-fledged **Equal Opportunities Commission** to ensure better protection from discrimination as it prohibits both direct and indirect discrimination on the grounds of age, caste, creed, ethnic origin, Impairment, marital status, place of origin, political opinion, race, sex or sexual orientation. The legislation also prohibits discrimination by victimisation.

The Commission is fully operational since 24 April 2012. Its main function includes, *inter-alia*, to:-

(i) work towards the elimination of discrimination, and the promotion of equality of opportunity and good relations between persons of different status; (ii) carry out an investigation of its own motion or following a complaint; (iii) attempt to reconcile the parties to whom and against whom a complaint relates; (iv) conduct and foster research and educational and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status; and (v) prepare appropriate guidelines and codes for the avoidance of discrimination and take all necessary measures to ensure that the guideline and codes are brought to attention of employers and the public at large.

Following a complaint made to the Commission, the latter will as the case may be, hold a preliminary examination of the complaint, investigate, and where applicable conduct a conciliation process. In the event that the parties cannot reach any agreement, a report is prepared and the case is referred to the Equal Opportunities Tribunal with the consent of the complainant.

The Equal Opportunities Tribunal shall have jurisdiction *inter-alia* to

(a) to hear and determine complaints referred to it by the Commission;

(b) to issue an interim order as a matter of urgency for the purpose of-

(i) preventing serious and irreparable damage to a person or category of persons;

(ii) protecting the public interest; or

(iii) preventing a person from taking any step that would hinder or impede a hearing before the Tribunal;

(c) to make-

(i) an order declaring the rights of the complainant and the respondent in relation to the Act to which the complaint relates;

(ii) an order requiring the respondent to pay to the complainant, within such time as it may determine, compensation in an amount not exceeding 500,000 rupees; or

(iii) a recommendation that the respondent takes, within a specified period, action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates; and

(d) to issue such directives as it considers necessary to ensure compliance with the Equal Opportunities Act.

(e) The Truth and Justice Commission Act 2008 which came into operation on 1 February 2009 on the very day commemorating the abolition of slavery in Mauritius provides for the setting up of the Truth and Justice Commission which shall conduct inquiries into slavery and Indentured labour during the colonial period in Mauritius, determine appropriate measures to be extended to descendants of slaves and indentured labourers, enquire into complaints made by persons aggrieved by dispossession or prescription of any land in which they claim to have an interest and prepare a comprehensive report of its activities and findings based on factual and objective information and evidence. The report of the Truth and Justice Commission was laid down before the National assembly on 28 November 2011. On 9 December 2011, Government set up an Inter-Ministerial High Powered Committee to look into the implementation of the recommendations contained in the Report. The Committee has decided to implement a first set of 19 recommendations of the Commission.

(PMO to update if need be)

(iv) Kindly provide information or any comments your country might have on the issue of procedural gaps to the ICERD, including any legal and judicial frameworks and practices, substantive and procedural measures.

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(v) Would your country have any comments on the issue of the impact of reservations on the implementation to the ICERD? Is there a need for reservations and why?

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(vi) Would your country have any comments concerning article 14 of the ICERD (declaration by State Party recognising the competency of the committee to receive/consider individual complaints?)

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(vii) Which CERD recommendations has your country implemented with regard to national mechanisms and xenophobia, including any legal and judicial frameworks and practices, substantive and procedural measures? What has been your national experience (including challenges) in this regard?

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(viii) How far is assistance provided to victims and /or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level? How do victims and/or affected communities participate fully and effectively in relevant processes and mechanisms?

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 other 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 judgement of the Supreme Court was confirmed on appeal to the Judicial Committee of the Privy Council.

It is also to be noted that in 2012-2015 Government Programme, provision has been made for the introduction of (i) a Police and Criminal Evidence Bill which will include the protection of victims rights etc and (ii) new legislation to specifically cater for the provision of assistance and protection of victims and witnesses in order to better safeguard the rights and interests of these categories of persons.

(ix) With this regard to the topics of the questionnaire:

a. Kindly indicate any possible recommendations your country would wish to provide and

b. Are there any additional comments or information your country wishes to provide in relation to xenophobia, national mechanisms or procedural gaps?

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