

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE (HUMAN RIGHTS DIVISION)

Inputs on Human Rights Council Resolution 46/27 on Combatting intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief

1. Introduction

The State of Mauritius is a cultural melting pot of people of various origins, coming specifically from Africa, Asia and Europe. It has succeeded in keeping the equilibrium among different religious groups and ethnic minorities through its legislations and policies which safeguard the equality of all citizens and guarantee the protection of the fundamental rights and freedoms of each and every one.

The State of Mauritius does not tolerate intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief.

At the international level, the State of Mauritius is party, amongst others, to the UNESCO Convention against Discrimination in Education, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

2. Legal Framework

Mauritius is a secular state. The legislations adopted by the State already cater for the protection of the fundamental rights and freedom of individuals and for the enforcement against acts of racism, racial discrimination, xenophobia and related intolerance and include, *inter alia*:

(a) Constitution of the Republic of Mauritius

The Constitution, which is the supreme law of the country, enshrines the principle of non-discrimination. It also prohibits discrimination on *inter alia*, the ground of race, colour or creed and provides freedom of thought and religion including the right of individuals to change, manifest and propagate their religious beliefs. Section 3 of the Constitution provides that “*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 the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms -*

- (i) *the right of the individual to life, liberty, security of the person and the protection of the law;*

- (ii) *freedom of conscience, of expression, of assembly and association and freedom to establish schools; and*
- (iii) *the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation; (...)*". (emphasis added)

The Constitution, furthermore, specifically prohibits at section 16, the enactment of a legal provision which is discriminatory either of itself or in its effect. The term discriminatory is defined at section 16(3) which as follows: *““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.”* (emphasis added)

Subject to certain provisos such as the protection of the rights and freedom of others, the protection of the enjoyment of a person’s freedom of conscience is protected under Section 11 while the freedom of expression is protected under Section 12 and his ability to assemble and associate with others is protected under Section 13.

Section 14 of the Constitution guarantees the right of a religious denomination or religious, social, ethnic or cultural association or group to establish and maintain schools at its own expense. Furthermore, no person shall be prevented from sending to any such school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the Government.

Section 17 provides for redress to be afforded by the Supreme Court to any individual where his rights under Chapter II of the Constitution have been, are being or is likely to be contravened.

(b) the Criminal Code

The Criminal Code criminalises acts against persons, events and property of a religious character. Although there may not be specific provisions in respect of an offence of “incitement to imminent violence on the basis of religion or belief”, there are many types of violent acts which constitute an offence under the Mauritian criminal laws.

Section 282 of the Criminal Code provides for the offence of stirring up racial hatred and provides *inter alia* that any person who, with intent to stir up contempt or hatred against any section or part of any section of the public distinguished by race, caste, place of origin, political opinion, colour, creed or sex – (a) publishes, distributes, posts up, circulates, exhibits, exposes, broadcasts or transmits through the internet or in any public place, meeting or procession any writing which is threatening, abusive or insulting; or (b) uses any word or makes any gesture through the internet

or in any public place, meeting or procession which is threatening, abusive or insulting, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years and to a fine not exceeding 100,000 rupees.

Sections 37 and 38 of the Criminal Code provide for the legal basis to prosecute accomplices and for the offence of “Giving instructions and aiding and abetting” respectively. It would be possible for persons who are responsible to have incited violence on the basis of religion or belief to be prosecuted as an accomplice or an aider/abettor, provided that the constitutive elements of these offences have been established.

Section 86 of the Criminal Code makes it an offence for a public officer to use any form of violence against any person and shall, according to the nature and extent of the violence used, be liable to double the punishment which would have been incurred by any other person guilty of the like crime or misdemeanor.

Moreover, the Criminal Code also provide for protection of places of worship, religious sites, cemeteries and shrines under Section 181 (Damaging Monuments), Section 184 (Disturbing religious ceremony), Section 185 (Outrage against religious worship), and Section 275 (Violating tomb). Provision is also made for Interference with freedom of conscience (Section 183), Assaulting and outraging minister of religion (Section 186), Outrage against public and religious morality (Section 206), Penalty applicable for revealing author of outrage against religion (Section 207) and Penalty applicable to author of outrage against religion (Section 208).

(c) Information and Communication Technology Act

Prompt actions are also being taken by the Information and Communication Technologies Authority regarding the malicious use of social media. In this vein, Section 46 of the Information and Communication Technology Act has been amended in 2018 to –

- (i) extend the scope of the offence of using a telecommunication equipment to send, deliver or show a message which is obscene, indecent, abusive, threatening, false or misleading, to circumstances where the use causes distress or anxiety or, causes or likely to cause, annoyance, humiliation or inconvenience;
- (ii) extend the scope of the offence relating to uses of an information and communication service in any manner, other than that specified under section 46(ga) of the aforementioned Act, to circumstances where such use is likely to cause or causes annoyance, humiliation, inconvenience, distress or anxiety to that person;
- (iii) add a new offence of using an information and communication service, including a telecommunication service, to impersonate, or by any other means impersonates, another

person which is likely to cause or causes annoyance, humiliation, inconvenience, distress or anxiety to that person; and

- (iv) increase the custodial sentence in case of conviction for an offence, to penal servitude for a term not exceeding 10 years, in addition to a fine not exceeding one million rupees.

These provisions were also made to protect individuals from being victims of racial discriminations by means of hate speech, impersonation or other types of harassment carried out through various information and communication technologies.

(d) Equal Opportunities Act

The Equal Opportunities Act (EOA) came into force in 2012 and further reinforces the protection from discrimination and the right to equal opportunities in various areas of life such as employment, education and access to certain facilities and services (including provision of goods and services, accommodation, the disposal of immovable property, companies, partnerships, “sociétés”, and registered associations, clubs and access to premises which the public may enter or use and sports) by prohibiting discrimination (both direct and indirect), against a person on the ground of his status. “Status” is further defined as including age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation. The EOA also applies to both the public and private sectors. It includes within its ambit sexual harassment and also criminalises discrimination by victimisation.

(e) the Workers’ Rights Act

The Workers’ Rights Act (WRA), promulgated on 24 October 2019 and repealing the Employment Rights Act, *inter alia*, provides for the protection from discrimination in employment and occupation, in addition to the protection afforded under the EOA. An employer cannot treat in a discriminatory manner, any worker who is in his employment. Discrimination, in relation to the above provisions, includes affording different treatment to “*different workers attributable, wholly or mainly, to their respective description by age, race, colour, caste, creed, sex, sexual orientation, HIV status, impairment, marital or family status, pregnancy, religion, political opinion, place of origin, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (...)*”

Moreover, Section 64(1) of the WRA provides for the protection against termination of agreement by an employer by reason of *inter alia* a worker’s race, colour, caste, national extraction, social origin, place of his origin, age, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, impairment, marital status or family responsibilities.

(f) the Employment Relations Act

The Employment Relations Act (ERA) 2008 as at 01 March 2021 provides for the protection of the fundamental rights of workers to freedom of association and protects their right to organise and engage in collective bargaining. Every worker shall according to Section 29, have the right, subject to certain conditions, *“to establish or join, as a member, a trade union of his own choice, without previous authorisation and without distinction whatsoever or discrimination of any kind including discrimination as to occupation, age, marital status, sex, sexual orientation, colour, race, religion, HIV status, national extraction, social origin, political opinion or affiliation.”*

(g) Education Act

In line with internationally accepted best practices, Section 37 of the Education Act provides for education to be mandatory for all children from age of 5 to 16. Moreover, there is no discrimination in admission of students in schools at pre-primary, primary, secondary or tertiary levels on account of nationality, race, caste, religion, belief, place of origin, political opinion, colour, creed or sex. A common curriculum is taught to all, irrespective of gender, religion or belief in primary and secondary schools and conducive environment is provided to all learners, which ensures equal access to relevant and quality education and training.

Section 35 provides that all Government schools and all schools in receipt of a regular grant-in-aid from public funds shall be open to pupils of any race or religion.

3. Moreover, over the years with a view to ensure the protection of the rights of its people, the State of Mauritius has established 7 National Human Rights Institutions (NHRIs), namely the;

- (a) National Human Rights Commission;
- (b) Independent Police Complaints Commission;
- (c) Equal Opportunities Commission;
- (d) Office of the Ombudsman;
- (e) Ombudsperson for Children’s Office;
- (f) Ombudsperson for Financial Services; and
- (g) Ombudspersons for Sports.

4. Additional measures to promote cultural diversity

Mauritius being a multi-ethnic country where different ethnic groups embrace their respective religious and cultural practices, a number of institutions as well as a series of incentives have been put in place to ensure cultural diversity and national unity and include, *inter alia*:

- (a) regular meeting/ interactions of the Comité des sages;

- (b) adapting the calendar each year in order to share equitably the public holiday which are proclaimed based on the religion and culture of the citizens. These include National Events such as Thaipooosam Cavadee, Maha Shivaratree, Chinese Spring Festival, Ougadi, Eid-ul-Fitr, Ganesh Chaturthi, Divali and Christmas; and two commemorative events, namely, Commemoration of the Anniversary of the Abolition of Slavery and the Commemoration of the Anniversary of the Arrival of Indentured Labourers. The aim is to enable the entire population to understand, appreciate and participate therein;
- (c) the setting up of a National Task Force chaired by the Hon. Prime Minister to ensure that Mauritians of different faith are given support in celebrating their culture through religious festivals;
- (d) provision of religious subsidies and infrastructural facilities to religious bodies during all religious festivals celebrated in Mauritius. Every year, budgetary provisions are made for 'Subsidy to Religious Bodies' affiliated to Federations. The amount of subsidy is based on the number of adherents. Those which are not affiliated but which operate as branches of international religious organizations are paid a fixed grant. Other groups registered as associations receive tax-exemption;
- (e) assistance provided by the Ministry of Arts and Cultural Heritage (MACH) to socio-cultural organisations to enable them to promote their respective culture through cultural gatherings at regional and grass root levels. Such practice enhances cultural exchanges between Mauritians and promotes a peaceful and inclusive Mauritian society;
- (f) provision of financial and institutional support to ensure that all aspects of arts and culture in Mauritius are preserved and promoted. Workshops, exhibitions, cultural programmes, concerts and plays in ten languages are also organized by the MACH on a regular basis. Financial and other support are provided to artists and groups of artists to encourage artistic creation. The MACH has also two theatre halls which are put at the disposal of the artist community at a reduced rate with a view to promoting arts and culture and encouraging the Mauritian public to attend cultural events.
- (g) setting up of Cultural Centres by way of legislation, namely the Mauritius Marathi Cultural Centre, Mauritius Telugu Cultural Centre, Mauritius Tamil Cultural Centre, Nelson Mandela Centre for African Culture and the Islamic Cultural Centre, amongst others to carry out activities which promote intercultural dialogue and foster mutual cultural understanding.
- (h) establishment of different Speaking Unions namely the Bhojpuri Speaking Union, Creole Speaking Union, Chinese Speaking Union, English Speaking Union, Marathi Speaking Union, Tamil Speaking Union, Telugu Speaking Union, Urdu Speaking Union and Sanskrit

Speaking Union to promote the different languages in its spoken and written forms in Mauritius and to promote friendship and understanding between the peoples of the world and to engage in any educational, academic, cultural and artistic work to further that objective. The Government of Mauritius, through the MACH is currently working on the setting up of an Arabic Speaking Union;

- (i) each child attending school is given to study an Asian Language/Arabic (according to their personal liking or cultural/religious background) and this preserves the cultural inheritance and rights. The State of Mauritius is one amongst the rare countries where English, French, Hindi, Urdu, Mandarin, Marathi, Tamil, Arabic and Telegu are taught at primary, secondary and tertiary levels in all educational institutions. Hinduism, Cathechism, Islamic Studies, Science and History are also within the secondary schools' curriculum;
- (j) encouraging the use of mother tongues to facilitate teaching and learning. Bhojpuri has been integrated in the existing Hindi curriculum while the Kreol Morisien (KM) is now a subject in itself in both the Primary and Secondary School cycle. Textbooks for Kreol Rodrigues are also now being developed for Grade 4 to 6;
- (k) local religious organisations/bodies of different faiths are allowed to apply for residence permits to enable foreign religious workers to work and reside in Mauritius. In this respect, foreign religious workers/ expatriates come to Mauritius and serve these local religious organisations/bodies. Furthermore, a social visa is also granted to foreign nationals, who visit Mauritius for short stay and who are engaged in the conduct of religious activities, upon invitation of a sponsoring organization. It is worth noting that all persons are treated equally in their applications for citizenship or to avail of Apostille services at the Prime Minister's Office. And there is no special treatment or discriminatory criteria related to religious belief in the processing of these applications.

5. It is important to note that the police duties such as law enforcement actions are not based on criteria such as religion or discrimination of any kind. The Police Force in Mauritius fosters religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion and to contribute openly and on an equal footing to society.

The Police Force prevents acts of vandalism or theft, regulate traffic and maintain good relationship with the community near temples, mosques, churches, kovils and other places of worship, especially during religious festivals. Policing is also maintained during the annual pilgrimage to the parish church of Saint Croix, or during other religious processions such as Maha Shivratri and Cavadee festivals.

The Crime Records Office collects data in respect to cases involving offences of a religious nature in a systematic way irrespective of age, sex, geographic location, nature of offence.

6. Conclusion

The State of Mauritius is seen as a tolerant country on the international field as regard to religious stability. Racial discrimination and hate speech are not tolerated in Mauritius. The Government is committed to ensuring that no one threatens the racial harmony prevailing in Mauritius. It has also taken measures to ensure that the relevant Human Rights norms and standards are implemented by all stakeholders and the laws have means to combat intolerance, negative stereotyping, stigmatization and discrimination, incitement to violence and violence against persons based on religion or belief.

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