

COMBATTING RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

- Section 3 of the Constitution entitled “Fundamental rights and freedoms of the individual” reads as follows:-

It is hereby recognized 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 for protection from discrimination. Section 16(1) states that no law shall make any provision that is discriminatory either of itself or in its effect subject to subsections (4), (5) and (7). Under section 16(2), subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner 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 word ‘discriminatory’ is defined as 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 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.

3 and 16 of the Constitution as well as age, pregnancy, mental and physical disability and sexual orientation in areas dealing with employment, education, the provision of accommodation, goods, services and other facilities, sports, the disposal of immovable property, admission to private clubs and premises open to members of the public. The Act also provides for the establishment of an Equal Opportunities Tribunal.

- 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 Truth and Justice Commission has already submitted its recommendations which are being implemented on a phasewise basis.
- Under the Criminal Code, there are offences pertaining to discrimination on grounds of race or creed in general –
 1. Section 51 provides for “Stirring up war against the State”.
 2. Section 62 provides for “Stirring up civil war”.
 3. Section 183 provides for “Interference with freedom of conscience”.
 4. Section 184 provides for “Disturbing religious ceremony”.
 5. Section 185 provides for “Outrage on religious worship”.
 6. Section 206 provides for “Outrage against public and religious morality”.
 7. Section 282 provides for “Stirring up racial hatred”.
 8. Section 283 provides for “Sedition”.
 9. Section 284 provides for “Inciting to disobedience or resistance to law”.
 10. Section 286 provides for “Importing seditious publication”.
 11. Section 287A provides for “Prohibiting circulation of seditious publication”.

UPR-2nd Periodic Report- October 2013

- Constructive Dialogue on the 2nd Periodic Report of Mauritius on the UPR was conducted in October 2013 and the Mauritian delegation gave extensive information on the steps taken to combat all forms of discrimination.

- Section 7(1) of the Constitution states that no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.
- The National Human Rights Commission set up under the Protection of Human Rights Act is empowered to enquire into any written complaint from any person alleging that any of this human rights has been, is being or is 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. It also has the power of enquiring into other written complaint from any person against an act or omission of a member of the police force in relation to hi, other than an act or omission which is the subject of an investigation by the Ombudsman. The National Human Rights Commission may equally review the safeguard provided by and under any enactment for the protection of human rights, review the factors or difficulties that inhibit the enjoyment of human rights and exercise such other functions considered conducive to the promotion and protection of human rights. Police complaints are referred to the Police Complaints Division of the NHRC.
- Citizens may have recourse to the Office of the Ombudsman. Minor Petitions relating to human rights may equally be forwarded to the Office of the Attorney General.
- Section 11 of the Constitution provides for the protection of freedom of conscience. Under section 11(1), it is stated that no person shall be hindered in the enjoyment of his freedom of conscience and that freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others and both in public and private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- All domestic laws other than citizenship and immigration laws are equally applicable to migrants. It is to be noted that a non citizen is afforded treatment on a non-discriminatory basis. However, section 16(4) of the Constitution states that section 16(1) shall not apply to any law so far as that law makes provision with respect to persons who are not citizens of Mauritius.
- The Equal Opportunities Act was passed in the National Assembly in 2011 and the Equal Opportunities Commission was set up since April 2012. The legislation covers the different grounds of discrimination referred to in sections