

**INTERNATIONAL  
COVENANT  
ON CIVIL AND  
POLITICAL RIGHTS**



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Addendum

MAURITIUS \*/

[12 January 1978]

PART I - GENERAL

1. Treaties, whether bilateral or multilateral, do not by themselves have the force of law in the legal system of Mauritius. They require to be implemented by an enactment passed by Parliament or by subsidiary enactments made in pursuance of an enactment. Enactments consist of two main categories of law: first, the Constitution which is the supreme law and, secondly, Acts passed by Parliament. An Act of Parliament and any subsidiary enactment made under it are void to the extent to which they are inconsistent with the provisions of the Constitution (Section 2 of the Constitution). The Constitution may be amended by an Act of Parliament if it is supported by an affirmative majority of three quarters in the case of some matters or of two thirds in the case of other matters (Section 47 of the Constitution).
  
2. Given the importance of the Constitution as the supreme law in the legal system of Mauritius and given the fact that the Constitution has transformed most of the Covenant rights into fundamental legal rights in respect of which there is guaranteed access to the courts and guaranteed measures of redress, the text of the Constitution is appended to this Report. \*\*/

\*/ The present report has been prepared and compiled in accordance with the guidelines issued by the Committee. In accordance with the request of the Government of Mauritius the present report is to replace the earlier one submitted by the Government and reproduced in document CCPR/C/1/Add.2.

\*\*/ The text of the Constitution is available for consultation in the files of the Secretariat.

3. Mauritius did not find it necessary to give the force of law specifically to the International Covenant on Civil and Political Rights as the substance of the Covenant is already contained either in the Constitution or in a number of specific enactments dealing with the rights concerned.

4. The different laws that exist both with regard to the protection of particular Covenant rights and with regard to derogations are described in detail in Part II of this Report under each Article of the Covenant.

5. Derogations from certain fundamental rights are provided for in the Constitution in a period of public emergency when exceptional measures are required to be taken in the interests of peace, order and good government (Section 18 of the Constitution).

6. Courts of Justice have jurisdiction with regard to all human rights. The jurisdiction of the different courts would depend upon the nature of the redress sought by an individual whose rights have been violated. The individual will, invariably, have a similar remedy by way of damages or indemnity before the Supreme Court or the lower courts (depending upon the amount claimed) whenever his person, property, reputation or other civil right of the kind recognized in the Covenant is violated.

7. He will further have a right to -

(i) request the Supreme Court to exercise the powers of the High Court of England and issue one of the prerogative writs e.g. certiorari, prohibition and mandamus against a public authority for any act or order complained of (section 15 of the Courts Ordinance);

(ii) a declaration by the Supreme Court whenever the violation is perpetuated by an official act or even by a law which is in itself a violation of the fundamental rights and freedoms guaranteed by the Constitution. As a general rule, any interference with a person's basic rights will in itself constitute a criminal offence for which the law provides a sanction. The violations which constitute criminal offences will be dealt with under Part II of this Report under each Article of the Covenant.

8. Mauritius recognizes that legislative measures, however important they may be, could not by themselves effectively and completely ensure the enjoyment of human rights. These measures can only provide remedies or sanctions where individual rights are violated. The actual enjoyment of human rights, however, largely depend on economic, social, health, educational and other measures designed to create a just society. In this first decade of its independence, Mauritius has embarked on a programme of economic development, intensified social services and benefits, increased the provision of free medical services in rural and urban areas alike and extended the provisions of free education from the primary to the secondary and university levels.

PART II - COVENANT RIGHTS

Article 1

As a Member of the United Nations (UN), the Organization of African Unity (OAU), the Organisation Commune Africaine et Mauricienne (OCAM) and the Commonwealth, Mauritius has consistently upheld and supported the right of peoples to self-determination and their right to dispose of their natural wealth and resources according to the principles of international law.

Article 2

Paragraphs 1 and 2

1. Laws which in Mauritius give effect to the following rights of the individual do not discriminate between individuals on any of the criteria referred to in paragraph 1 of Article 2 of the Covenant, that is to say -

- (a) the right of the individual to life, liberty, security of the person and the protection of 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 for all deprivation of property without compensation.

(Section 3 of the Constitution).

2. However, legislation is always kept under review with a view to ensuring that any defects or deficiencies are remedied. In any event, where any law exists which is inconsistent with the Constitution, that law is, by virtue of Section 2 of the Constitution, void to the extent of the inconsistency.

Paragraph 3(a)

1. The Constitution recognizes a number of fundamental rights and freedoms (Sections 3 - 16). An effective remedy is specifically provided for in the Constitution whenever any of these guaranteed rights or freedoms is violated (Section 17). The civil law of Mauritius which is based on the Code Napoléon also recognizes the right of an individual to redress by way of damages or compensation whenever a wrong is done to his person, reputation or property or to that of his dependents (Articles 1382 to 1384 of the Civil Code).

2. The Penal Code also treats as a criminal offence any wrong done to an individual's person (e.g. Sections 215 to 230 of Penal Code), property (e.g. Sections 301-310) or reputation (e.g. Sections 288, 291 and 296). It is no defence that the alleged wrong doer was acting in an official capacity. Proceedings against public authorities and the Crown are regulated by the Crown Proceedings Ordinance, 1953.

3. In order to ensure that all citizens are able to have access to the courts irrespective of their financial means, the law relating to the grant of legal aid was brought up to date in 1973 (Legal Aid Act). This Act makes provision for the assignment of lawyers to poor persons and exemption from taxes, fees and costs in relation to the case.

Paragraph 3(b)

1. The possibilities of judicial remedy have traditionally been highly developed in Mauritius and the judicial system which exists in Mauritius is as sophisticated as is to be found in highly developed countries. Those called upon to discharge judicial office whether in the Lower or Higher courts are required by law to have legal qualifications and experience in the practice of law.
2. In order to ensure that the judiciary is independent and competent, appointment to judicial office is governed by special constitutional provisions. The Chief Justice who is the head of the Judiciary is completely independent of the Executive and, once appointed, he is protected like other Judges of the Supreme Court by constitutional guarantees relating to security of tenure. The Senior Puisne Judge is appointed on the advice of the Chief Justice. The other Judges are appointed on the advice of an independent Judicial and Legal Service Commission chaired by the Chief Justice. The other judicial officers in the lower courts as well as the law officers whose function it is to advise the Government and to undertake prosecutions in criminal matters are all appointed by the independent Judicial and Legal Service Commission (Sections 72, 77, 78, 85 and 86 of the Constitution).
3. In industrial matters, questions relating to the registration of trade unions fall within the final jurisdiction of a Permanent Arbitration Tribunal established by the Industrial Relations Act, 1973. The President of the Tribunal is required by law to be qualified for appointment as a Judge of the Supreme Court and his appointment is made by a Public Service Commission which is independent of the Executive. In any event, on questions of law or whenever the constitutional freedom of association of persons is in issue, redress may be sought from the Supreme Court.

Paragraph 3(c)

Legal provisions exist under the laws regulating the Supreme Court, the Intermediate Courts and the District Courts to ensure the enforcement of remedies guaranteed by the Courts whether by way of damages, compensation or personal sanction. (Courts Ordinance, Criminal Procedure Ordinance, Intermediate and District Courts (Civil Jurisdiction) Ordinance, Code de Procédure Civile, District Courts Execution (Amendment) Ordinance.)

Article 3

1. Section 3 of the Constitution declares that no discrimination exists between men and women with regard to fundamental rights and freedoms to which Section 3 of the Constitution relates. Generally speaking, no discrimination therefore exists as between men and women in the enjoyment of basic Covenant rights.
2. However, with regard to married women, two circumstances should be noted -
  - (a) First, for the purposes of Article 16 of the Covenant which deals with the question of the recognition of persons before the law, the juridical capacity of the married woman is affected depending upon whether a woman is married under one of the matrimonial régimes provided in the Civil Code or whether she is married under the régime established by the Status of Married Women Ordinance, 1949. Under any of the régimes established by the Civil Code she suffers certain incapacities and must act by

or with the authorization of her husband. Under the régime established under the Status of Married Women Ordinance she is completely independent as regards the performing of any juridical act and can act without the authority or consent of her husband. It is, however, essential to stress that a woman is free to choose whatever matrimonial régime she likes at the time of marriage.

- (b) Secondly, for reasons of national security and public order, rights to residence of the foreign husbands of Mauritian wives are regulated more strictly than the rights of the foreign wives of Mauritian husbands for the purposes of the Immigration Act, 1970 and the Deportation Act, 1968. The alien husband, however, has the right under the law to apply for a residence permit and for acquiring Mauritian citizenship on satisfying certain conditions.

## Article 5

### Paragraph 1

Mauritius has not taken, nor has it authorized any group or person to take, any measures designed to destroy any of the rights or freedoms recognized in the Covenant or to limit them to a greater extent than is provided for in the Covenant. The circumstances and conditions under which limitations are possible are discussed under the different Articles of the Covenant in this Section of the Report.

### Paragraph 2

No fundamental human rights recognized as existing in the laws, customs or conventions of the State of Mauritius have been restricted since Mauritius became a party to the Covenant. In any event, the existence of rights in the Covenant could not be used as an excuse for any restrictions inasmuch as the Covenant by itself does not have the force of law in Mauritius although the rights recognized therein are entrenched either in the Constitution of Mauritius or in various other enactments.

## Article 6

### Paragraph 1

1. The right to life is protected by Section 4 of the Constitution and the circumstances under which a person may lawfully be deprived of his life are limitatively set out in Section 4(2).

2. The right to life is further protected by the Penal Code and by the Civil Code. The deliberate and unlawful taking of a person's life may constitute the crime of murder (assassinat), manslaughter (Meurtre), patricide, infanticide, depending upon the circumstances (Sections 215-223 of the Penal Code).

3. Where death results from wounds inflicted by another person through his negligent act, the offence of involuntary homicide is committed (Section 239 of the Penal Code).

4. The taking away of the life of a child as yet unborn is not punished as such, however, it is a crime to procure the miscarriage of a pregnant woman (Section 235 of the Penal Code), presumably, the Director of Public Prosecutions would not authorize the prosecution of a medical practitioner who procured a miscarriage in circumstances where the life or the health of the mother would otherwise have been in grave risk.

5. The civil law grants a remedy by way of damages to the dependents of a person who has been wrongfully deprived of his life (Articles 1382 to 1384 of the Civil Code).

#### Paragraphs 2 and 3

1. The death penalty can only be inflicted in the case of the crimes of murder (assassinat) or high treason. These crimes are triable only by the Supreme Court sitting at Assizes. It is possible for a prisoner after conviction to appeal to the Court of Criminal Appeal against both his conviction and sentence.

2. Mauritius is not a party to the Convention on the prevention and punishment of the crime of genocide.

#### Paragraph 4

Any prisoner sentenced to death or to any other punishment for that matter may apply to the Governor-General for the exercise of the prerogative of mercy (Section 75 of the Constitution).

#### Paragraph 5

Sentence of death cannot be pronounced on, or recorded against, a person if at the time of the commission of offence he was under 18 (Section 16 of the Juvenile Offenders Ordinance, 1935).

2. Sentence of death cannot be carried out on pregnant women. Instead a sentence of penal servitude for life is passed (Section 156 of the Criminal Procedure Ordinance).

#### Paragraph 6

The abolition of the death penalty has often been debated in Parliament but no positive conclusion has been reached. Since the Covenant does not by itself have the force of law in Mauritius, it could not be used as an excuse to prevent the abolition of capital punishment.

#### Article 7

1. The right not to be subject to torture or to inhuman or degrading punishment or other such treatment is a guaranteed constitutional right which is legally enforceable (Section 7 of the Constitution).

2. The provision of the Constitution does not, however, apply to punishments which were lawful in March 1964, and no sentence for a criminal offence can lawfully include corporal punishment (Corporal Punishment Ordinance, 1951). Corporal punishment is, however, only restricted to cases where prisoners are guilty of mutiny, incitement to mutiny, gross personal violence against a prison officer or escaping from legal custody. Such punishment, however, is closely regulated and supervised by a medical officer (Section 43 of the Prisons Ordinance).

3. The use of force against any individual, including for this purpose medical or scientific intervention, is also sanctioned both by the criminal and civil law. Under the criminal law, the use of force would, in the circumstances, amount to "coups et blessures" unless force was used in -

- (a) self-defence (provided that the force used was not out of proportion to the assault) or defence of property (Section 246 of the Penal Code);
- (b) securing the arrest of an offender for preventing a crime or detaining an offender provided that no more force is used than is reasonable in the circumstances (Section 11 of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance).

4. In civil law, any person who has been ill-treated may claim damages against those responsible for the assault (Articles 1382 to 1384 of the Civil Code).

5. In addition to these general provisions, certain procedures have been adopted to protect the individual in certain circumstances. For example, in addition to their normal criminal and civil liability, police officers are subject to internal disciplinary proceedings for any infringement of the police code of discipline.

6. Where a police officer is charged with a breach of the police code, the case is heard by a disciplinary board which may, if the officer is found guilty, report to the Police Service Commission or the Commissioner of Police that the officer be reprimanded, fined or dismissed from the Force.

7. Any member of the public may file a complaint against a police officer. The complaint is investigated into by the Superintendent of Police who, after completion of the investigation, sends his report to the Director of Public Prosecutions. The D.P.P., being an entirely independent person (Section 72 of the Constitution), decides whether criminal or disciplinary proceedings should be instituted or whether the complaint should be filed.

8. Any confession found by the judge or magistrate to have been obtained by oppression i.e. by force, fear of prejudice or hope of advantage or favour exercised or held out by a person in authority is inadmissible and cannot be used as evidence against the person who made it.

9. In a jury trial, the question of the admissibility of a confession is decided by the Judge after hearing evidence for and against in the absence of the jury. If the confession is ruled to be voluntary, then it will be admissible.

10. Indeed, police officers are bound after the arrest of any person not to offer him any inducement by threat, promise or otherwise to make any disclosure but shall inform him of the cause of his arrest and leave him free to speak or keep silent (Section 15(1) of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance).

11. Apart from their ordinary criminal or civil liability, prison officers are also subject to their code of discipline - (See the section of this Report dealing with Article 10 of the Covenant).

### Article 8

1. The right not to be held in slavery or servitude and not to be required to perform forced labour except in certain limited circumstances are set out in Section 6 of the Constitution.

2. Labour is freely given under contract and, in general, a contract is terminated by either party on giving due notice. Where there is a breach of contract the aggrieved party will be compensated by damages. Any contract which imposes servile obligations will be considered to be unconstitutional and illegal.

3. If anyone unlawfully arrests, detains or confines another for any purpose, he will be liable to pay damages (Section 5(5) of the Constitution and Article 1382 of the Civil Code). He will also be liable to prosecution for a criminal offence (Sections 258 and 259 of the Penal Code).

4. Moreover, the writ of habeas corpus is available to every one who is unlawfully detained. By this writ, the Supreme Court may order that the detainee be brought before the Court to enquire into the causes of his detention. If his detention is proved to be illegal, his release will be forthwith ordered (Sections 185 - 190 of the Criminal Procedure Ordinance - Cap 169).

### Article 9

#### Paragraph 1

1. The right to liberty and freedom from arbitrary arrest is provided for in Section 5 of the Constitution and the circumstances under which a person may lawfully be deprived of his liberty are limitatively set out in Section 5(1) of the Constitution.

2. So any person who arrests or detains another without lawful excuse will be liable, as already stated under Article 8 of the Covenant, to a civil action in damages for unlawful imprisonment but also to criminal prosecution.

#### Paragraph 2

Any arrested or detained person must be informed as soon as is reasonably practicable in a language he understands of the grounds of his arrest or detention (Section 5(2) of the Constitution and Section 15(1) and 20 of the Intermediate Court (Criminal Jurisdiction) Ordinance). Otherwise, the policeman or private person who makes the arrest may be liable for unlawful imprisonment. Every summons, warrant of arrest and information must give the accused sufficient particulars of the nature of the charge against him (see the section of this Report dealing with Article 14 of the Covenant).

#### Paragraph 3

1. Section 5(3) of the Constitution lays down that any arrested or detained person must be brought promptly before a court and tried promptly or otherwise released either unconditionally or conditionally. Section 27 of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance also provides that any person arrested either by a police officer or private person must be taken as soon as possible before the Court. If an arrested or detained person is not tried within a reasonable time, he shall be released on

bail either unconditionally or subject to the provision of sureties and the requirements laid down by the court (ibid. Section 68), except where there are reasonable grounds to believe that the accused, if released on bail would -

- (a) interfere with witnesses of the prosecution;
- (b) fail to turn up in court for his trial; and
- (c) commit offences while on bail.

2. The accused or his representative may challenge any of these grounds before the court and it will then be for the Police and the Crown to prove beyond any reasonable doubt that these grounds exist.

#### Paragraph 4

As already stated, the existence of the writ of habeas corpus upholds the right of personal freedom. It may be sought on probable cause shown in an affidavit by any person arrested or detained illegally, or his representative. If the arrest or detention is proved to be illegal, the arrested or detained person shall be set free (Sections 185 - 190 of the Criminal Procedure Ordinance).

#### Paragraph 5

As stated already, there is a constitutional right of action for compensation for unlawful imprisonment (Section 5(5) of the Constitution). There is also a civil action in damages against anyone who procures the unlawful arrest or detention of another (Article 1382 of the Civil Code).

#### Article 10

##### Paragraph 1

1. The management of all penal institutions is governed by regulations made by the Minister of Reform Institutions.

2. The Prison Regulations ensure that prisoners are not ill-treated and that their physical and mental health is assured. All penal institutions are under the supervision of the Minister of Reform Institutions who is answerable to Parliament for their administration.

3. There exists a District Prison Board (section 16 of Prisons Ordinance - Cap 313) for every prison established for a district, composed of five members, including the District Magistrate and the Government Medical Officer of the district. With regard to the Central Prisons (i.e. prisons at Port Louis and Beau Bassin), there is a Central Prisons Board appointed by the Minister and composed of four magistrates and four other persons.

4. The main functions of the Central Prisons Board and of the District Prison Board are to -

- (a) visit the prisons and hear complaints made by prisoners;
- (b) report on any abuses within the prisons and on any repairs urgently required in prisons;
- (c) take cognizance of any matters of pressing necessity and report them to the Minister (section 10).

5. All the Prison Boards report directly to the Minister and they are under an obligation to enquire into and report on any matter which he may refer to them.

6. The Permanent Secretary, Ministry of Labour and the Permanent Secretary, Ministry of Health, are official visitors of all prisons and each of them is obliged to visit the prisons at least once a month and make a report of every visit to the Minister (ibid. section 12).

7. Moreover, every judge of the Supreme Court, Member of the Legislative Assembly and the Mayor of Port Louis has the right to visit all prisons and make any observations they think fit in a book kept for that purpose by the Commissioner of Prisons.

8. The Prisons Ordinance also contains specific provisions regarding the punishments to be meted out to prisoners who offend against prison discipline. For example, a prisoner may be kept in separate confinement if his conduct is quite violent or be treated on a bread and water diet for a period not exceeding seven days if he assaults another prisoner (section 40).

9. In case of repeated offences by a prisoner against prison discipline, he is reported to one of the Prisons Boards which may order him to be confined in a punishment cell on a bread and water diet for a period not exceeding one month (section 42). The prisoner in such a case will be visited once a day by a medical officer who can cause the confinement to cease wholly or partly on medical grounds.

10. As stated in the section of this Report dealing with Article 7 of the Covenant, corporal punishment is confined only to cases where prisoners are guilty of mutiny, etc. It is effected under the close supervision of a medical officer.

11. The code of discipline for prison officers is laid down in Chapter XIII of the Prisons Regulations of 1891. Regulation 253 lays down that it is the duty of all prison officers to treat the prisoners with kindness and humanity, and to listen patiently to, and report, their complaints or grievances, being firm, at the same time, in maintaining order and discipline and enforcing complete observance of the rules and regulations of the establishment.

12. Regulations 255 and 258 state that no officer or servant shall strike a prisoner, except when compelled to do so in self defence and that no subordinate officer shall take it upon himself to punish any prisoner. Regulation 274 prevents any prison officer or servant from employing any prisoner for his own private purposes.

13. Prison officers are, of course, liable to prosecution for criminal offences committed while on duty.

#### Paragraph 2(a)

1. Section 27 of the Prisons Ordinance requires that unconvicted persons shall not be subjected to any restraint or inconvenience beyond what shall be necessary for their safe keeping, except when undergoing punishments for prison offences and shall be confined separately from convicted prisoners.

2. Work is optional to the unconvicted prisoner who is entitled to wear his own clothing and receive food from outside (ibid. sections 23 and 25).

Paragraph 2(b)

1. Under the Juvenile Offenders Ordinance (Cap 186), any child i.e. one under 14 who is before a court charged with an offence and is not released on bail must be committed to a place of remand (section 10).
2. A young person i.e. one who has attained the age of 14 and is under 17 is also generally committed to a place of remand unless he is found to be so untidy a character that he cannot safely be so committed or is so depraved a character that he is not a fit person to be so detained: in such a case he may be committed to prison (section 10). Young persons are, as far as possible, kept apart from adults in prisons (ibid. section 15(4)).
3. Moreover, section 8 of the Juvenile Offenders Ordinance ensures that children and young persons, while detained at Police stations, conveyed to and from Court and while waiting before or after attendance in Court, are not associated with adult offenders.

Paragraph 3

1. Regulation 254 of the Prison Regulations provides that the great object of reclaiming the criminal should always be kept in view by every officer in their prisons and they should strive to acquire a moral influence over the prisoners. While regulation 120 states that the Commissioner of Prisons shall bear in mind that the object of his duties, and those of all officers and servants under his directions, is not only to give full effect to the sentence awarded to the prisoners during their confinement but also to instil into their minds sound moral and religious principles and induce in them practical habits of industry, regularity and good conduct.
2. Moreover, reasonable facilities are provided to prisoners for exercising their handicraft or other skills or learning a trade or craft. They can read books and newspapers, write letters and listen to the radio or watch television as long as they do not offend against prison discipline.
3. A child or person under the age of 17 cannot be sentenced to imprisonment for any offence unless the court is of opinion that no other method etc. of dealing with him is appropriate e.g. sending him to an industrial school or putting him on probation etc. (section 15(3) of the Juvenile Offenders Ordinance).
4. Where a child or young person is convicted of a serious case e.g. wounds and blows causing death or complicity in murder, etc., and the court is of opinion that no other method of dealing with him is appropriate, he may be liable to be detained in such place and on such conditions as the Governor-General may direct (ibid. section 16(2)).
5. Where a person who is less than 16 and not more than 20 years old is convicted of an offence punishable by penal servitude or imprisonment, the court may, if certain conditions are satisfied e.g. the convicted person is suitable for treatment because of his character, state of health and mental condition, pass a sentence of Borstal training (section 5(1) of the Borstal Institution Ordinance, 1947).
6. The aim of Borstal training is to subject the offender to detention under such instruction and discipline as appears most conducive to his reformation and the repression of crime (ibid. section 5(1) of the Borstal Institution Ordinance).

7. Before deciding on how to deal with a convicted child or young person, the Court is under an obligation to obtain such information as to his general conduct, home surroundings, school record and medical history in order to be able to deal with the case in the best interests of the child or young person (Section 11(g) of the Juvenile Offenders Ordinance).

8. All the custodial sentences for juvenile offenders outlined above ensure that only a few young offenders are admitted to prisons. Those who are admitted are not allowed, as far as is practicable, to associate with adult prisoners (section 15(4) of the Juvenile Offenders Ordinance).

#### Article 11

1. It is laid down in section 21 of the Mauritius Civil Procedure Ordinance (Cap 192), that imprisonment for debt in civil and commercial matters is abolished except in a few limited cases e.g. under a judgment or order for the payment of damages or the restitution of property (ibid. section 24) or where a debtor who has the means to pay his creditor wilfully refuses to do so.

2. No imprisonment for debt may be decreed in suits between husbands and wives, ascendants and descendants, brothers and sisters and against minors, women, or men of 70 years (ibid. section 27).

3. During the term of his imprisonment, the debtor is kept separate from other prisoners and is permitted to receive his food and clothing from home and is not subjected to any forced labour (ibid. section 34).

#### Article 12

##### Paragraphs 1 and 2

1. Section 15(1) of the Constitution lays down that any person lawfully within Mauritius has the right to freedom of movement, freedom to reside in any part of Mauritius and freedom to leave Mauritius.

2. Any unlawful interference with that right, in so far as it amounts to arrest or detention, may be challenged by a writ of habeas corpus, proceedings for unlawful imprisonment or for certiorari to quash the act or order complained of e.g. a deportation order.

##### Paragraph 3

Restrictions on the rights in paragraphs 1 and 2 of this Article are limitatively set down in section 15(3) of the Constitution.

##### Paragraph 4

1. The Immigration Act, 1970 lays down that any citizens and residents of Mauritius (as defined in section 5) or exempted persons are allowed to enter or remain in Mauritius. All the others are, however, subject to immigration control (ibid. section 4).

2. It is to be noted that where a person, who is refused admission to Mauritius by an Immigration Officer, claims to be a citizen or a resident, the matter is referred to the Minister of Internal Security for his decision (ibid. section 3(1) and (2)). He has also a right of appeal against the decision of the Minister to the Supreme Court (ibid. section 13(6)).

Article 13

1. Section 4 of the Deportation Act, 1968 states that the Minister of Internal Security may make a deportation order in respect of aliens who are not residents of Mauritius and are convicted, undesirable or destitute persons or prohibited immigrants (as defined in section 2).
2. Normally, a notice signed by the Minister will be served on the alien stating the substantiated grounds on which it is proposed to make the order and requiring him to show cause before a magistrate in chambers why the order should not be made (ibid. section 5(1)).
3. The Magistrate hears the parties and then makes his report to the Minister and, pending the decision of the Minister, the alien may be detained by the Magistrate for a period not exceeding 28 days (ibid. section 6).
4. Exceptionally, in the interests of defence, public safety or public order, the Minister of Internal Security may make a deportation order in respect of an alien who is a non-resident and an undesirable person or a prohibited immigrant by serving a notice on him stating the substantiated grounds on which it is proposed to make the order, requiring him to show cause in writing within a prescribed period why the order should not be made and considering any representations made by him (section 5(b)).
5. Any person who is the subject of a deportation order has a right of appeal to the Supreme Court to have the order reviewed under section 15 of the Courts Ordinance (Cap 168).

Article 14

Paragraph 1

1. Section 10(i) and (8) of the Constitution lays down that criminal and civil courts or tribunals shall be independent and impartial. This independence and impartiality is safeguarded by -

- (1) the rule of natural justice that no man may be a judge in his own cause; and
- (2) the security of tenure of Supreme Court judges who can be removed from office only for inability to perform their functions or for misbehaviour in accordance with elaborate procedures laid down by section 78 of the Constitution.

Moreover, all the courts and tribunals are open to everyone on an equal basis. There are, however, certain differences in the procedural rights of some persons e.g. a minor can only institute an action by his parent or guardian.

2. All criminal and civil proceedings are conducted in public (section 10(9) of the Constitution) with the exception of certain cases laid down in section 10(10).

Paragraph 2

It is a cardinal principle of criminal law that the accused is presumed innocent until proved guilty. This principle is enshrined in the Constitution (section 10(2)(a)). The prosecution must prove the guilt of the accused beyond reasonable doubt. In a few cases, the burden of proving certain facts or excuses is placed on the accused e.g. it is for the accused to prove insanity (section 10(11)). This burden of proof is satisfied by the accused on a balance of probabilities.

Paragraph 3(a)

Section 10(2)(b) of the Constitution states that the accused must be informed as soon as possible and in a language that he understands of the charge against him. Summonses, warrants of arrest must state shortly the offence with which the accused is charged (sections 7(2) and 40(2) of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance and section 17 of the Criminal Procedure Ordinance (Cap 169)). Moreover, when the accused is present at the hearing, the substance of the information is stated to him and he is asked to show cause why he should not be convicted - (section 72(1) of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance).

Paragraph 3(b)

The accused has a constitutional right to be afforded adequate time and facilities for the preparation of his defence - (section 10(2)(c) of the Constitution). The right to be afforded adequate time is also provided by section 68(1) of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance. If he has not had sufficient time to prepare his defence, he may ask for an adjournment. If the application is genuine, the hearing must be postponed; otherwise the conviction would be quashed on appeal.

Paragraph 3(c)

Section 10(1) of the Constitution provides that the accused must be given a fair hearing with a reasonable time. A trial, however, may be postponed on various grounds e.g. the absence or illness of key witnesses, the request of accused's counsel for adjournment because he has not had sufficient time to prepare the defence, etc.

Paragraph 3(d)

1. The right of the accused to defend himself in person or by a legal representative of his own choice either at his own or public expense is protected by section 10(2)(d) of the Constitution.
2. In general, an accused has a right to be present at his trial unless he consents that the trial should take place in his absence or he conducts himself in such a way that the Court orders him to be removed and the trial to proceed in his absence (section 10(2) of the Constitution).
3. Legal aid is governed by the Legal Aid Act 1973. Legal aid in civil proceedings is governed by the Legal Aid Act 1973 and consists of representation by an attorney and counsel. Section 4 of the Legal Aid Act lays down that the applicant must make a written application to the authority i.e. the Chief Justice in respect of proceedings before the Supreme Court or, otherwise, any Magistrate, stating his course of action or ground of defence or appeal or the nature of his extra-judicial problem and making a sworn statement that he is not worth Rs 5000 excluding his wearing apparel and tools of trade, and his total monthly earnings are less than Rs 400 (ibid. section 4).
4. The Authority, on receiving the application, may order an enquiry to be made as to the means of the applicant and the apparent merits of his cause of action, ground of defence or appeal.
5. If the application for legal aid is well founded, legal aid will be granted.

Paragraph 3(e)

Section 10(2)(e) of the Constitution provides for the accused to cross-examine prosecution witnesses and adduce evidence on his behalf. The accused is normally informed of all his procedural rights - the right to cross-examine witnesses, right to call witnesses and right to give sworn or unsworn evidence. Indeed, the rule of natural justice that every man must be given a fair hearing is scrupulously observed - Section 72(3) of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance.

Paragraph 3(f)

The right to free assistance of an interpreter where the accused cannot understand the language used in Court is sanctioned by section 10(2)(f) of the Constitution. This right again flows from the fundamental rule of natural justice that every man must be given a fair hearing.

Paragraph 3(g)

1. An accused party has the right not to admit the truth of the information and to plead not guilty (section 72(3) of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance). The accused has even the right to confess to part of the information and at the same time plead not guilty to the rest (section 88 of the Criminal Procedure Ordinance (Cap. 169)).
2. If the accused is mute by visitation of God or stands mute of malice and does not answer directly to the information, the Court will order a plea of not guilty on his behalf (ibid. section 87).
3. A person shall be a competent witness for the defence at any stage of the proceedings either on his own behalf or on behalf of another who is jointly tried with him. But he cannot be called as witness except upon his own application (section 184(a) of the Courts Ordinance (Cap 168)). Moreover, section 10(7) of the Constitution gives the accused the right not to be compelled to give evidence at his trial.
4. The failure of the accused to give evidence shall not be made the subject of any comment by the prosecution (section 184(b) of the Courts Ordinance - Cap 168).

Paragraph 4

1. All charges against a child i.e. one under 14 or young person i.e. one who is 14 but under 17, must be tried by a Juvenile Court except the following, inter alia -
  - (a) serious crimes like murder, manslaughter, parricide etc. (section 3(4) of the Juvenile Offenders Ordinance);
  - (b) a charge made jointly against a child or young person and a person who has attained 17 (ibid. section 4(b)).
2. A juvenile court is composed of one of the district magistrates and must sit either in a different building or room from that in which sittings of a court other than a juvenile court are held, or on different days from those on which sittings of other Courts are held (ibid. section 6(2)).

3. The only persons who are allowed to be in Court are -

- (a) members and officers of the Court;
- (b) parties in the case - solicitors, counsel and witnesses;
- (c) accredited newspaper reporters; and
- (d) other persons specially authorized by the Court.

4. No newspaper report of any proceedings in a juvenile court may reveal the name, address or school or include any particulars calculated to lead to the identification of any child or young person who is an accused or a witness and no picture of any such person may be published in any newspaper except by direction of the Court or of the Governor-General - (ibid. section 7(1)).

5. There is also provision for the separation of children and young persons from adults while being conveyed to and from Court or while waiting before or after attendance in Court - (ibid. section 8).

6. The parent or guardian of the accused may be required to attend the Court during all stages of the proceedings unless the Court is satisfied that it would be unreasonable to require his attendance - (ibid. section 13(1)).

7. The Court must as soon as possible explain to the accused in a simple language the substance of the charge - (ibid. section 11(a)). It must ask the accused or his parent or guardian whether he wishes to put any question to the witness (ibid. section 11(e)). If the accused, instead of asking questions, makes a statement, the Court must put such statement to the witness in the form of questions (ibid. section 11(e)).

8. After the accused is convicted, the Court must, as stated already, obtain such information as to his general conduct, home surroundings, school record and medical history to be able to deal with the case in the best interests of the accused - (ibid. section 11(g)).

#### Paragraph 5.

1. Section 82(2)(d) of the Constitution provides for a person convicted of an offence to appeal against his conviction and sentence to the Supreme Court which has jurisdiction to supervise criminal proceedings before any subordinate court and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such Court.

2. Section 92 of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance provides for an accused who has been ordered to pay a fine of Rs 50 or more or been sentenced to imprisonment, to appeal to the Supreme Court.

3. Section 96 of the same Ordinance lays down that no new evidence shall be heard by the Supreme Court, which only reviews the information, depositions, other evidence and convictions and has the power to affirm, reverse, amend or alter the conviction, order, or sentence.

Paragraph 6

1. There is no provision in our law to compensate persons wrongfully convicted of criminal offences but later exonerated or pardoned.
2. However, a person may bring a civil action for damages against any person or authority which has maliciously or unreasonably instituted against him criminal proceedings - (article 1382-4 of the Civil Code).
3. Moreover, nothing prevents ex-gratia payments out of public funds being made to persons who have been the unwitting victims of the administration of justice and who have thereby suffered undue hardship.

Paragraph 7

Another cardinal principle of criminal law - that of "autrefois acquit" and "autrefois convict" - is reaffirmed in section 10(5) of our Constitution and sections 84 and 85 respectively of the Criminal Procedure Ordinance. Our Constitution goes further than this Ordinance and forbids also the trial of any person for a criminal offence for which he has been granted a pardon by the competent authority - section 10(6).

Article 15

Section 10(4) of the Constitution lays down that no one shall be convicted of a criminal offence retrospectively and no penalty shall be imposed retrospectively.

Article 16

There is no situation in Mauritius where a person may be deprived of the protection of the law.

Article 17

1. No person or authority has any right to interfere with these rights except as provided by law.
2. The Constitution ensures the protection of the individual from deprivation of his property. The conditions and circumstances that must be satisfied in law before anyone may be compulsorily deprived of his property are spelt out in section 8(1)(a) - (c) and (4) of the Constitution.
3. Section 9 of the Constitution protects the right of the individual to the privacy of his person, home and other property. Any illegal sanction of an individual, any imputation on his character or honour will also give rise to a civil action for damages while any unauthorized entry on land, building, etc. will constitute a trespass calling for compensation (Article 1382 of the Civil Code).
4. Section 9(2) of the Constitution lays down the conditions under which intrusions against privacy by public authorities may be sanctioned.
5. Section 288 of the Penal Code makes it a criminal offence to cast any imputation or allegation of a fact prejudicial to the honour, character or reputation of the person to whom such fact is imputed while section 296 prohibits the use of contempt or invective or abusive language against another person.

6. As regards correspondence, any officer of the Post Office commits a criminal offence for opening or detaining postal packets i.e. letters, papers, parcels - section 18 of the Post Office Ordinance (Cap 314).

7. Control of prisoners' correspondence is regulated by regulation 25 of the Prisons Regulations which states that every letter (except one addressed to the Governor-General or any member of the Prisons Board or Commissioner of Prisons) shall be perused by the prison officer in charge who shall affix his initials thereto.

#### Article 18

All four paragraphs of this Article relating to freedom of thought, religion and conscience find their expression in section 11 of the Constitution. It is to be noted that section 183 of the Penal Code makes it a criminal offence to compel or prevent anyone by open or overt act or by threats, to practise a religion or attend the practice of such religion.

#### Article 19

The right to freedom of expression is protected by section 12 of the Constitution. The conditions under which freedom of expression may be checked are limitatively set out under section 12(2) of the Constitution e.g. statements which amount to a contempt of court which are seditious or are defamatory of or insulting to another person.

2. Examples of other statutory provisions that impose restriction upon freedom of expression in the interests of public order are section 10 of the Official Secrets Act and sections 12, 30-33 of the Public Order Act, 1970.

3. The Mauritius Broadcasting Corporation provides independent and impartial broadcasting services of information, education and entertainment in English, French and certain oriental languages with impartial attention to the interests and susceptibilities of the different communities in Mauritius and with due regard to the interests of minority communities in Mauritius - section 15(2) and (e) of the Mauritius Broadcasting Corporation Act, 1970.

#### Article 20

1. Sections 53 - 61 of the Penal Code deal in general with crimes and misdemeanours against the safety of the State, while section 62 et seq. deal with crimes tending to disturb the State by civil war, by the illegal use of armed troops or by public devastation and plunder.

2. Section 33 of the Public Order Act, 1970 deals specifically with the advocacy of national or racial hatred and contempt while section 185 of the Penal Code deals with religious hatred, bigotry and outrage.

#### Articles 21 and 22

1. Freedom of peaceful assembly and association is sanctioned by section 13 of the Constitution.

2. The restrictions which are placed in such freedom are limitatively set out in section 13(2) of the Constitution. For example, it is unlawful to organize an association for the purpose of usurping the function of the police, the armed forces and the Crown - section 62 to 64 of the Penal Code.

3. With regard to trade unions, they are recognized as lawful by the Industrial Relations Act, 1973 which lays down the formal conditions for their registration. A trade union will not be registered if, inter alia, any of its objects is unlawful or it is engaged or about to be engaged in activities likely to cause a serious threat to public safety or public order.

4. Mauritius is a party to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize.

5. The Public Order Act which has been enacted in 1970 (sections 16 and 17) deals with unlawful assemblies and riots.

#### Article 23

##### Paragraph 1

1. The Civil Code protects the family which is a natural and fundamental element of society i.e. the blood relations between father, mother and child intricately linked by legal ties. For example, Chapter VI (Title V) of the Civil Code spells out the respective rights and responsibilities of a married couple and Article 203 lays down that the spouses, by the mere fact of marriage, are under the obligation to nourish, provide for, and bring up their children.

2. While any marriage lasts, the rights of each spouse in relation to third parties are protected e.g. a husband may claim damages from any person on the ground of adultery with his wife (Section 11 of the Divorce and Judicial Separation Ordinance (Cap 175)). Damages arising from death caused by the defendant's intentional or negligent act may be recovered by the deceased's spouse children or dependents - (Articles 1382 - 1384). A marriage is terminated only by the death of one of the spouses or by a decree of divorce or nullity pronounced by a Court of Law. Under the Divorce and Judicial Separation Ordinance (Cap 175), a divorce by mutual consent is illegal. Divorce can only be granted on certain grounds e.g. adultery, sodomy, wilful desertion, acts of cruelty (Sections 4 - 7).

3. Sections 268-271 of the Penal Code Ordinance makes it a criminal offence to abduct minors.

##### Paragraph 2

The right to marry is legally established. The restrictions imposed on this right are laid down in the Civil Status Ordinance (Cap 39). In order to contract a civil marriage in Mauritius, the following conditions, inter alia must be met -

- (a) one party must be male and the other female;
- (b) neither party must be already married;
- (c) the male person must be at least 18 and the female 15 unless a dispensation is granted for good and sufficient reasons. It is to be noted further that a minor cannot marry without the consent of his parents except in certain circumstances (Section 52 et seq.); and
- (d) the parties must not be related in direct or collateral lines.

##### Paragraph 3

1. For the marriage to be valid the parties should consent to marry each other (Section 48 of the Civil Status Ordinance). Article 180 of the Civil Code lays down that a marriage which is contracted without the consent of both or one of the parties may be contested by both parties or by the party whose consent was not voluntary.

2. Similarly, where there is a mistake as to the person with whom the marriage is performed, the marriage may again be contested. The marriage will not be dissolved, however, if there has been continuous cohabitation for six months since the spouse has attained his or her freedom or has recognized his or her mistake (Article 181 of the Civil Code).

#### Paragraph 4

1. With regard to the question of rights and responsibilities of spouses in a marriage, this will depend on the matrimonial régime chosen by the wife at the time of her marriage - (See the Section of this Report dealing with article 3 of the Covenant).

2. Provision is made in the Civil Code that, after the dissolution of a marriage, the children are entrusted to the spouse who has obtained divorce except where their welfare dictates that they should be entrusted to the other spouse or to a third person (Article 302).

#### Article 24

1. Children enjoy a wide degree of protection by the laws of Mauritius. For example, responsibility for the care and upbringing of children is placed squarely on their parents (Article 203 of the Civil Code).

2. After the death of one of the parents of a legitimate child, the surviving parent becomes automatically the guardian of the child except where he refuses in which case a guardian is appointed by a family council (Article 390 et seq.).

3. Under the Guardians to Illegitimate Children Ordinance (Cap 41), guardians are appointed by the Master of Supreme Court or the District Magistrate to illegitimate children who are minors and without mother or father or who are not being cared for properly (section 2). Again the welfare of the child is of paramount importance in the appointment of guardians who may be revoked if the child is ill-treated or neglected (section 7).

4. Sections 263-267 of the Penal Code Ordinance deal with crimes and misdemeanours of abandonment and exposure of children by anyone, including parents. While section 249(3) and (4) deals with attempt upon chastity of a child under twelve and illegal sexual intercourse with a female child under twelve, section 251 et seq. deal with those who debauch and corrupt youth or procure minors for purposes of prostitution and section 220 deals with the offences of murder of a newly born child and infanticide.

5. Under the Juvenile Offenders Ordinance, the Attorney-General or a Police Officer may bring before a Juvenile Court any child under 17 who, inter alia, is found wandering without any home or has both parents imprisoned or is under the care of a parent unfit to look after him (section 19 et seq.). The Court may then remove the child from the care and control of his parents or guardian and commit him instead to an institution which will have the same control over the child as his parent or guardian and will be responsible for his maintenance and upbringing (section 20).

Paragraph 2

1. Section 40 of the Civil Status Ordinance (Cap 39) lays down that for a birth to be registered, it must be declared by the father or mother or by such other person as a medical practitioner within 45 days (ibid. section 39) of its birth. Section 41 prescribes the particulars required to be registered, including the names given to it and the names and surnames of its parents. Section 42 deals with the declaration of birth of natural children where the name of the father or mother cannot be registered without his or her consent.
2. Even newly born children who are abandoned by their parents are registered and given a name (ibid. section 43).

Paragraph 3

Every child born in Mauritius becomes a citizen of Mauritius - (section 22 of the Constitution). A person born outside Mauritius is a citizen of Mauritius by descent if at the date of his birth his father is a citizen of Mauritius (section 23 of the Constitution).

Article 25

1. The right to take part in the conduct of public affairs is secured by the citizen electing his representatives to Parliament and to local authorities.
2. Sections 33 and 34 of the Constitution lay down the qualifications and disqualifications for membership to Parliament while sections 42 to 44, lay down the qualifications and disqualifications of electors and those who have the right to vote at a parliamentary election.
3. Sections 33, 34, 36 and 37 of the Local Government Ordinance, 1962 lay down the qualifications and disqualifications for offices of municipal councillors and membership of district and village councils while sections 55, 56 and 57 lay down respectively the qualifications of electors for urban authorities and village councils and disqualifications of electors for local authorities.
4. The effect of section 57(2) of the Constitution is that a general election must be held at least once every five years, while elections for local authorities must be held at least once every three years (section 11(2) of the Local Government Ordinance 1962).
5. Voting at all elections is by secret ballot - (Regulation 32 of Legislative Assembly Elections Regulations, 1958 and regulation 25 of the Municipal Council Elections Regulations, 1958).
6. It is to be noted that the Constitution provides for an independent Electoral Supervisory Commission to supervise the registration of electors for the election of members of the Assembly and the conduct of such elections (section 41) as well as for an independent Electoral Commissioner appointed by the Judicial and Legal Service Commission (section 40).
7. The power to appoint persons to hold or act in any offices in the public service is vested, with a few exceptions, with Commissions independent of the Executive (sections 85, 89 and 90 of the Constitution). There are three main Commissions - The Public Service Commission, the Judicial and Legal Service Commission, the Police Service Commission which select individuals for appointments to the civil service, judiciary and legal department and the Police.

8. All the Commissions have made regulations prescribing the conditions of appointment, promotion and removal of public officers and rules of disciplinary control over public officers.

#### Article 26

As seen from this Report, the rule of law is a fundamental principle of the Constitution. Section 16 of the Constitution explicitly lays down that no law shall make any provision that is discriminatory either of itself or in its effect and that no person shall be treated in a discriminatory manner by any public officer of authority. "Discriminatory" is defined in section 16(3) while section 16(5) limitatively sets out the conditions and circumstances under which discrimination may be effected e.g. recruiting a person with higher qualifications than another or levying a higher rate of income tax on a richer person.

#### Article 27

1. Ethnic, religious or linguistic minorities, like any other individual, are not hindered in the enjoyment of their freedom of conscience, freedom of thought and freedom of religion - (section 11 of the Constitution).

2. They are also not prevented from establishing and maintaining schools at their own expense - (section 14 of the Constitution). Even at State schools, minorities are given the opportunity to study their native languages like Tamil, Marathi, Telegu, Urdu and Chinese.

3. Moreover, it is a criminal offence to disturb or prevent the practice of any religion (section 184 of the Penal Code).

4. As already stated in this Report under Article 18 of the Covenant, the national radio and television service caters fully to the needs of ethnic, religious and linguistic minorities.

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