

Mr. Vishwadeo Gobin v. Mauritius, Communication No. 787/1997, U.N. Doc. CCPR/C/72/D/787/1997 (2001)

1) Reference Details

Jurisdiction: UN Human Rights Committee
Date of decision: 16 July 2001
Case Status: Concluded by the Human Rights Committee

2) Facts

In 20 of 21 constituencies in Mauritius, the electoral system for the legislature is such that the three candidates with the highest number of votes are elected. In the remaining constituency the two candidates with the most votes are elected. Thus 62 members of the legislature are elected directly. A further 8 seats are allocated to the “best losers.” When appointing the 8 additional members, the Electoral Supervisory Commission applies article 5 of the First Schedule of the Constitution of Mauritius which provides that candidates must belong to “the appropriate community”. This is defined under article 5(8) of the First Schedule as the community that has an unreturned candidate available and that would have the highest number of persons (as determined by the 1972 census) in relation to the number of seats in the Assembly held immediately before the allocation of the seat.

3) Law

International Law

Article 26, International Covenant on Civil and Political Rights 1966 (right to non-discrimination)

National Law

Article 5, First Schedule, Constitution of Mauritius

4) Legal Arguments

The applicant

The applicant claimed that the definition of “appropriate community” under the Constitution amounted to direct *de jure* discrimination under article 26 of the International Covenant on Civil and Political Rights (ICCPR) because the criteria on which the decision is taken is based on race and religion.

The State

The State argued that the applicant’s communication itself was incompatible with the ICCPR because the rules of procedure against which the applicant was complaining were set up precisely in order to ensure that all minorities of the country are adequately represented in the legislature

and to avoid racial discrimination under article 26 of the ICCPR. Thus, an absence of such a provision would lead to discrimination on the grounds of race, religion, national, or social origin.

The applicant's response

In response to this contention, the applicant argued that election questions should be left up to the electorate and that since the Mauritian population is, for election purposes, divided into four "communities" according to religion and race, allocating seats on the basis of race and religion is unacceptable and fundamentally in contradiction with article 26 of the ICCPR.

5) Decision

The case was not considered on the merits as the majority in the Committee considered it to be inadmissible under article 3 of the Optional Protocol to the ICCPR.