

ORAL ANSWERS TO QUESTIONS
NATIONAL IDENTITY CARD – LEGISLATION – AMENDMENT

The Leader of the Opposition (Mr P. Bérenger) (*by Private Notice*) asked the Acting Prime Minister whether, in regard to the new Mauritius National Identity Card, he will state –

- (a) if, following the Supreme Court judgment, proposed amendments to the existing legislation in relation thereto will be introduced, indicating if –
 - (i) fingerprints are presently being stored pending the delivery of the cards after consent is obtained, post-finger print taking;
 - (ii) fingerprints will be stored on the cards permanently, and
 - (iii) the cards are the property of the State, and
- (b) the sums paid as at to date and due to be paid to the contractor of the project therefor, the Singapore Cooperation Enterprise and other partners.

The Minister of Foreign Affairs, Regional Integration and International Trade (Mr E. Sinatambou): With your permission, Madam Speaker, I shall be replying to the Private Notice Question of the Leader of the Opposition since I am replacing the substantive Minister responsible for the National Identity Card Issue. I shall also, with your permission, reply to PQ B/579 together with the Private Notice Question.

Following the Judgment of the Supreme Court in the case of *Madhewoo Maharajah v The State of Mauritius and anor* which was delivered on 29 May 2015, Government decided that fingerprints will not be stored in any Database, save and except for the sole and strict purpose of producing an Identity Card. The House may wish to note that in that case the Supreme Court has ruled that the law providing for the storage and retention of fingerprints and other personal biometric data regarding the identity of a person is lawful, but that provisions in the National Identity Card Act and the Data Protection Act for the storage and retention of fingerprints and other personal biometric data collected for the purpose of the biometric identity card of a citizen of Mauritius are unconstitutional.

Subsequently, Government caused all the biometric data stored and retained to be destroyed in line with its pledge. However, we cannot just cancel the card itself because it costs more than Rs1.1 billion. Hence, we are now only storing minutiae on the card which is in the sole and permanent custody of the cardholder only. In the current process, the applicant

gives his or her fingerprints which are converted into minutiae. Out of the minutiae that are given, only the four best are recorded on the card.

In that process, fingerprints and minutiae are stored for a minimum period of one day and a maximum period of 7 days, which is perfectly lawful and in line with the Judgment of the Supreme Court where it is stated at page 33, I quote –

“the law providing for the storage and retention of fingerprints and other personal biometric data regarding the identity of a person constitutes a permissible derogation, in the interests of public order, under section 9 (2) of the Constitution of the country.”

The House may wish to note that Government is, however, not retaining or storing biometric data as such, save and except for the strict and sole purpose of producing and printing the Identity Card and that, even then, this is for a limited period not exceeding seven days whereafter the biometric data is destroyed and permanently erased.

As regards part (a)(i) of the question, Madam Speaker, the House may wish to note that, subsequent to the Supreme Court Judgement, the National Identity Card (Amendment) Regulations 2015 were made on 11 September 2015. I am advised that, the said amendments provide that fingerprint minutiae will be processed and recorded for the sole purpose of producing the ID card of a citizen and that any biometric information will be erased permanently once the ID card has been printed.

As regards part (a)(ii) of the question, Madam Speaker, I wish to inform the House that fingerprints images are not stored on the card. The cards are personalised with the four best fingerprint minutiae extracted from the fingerprint images which are, as I said earlier, permanently destroyed and erased after producing and printing the ID card.

These fingerprint minutiae will be stored permanently only on the ID card and will be used for verification of the identity of the cardholder. It must be highlighted, Madam Speaker, that any minutiae and the ID card itself remain in the sole custody of the cardholder.

As regards part (a)(iii) of the question, Madam Speaker, I am advised that a National Identity Card belongs to the cardholder and not to the State. In fact, I am advised that section 9(1)(f) of the National Identity Card Act makes it an offence for a person to have in his possession a National Identity Card not belonging to him or her.

Madam Speaker, as regards part (b) of the question, I wish to inform the House that the former Government signed an agreement with the Singapore Cooperation Enterprise on

17 October 2012 for the implementation of the Mauritius National Identity Scheme Project to the tune of SGD 44,326,139 SGD which amounts to about Rs1.152 Billion).

For the implementation of the Project, the Government of Singapore designated Singapore Cooperation Enterprise to lead the project and a Consortium was formed by Singapore Cooperation Enterprise with CrimsonLogic Pte Ltd and NEC Asia Pacific Pte. Ltd as members.

As at date, an amount of approximately Rs1.143 billion has already been disbursed to Singapore Cooperation Enterprise; an amount of approximately Rs9.35 million representing 10% retention money has not yet been paid.

All payments are paid to Singapore Cooperation Enterprise and no payment is effected to subcontractors concerned.

To sum up, Madam Speaker, we are now confident that the fear which the public could previously legitimately have about the possibility of their personal data being stored abusively and/or being misused and/or abused is no more. The very destruction of the central database and the permanent erasure of any biometric data as soon as same has been used for the sole and strict purpose of producing and printing an Identity Card is in line with the pledge given by this Government and can only restore public trust that citizens' rights will be respected and upheld in the Republic.

Mr Bérenger: I think the hon. Minister has not replied directly to my question as to whether following the May 2015 Supreme Court judgement, amendments would be brought to existing legislation, that is, the NIC Act and the Data Protection Act. Can I interpret that as far as Government is concerned, there is no need to bring amendments to these two Acts?

Mr Sinatambou: As I just said earlier - and I must say that I don't agree that I did not reply to the question - I just explained to the House, Madam Speaker, that subsequent to the judgement, the National Identity Card (Amendment) Regulations 2015 have been passed and they entered into force on 11 September 2015. Those regulations provide that fingerprint minutiae will be processed and recorded only for the purpose of producing an ID card and any biometric information will be erased permanently once the ID card has been printed.

Therefore, as it now stands, whatever illegality was actually found out by the Supreme Court in May 2015 in its pronouncement has now been made good by the regulations which have been passed.

Mr Bérenger: Madam Speaker, we all know what regulations are and what the main Act under which regulations are made, what it is. Now, from my reading of the judgement, the Supreme Court has found that sections, provisions of the two Acts are unconstitutional. Am I given to understand that according to Government the fact of having published regulations and not amending the Act means that there is no need, according to Government, to amend those two Acts?

Mr Sinatambou: I stand to be advised by the State Law Office. But the fact of the matter remains that regulations also have the force of law in this country. Therefore, as the matter stands, the law stipulates that whatever has been found to be unlawful by the Supreme Court has been now rendered lawful, with or without amendment as at now. But I am advised that the relevant Ministry is working on amendments to be made to whatever Acts.

(Interruptions)

But, in any event, as the matter stands, the law has been cured and as at today the National Identity Cards (NICs) which are being produced and delivered to citizens of this country are lawful, Madam Speaker.

(Interruptions)

Madam Speaker: Please! Please, hon. Bhagwan don't provoke!

Mr Bérenger: Madam Speaker, being given that we are now informed that the two Acts will be amended and that the State Law Office is working on them, are the amendments ready and will they be circulated as soon as possible?

Mr Sinatambou: Obviously, once the work is finalised it will be circulated. But the point which has to come across very clearly and forcefully, Madam Speaker, is that whatever has been declared unlawful is now lawful. The ID cards are lawful, the minutiae are lawful and there is no breach of any constitutional right regarding any citizen of this country.

Mr Bérenger: Madam Speaker, am I right in saying that before the Supreme Court, authorisation has been obtained to go to the Privy Council? Will those amendments being prepared be brought to the National Assembly whilst this is ongoing or will the present Identity Card validity be extended until the Privy Council eventually has dealt with the matter?

Mr Sinatambou: I am informed, Madam Speaker, that the current ID card has already been extended to 31 January 2016 and I am informed that the relevant amendments to be brought to the two legislations concerned will be circulated during this session of the National Assembly.

Mr Bérenger: Can I know what is the stand of the State, that is, the Attorney-General and the Solicitor-General as far as this request to appeal to the Privy Council is concerned? The Press has reported that the DPP - I tend to think it is not correct as a report - is going to take a stand against that permission being granted by the Supreme Court to go to the Privy Council. Can I know whether that is correct and what is the stand of the State through the Attorney-General and the Solicitor-General?

Mr Sinatambou: Of course, I am only replacing the substantive Minister of Technology, Communication and Innovation. What I can say to the House is that to my understanding is that the State has not appealed and as for the Director of Public Prosecutions, his independence does not allow me to give a reply to that aspect of the question. But, to all intents and purposes, it is only the plaintiff in the matter, Dr. Madhewoo Maharajah who is appealing. That is the information that I have.

Mr Bérenger: Madam Speaker, I have not been told that, but we all know that the validity of the card has been extended once more until the end of the year. Can I ask the Government...

(Interruptions)

Janvier! Can I ask the Government whether this is going to be done every three months? How long this will go on? As I said, if the appellants do not obtain the permission of the Supreme Court, it is clear that they will go to the Privy Council themselves. Therefore, can I again ask whether Government has decided or should decide to extend the validity of the present cards until the Privy Council – out of due respect to the Privy Council also - has dealt with the issue?

Mr Sinatambou: I understand that no decision has been taken on this issue yet.

Mr Bérenger: But then, can I point out that in case it is extended, then we have a problem with the youngsters that come of age 18 and that do not have a card at all? So, has Government thought through that in case it is extended until the Privy Council gives a judgement, what will happen to the 18 years old who want a card for the first time? They don't hold the present Identity Card.

Mr Sinatambou: My understanding, Madam Speaker, is that all those who are reaching the age of 18 are already being provided cards and this is why the National Identity Card Regulations of 2015 were passed. It allows for the production and issue of National Identity Cards in full respect of the judgement of the Supreme Court as it was delivered in May 2015.

Mr Bérenger: As far as the issue of now, at present, fingerprints being taken, I did not hear the Minister react to the fact that consent supposedly is being asked, being given the interpretation that Government gives of the judgement, why is consent sought? And is it not a fact that, in fact, what is happening is that fingerprints are being taken and afterwards consent is being asked in English, in confusion? So, is this going to go on? Can the hon. Minister clarify the situation?

Mr Sinatambou: In fact, Madam Speaker, I would respectfully see that there is no such confusion. If there is no such confusion, if we look at the judgement itself, it is quite clear that consent is not required as such just to make sure that tomorrow someone does not claim that his rights have been infringed. The law as declared by the Supreme Court and I need to quote page 33 of the judgement here.

“ (a) the law providing for the storage and retention of fingerprints and other personal biometric data regarding the identity of a person constitutes a permissible derogation, in the interests of public order, under section 9 (2) of the Constitution;”

So, just to highlight that it is perfectly lawful with or without it.

Mr Bérenger: My understanding is fingerprint is not required, but yet it is being taken with a pseudo-consent - consent obtained after fingerprints have been taken. Obviously, this is not in order and I appeal to Government to have a fresh look at this at least, Madam

Speaker. Well, Government has told us that in a maximum of seven days, the fingerprint taking is destroyed completely. Why this delay between one and seven days and what procedures are followed for that destruction to the satisfaction of the public?

Mr Sinatambou: Well, let me first perhaps respond to this request for a fresh look at the procedure. I hope, first of all, that the hon. Leader of the Opposition will agree with me that prevention is better than cure. So, I believe that when consent was being required, I think it was a precautionary measure worth its salt. However, I am advised that, as from 14 September 2015, there is no consent form as such, that is the information I have been given and as for the delay of one to seven days, there is a procedure. I, unfortunately, cannot go into the nitty-gritty. What I've been told is that this is the amount of time and I believe that we must account for not only the fact that there is a decentralised system for people to go to, then there is another place where all the data are sent for processing. So, I think that it is precautionary to say again up to seven days. If we would have said it takes three days, the moment one has taken four days, we would have it: 'oh! What a scandal!' So, that is why I believe the one to seven day precautionary step is a step in the right direction.

Mr Bérenger: I've tried to listen carefully to the hon. Minister and from what I understand, being given Government's reading of the judgment of the Supreme Court, fingerprints and other data are going to be stored on the Identity Card permanently. Now, obviously, I am sure the hon. Minister is aware that in certain countries like Germany, fingerprints are taken voluntarily; if you refuse, you have your card and you have no problem. Therefore, I am sure that those who are going to appeal to the Privy Council will refer to Germany and other cases arguing that the putting of the fingerprints etc on the card is not acceptable, reasonably justified in a democratic society. So, again I ask the question: until the Privy Council has pronounced on this issue of whether it is acceptable that the fingerprints are put on the card, not in a server, not in a database, but on the card itself, until that is commented upon by the Privy Council, what is going to happen?

Mr Sinatambou: Well, until further notice, Madam Speaker, we stand to be guided by a decision of the Supreme Court of this country which has declared that, I quote –

“The law providing for the storage and retention of fingerprints and other personal biometric data regarding the identity of a person constitutes a permissible derogation under our Constitution.”

As such, I would say that it is premature to aver that what has happened is to be perceived as being unreasonable in a democratic society. Now, further to that, I wish to highlight the fact that fingerprints are not, I insist, are not stored on the card. It is called minutiae, Madam Speaker. So, what happens is - I asked because I also did not know - my understanding is that you take the fingerprints, it is a rendering of the fingerprint which is not the fingerprint. Now, it is as if an extract; the minutiae are an extract of the fingerprint, the fingerprint does not appear on the card. Now, even when the minutiae are extracted from the fingerprint, it does not appear on the card, it is in the chip inside the card. What is also...

(Interruptions)

That is not childish – sorry! Madam Speaker, what I am trying to say is that why we have, unfortunately, to disagree with the hon. Leader of the Opposition is that once the minutiae is on the ID card, the purpose is to do what? Let us say, for example, the person has to prove his or her identity to obtain his or her pension. That day the person goes there, he/she is allowed or he is allowed to put his/her finger and immediately the card is used to ascertain that this is the identity. Therefore, this is the best possible identification process and this is why we have to disagree with the hon. Leader of the Opposition.

Mr Bérenger: The law, as it stands, from my reading of it - careful reading - does not say whether the card, today or tomorrow, is the property of the individual or of the State. Now, in certain countries, for example, from what I understand in Germany, it is spelt out that it is a property of the State, like passports, it is spelt out on the passport that the passport remains the property of the State. Now, I would like to know whether it is going to be spelt out, that it is not the property of the State and whether the State Law Office opinion has been sought. What difference does it make to spell out that, as in Germany, it is the property of the State or not?

Mr Sinatambou: Madam Speaker, as currently advised, I have been told in most clear terms that the National Identity Card belongs to the cardholder and not to the State. In fact, I am further advised that under Section 9, Sub Section (1), Paragraph (f) of the National Identity Card Act, it is an offence for a person to have in his possession a National Identity Card not belonging to him. I don't think it can be clearer than that, Madam Speaker.

Mr Bérenger: As far as the financial aspect is concerned, can I know whether Singapore Cooperation Enterprise which has already been paid nearly all the one billion two

hundred million rupees agreed upon, are still in any way or fully involved in this whole identity card issue? Will they be around or are they still involved until the Supreme Court and then the Privy Council pronounced on the issue?

Mr Sinatambou: My understanding is that after being paid approximately Rs1,143,000,000 Government would not let them off the hook like that. They have signed. There has to be a hook, on the contrary. These are people who have been paid a massive amount of money to do something which, in the end, has turned out to be unlawful. Government will not let them go away. We are insisting that they provide the software, to put into place a perfectly lawful mechanism this time. So, we cannot let them off the hook.

(Interruptions)

Madam Speaker: Wait! There are other people before you. I have got a long list here. The privilege is for the hon. Leader of the Opposition. After he has put his question, then I will ask hon. Dr. Sorefan. Privilege is for the hon. Leader of the Opposition first. Do you have a question now, hon. Leader of the Opposition? If you don't have a last one, then hon. Dr. Sorefan.

Dr. Sorefan: Thank you, Madam Speaker. The hon. Minister said he won't let the Singaporean off the hook, but this is a contract worth Rs1.2 billion for the work that was asked to be done. Now the Government is coming to change, to erase the data. Of course, it is additional work. They will come and claim for the money. I want to know - but probably the hon. Minister does not have the answer - how much they are going to claim. The other issue...

Madam Speaker: One question at a time, hon. Dr. Sorefan!

Dr. Sorefan: But my question is coming on the minutiae. The hon. Minister mentioned this word and it seems that many of us don't understand it. From my understanding, you take four fingerprints...

Madam Speaker: Hon. Dr. Sorefan, ask your question!

Dr. Sorefan: I have to explain and then come with the question, Madam Speaker.

Madam Speaker: Ask your question! Put it in the form of a question!

Dr. Sorefan: The four fingerprints are converted into figures that are stored in the ID card. May I know from the hon. Minister whether, if we can convert the fingerprints into figures that are stored in the card, can we do it the other way round? Will what is stored in the ID card be convertible into fingerprints?

Mr Sinatambou: True it is that normally additional work implies additional pay, but in this instance the House will appreciate that Government has already had to spend an enormous amount of money for those identity cards. The erasure and removal exercise which has been done, for example, of the database and everything, has apparently been financially substantiated to an amount of Rs23 m. But I understand that the majority of it has been drawn from the maintenance component of their contract. So, we are still saying that we will not let them off the hook as regards further payments. They have been paid more than enough. It is believed that this is already scandalously big.

Now, let me come to the minutiae part of the question. I must, before replying to that aspect, insist that the minutiae are on that card which is - I am advised - the ownership of the cardholder and is actually only meant to be in his sole custody. However, I am advised that, according to experts from Singapore Cooperation Enterprise, the minutiae are irreversible. Therefore, they cannot be converted back into fingerprints.

Madam Speaker: Hon. Rutnah!

Mr Rutnah: Thank you, Madam Speaker. In relation to part (b) of the question, bearing in mind the Government policy that Government will not let them off the hook, in view of the cloud of suspicion which surrounds the whole ID Card Project, will the hon. Minister request investigative authorities to initiate thorough enquiry into possible criminal offence or criminal offences that have been committed in relation to the allocation of contracts to contractors, then subcontractors, bearing in mind that impression was given that this was a Government-to-Government project?

Mr Sinatambou: I thank the hon. Member for his question. As the Ag. Minister, I would not take it upon myself to send for enquiry to the competent authorities, whether the Police or ICAC. But what I will say is that, as the matter currently stands, Madam Speaker, everything is being looked at at the Ministry of Financial Services, Good Governance and Institutional Reforms because we believe in it.

Madam Speaker: One question for hon. Baloomoody. Then, I will pass on to the hon. Leader of the Opposition for his last question.

Mr Baloomoody: Thank you, Madam Speaker. The hon. Minister has referred I think three times to part 5 of the conclusion of the judgement of the Supreme Court in the case of Dr. Madhewoo. He did not refer to section 6, which says that “the provisions of the National Identity Card Act and the Data Protection Act for the storage and retention of fingerprints and other personal biometric data collected for the purpose of biometric identity card of a citizen of Mauritius are unconstitutional.” This is what part 6 of the conclusion says. Now, in view of what section 5 and section 6 say, Dr. Madhewoo is appealing. Can I know why is it that, on a matter of such national importance, the Attorney General is objecting that the matter goes to the Privy Council?

Mr Sinatambou: Madam Speaker, the reason is quite simple. The reading that we make of page 33 of the judgement - the fifth part - is that, indeed, under the Constitution, it is perfectly lawful for a law to provide for the storage and retention of fingerprints and other personal biometric data. That is perfectly lawful in a democratic society according to the Constitution. However, the way it was being done under those two Acts, that is, the National Identity Card Act and the Data Protection Act, was unlawful, which is why Government has passed those regulations and rendered the situation now lawful. Thank you, Madam Speaker.

Madam Speaker: Last question, hon. Leader of the Opposition!

Mr Bérenger: I have to come back to this. On 19 October, from what I understand, the request to be allowed to appeal, permission to appeal to the Privy Council will be before the Supreme Court. I put my question. What is the stand of the State through the Attorney General and the Solicitor General? Can I, again, appeal to Government? Leave it in the hands of the Court! If that is the intention, why object to the Privy Council having a look at this and other legislations worldwide? Therefore, can I appeal to Government that, on 19 October, the State - not the DPP; the DPP is not the State - should not object to the Court granting permission to go to the Privy Council?

Madam Speaker: Yes, hon. Minister!

Mr Sinatambou: My understanding is that there are two judgements, first of all. One concerning Dr. Madhewoo and one concerning hon. Pravind Jugnauth. There is no appeal in the second case. There is an appeal by the gentleman in the first case. Now, I must say that I do not know whether the State is objecting in the case of Madhewoo. What I know, after verifying with the State Law Office, is that the State is not appealing. However, a reading of page 33 and part 5 of the judgement, as a lawyer, makes it apparent to me that it is lawful in a democratic society to have fingerprints taken, but this Government is not retaining fingerprints. That is the most important thing to say about this affair. It is that the Government is not and will not retain fingerprints and has caused all the database of more than 900,000 people to be destroyed. Thank you, Madam Speaker.

Madam Speaker: Time is over! Hon. Members, the Table has been advised that PQ No. B/575 in regard to the drafting of the Juvenile Justice Bill will now be replied by the hon. Attorney General. Hon. Dr. Sorefan!