

MAURITIUS NATIONAL ASSEMBLY
PARLIAMENT HOUSE
PORT LOUIS

THE CONSTITUTION (DECLARATION OF COMMUNITY)
(TEMPORARY PROVISIONS) Bill
(No. V of 2014)

The Clerk of the National Assembly presents her compliments to Honourable Members and, in regard to the above Bill which has already been circulated amongst Honourable Members, has the honour to submit, herewith, for their information, copy of the First Schedule of the Constitution.

The Constitution

FIRST SCHEDULE

(section 31(2))

1 Elected members to be returned by constituencies

(1) There shall be 62 seats in the Assembly for members representing constituencies and accordingly each constituency shall return 3 members to the Assembly in such manner as may be prescribed, except Rodrigues, which shall so return 2 members.

(2) Every member returned by a constituency shall be directly elected in accordance with this Constitution at a general election or by-election held in such manner as may be prescribed.

(3) Every vote cast by an elector at any election shall be given by means of a ballot which, except in so far as may be otherwise prescribed in relation to the casting of votes by electors who are incapacitated by blindness or other physical cause or unable to read or understand any symbols on the ballot paper, shall be taken so as not to disclose how any vote is cast; and no vote cast by any elector at any general election shall be counted unless he cast valid votes for 3 candidates in the constituency in which he is registered or, in the case of an elector registered in Rodrigues, for 2 candidates in that constituency.

2 Registration of parties

(1) Every political party in Mauritius, being a lawful association, may, within 14 days before the day appointed for the nomination of candidates for election at any general election of members of the Assembly, be registered as a party for the purposes of that general election and paragraph 5(7) by the Electoral Supervisory Commission upon making application in such manner as may be prescribed:

Provided that any 2 or more political parties may be registered as a party alliance for those purposes, in which case they shall be regarded as a single party for those purposes; and this Schedule shall be construed accordingly.

(2) Every candidate for election at any general election may at his nomination declare in such manner as may be prescribed that he belongs to a party that is registered as such for the purpose of that general election and, if he does so, he shall be regarded as a member of that party for those purposes, while if he does not do so, he shall not be regarded as a member of any party for those purposes; and where any candidate is regarded as a member of a party for those purposes, the name of that party shall be stated on any ballot paper prepared for those purposes upon which his name appears.

(3) Where any party is registered under this paragraph, the Electoral Supervisory Commission shall from time to time be furnished in such manner as may be prescribed with the names of at least 2 persons, any one of whom is authorised to discharge the functions of leader of that party for the purposes of the proviso to paragraph 5(7).

(4) There shall be such provision as may be prescribed requiring persons who make applications or declarations for the purposes of this paragraph to furnish evidence with respect to the matters stated in such applications or declarations and to their authority to make such applications or declarations.

(5) There shall be such provision as may be prescribed for the determination, by a Judge of the Supreme Court before the day appointed for the nomination of candidates at a general election, of any question incidental to any such application or declaration made in relation to that general election, and the determination of the Judge shall not be subject to appeal.

3 Communities

(1) Every candidate for election at any general election of members of the Assembly shall declare in such manner as may be prescribed which community he belongs to and that community shall be stated in a published notice of his nomination.

(2) Within 7 days of the nomination of any candidate at an election, an application may be made by an elector in such manner as may be prescribed to the Supreme Court to resolve any question as to the correctness of the declaration relating to his community made by that candidate in connection with his nomination, in which case the application shall (unless withdrawn) be heard and determined by a Judge of the Supreme Court, in such manner as may be prescribed, within 14 days of the nomination, and the determination of the Judge shall not be subject to appeal.

(3) For the purposes of this Schedule, each candidate at an election shall be regarded as belonging to the community to which he declared he belonged at his nomination as such, or if the Supreme Court has held in proceedings questioning the correctness of his declaration that he belongs to another community, to that other community, but the community to which any candidate belongs for those purposes shall not be stated upon any ballot paper prepared for those purposes.

(4) For the purposes of this Schedule, the population of Mauritius shall be regarded as including a Hindu community, a Muslim community and a Sino-Mauritian community; and every person who does not appear, from his way of life, to belong to one or other of those 3 communities shall be regarded as belonging to the General Population, which shall itself be regarded as a fourth community.

4 Provisions with respect to nominations

(1) Where it is so prescribed, every candidate for election as a member of the Assembly shall in connection with his nomination make a declaration in such manner as may be prescribed concerning his qualifications for election as such.

(2) There shall be such provision as may be prescribed for the determination by a returning officer of questions concerning the validity of any nomination of a candidate for election as a member of the Assembly.

(3) Where a returning officer decides that a nomination is valid, his decision shall not be questioned in any proceedings other than proceedings under section 37.

(4) Where a returning officer decides that a nomination is invalid, his decision may be questioned upon an application to a Judge of the Supreme Court made within such time and in such manner as may be prescribed, and the determination of the Judge shall not be subject to appeal.

5 Allocation of 8 additional seats

(1) In order to ensure a fair and adequate representation of each community, there shall be 8 seats in the Assembly, additional to the 62 seats for members representing constituencies, which shall so far as is possible be allocated to persons belonging to parties who have stood as candidates for election as members at the general election but have not been returned as members to represent constituencies.

(2) As soon as is practicable after all the returns have been made of persons elected at any general election as members to represent constituencies, the 8 additional seats shall be allocated in accordance with the following provisions of this paragraph by the Electoral Supervisory Commission which shall so far as is possible make a separate determination in respect of each seat to ascertain the appropriate unreturned candidate (if any) to fill that seat.

(3) The first 4 of the 8 seats shall so far as is possible each be allocated to the most successful unreturned candidate, if any, who is a member of a party and who belongs to the appropriate community, regardless of which party he belongs to.

(4) When the first 4 seats (or as many as possible of those seats) have been allocated, the number of such seats that have been allocated to persons who belong to parties, other than the most successful party, shall be ascertained and so far as is possible that number of seats out of the second 4 seats shall one by one be allocated to the most successful unreturned candidates (if any) belonging both to the most successful party and to the appropriate community or where there is no unreturned candidate of the appropriate community, to the most successful unreturned candidates belonging to the most successful party, irrespective of community.

(5) In the event that any of the 8 seats remains unfilled, then the following procedure shall so far as is possible be followed until all (or as many as possible) of the 8 seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate (if any) belonging both to the most successful of the parties that have not received any of the 8 seats and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful of those parties and to the appropriate community, and so on as respects any remaining seats and any remaining parties that have not received any of the 8 seats.

(6) In the event that any of the 8 seats still remains unfilled, then the following procedure shall so far as is possible be followed (and, if necessary, repeated) until all (or as many as possible) of the 8 seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful party and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the third most successful party (if any) and to the appropriate community, and so on as respects any remaining seats and parties.

(7) Where at any time before the next dissolution of Parliament one of the 8 seats falls vacant, the seat shall as soon as is reasonably practicable after the occurrence of the vacancy be allocated by the Electoral Supervisory Commission to the most successful unreturned candidate (if any) available who belongs to the appropriate community and to the party to whom the person to whom the seat was allocated at the last general election belonged;

Provided that, where no candidate of the appropriate community who belongs to that party is available, the seat shall be allocated to the most successful unreturned candidate available who belongs to the appropriate community and who belongs to such other party as is designated by the leader of the party with no available candidate.

(8) The appropriate community means, in relation to the allocation of any of the 8 seats, the community that has an unreturned candidate available (being a person of the appropriate party, where the seat is one of the second 4 seats) and that would have the highest number of persons (as determined by reference to the results of the published 1972 official census of the whole population of Mauritius) in relation to the number of seats in the Assembly held immediately before the allocation of the seat by persons belonging to that community (whether as members elected to represent constituencies or otherwise), where the seat was also held by a person belonging to that community:

Provided that, if, in relation to the allocation of any seat, 2 or more communities have the same number of persons as aforesaid preference shall be given to the community with an unreturned candidate who was more successful than the unreturned candidates of the other community or communities (that candidate and those other candidates being persons of the appropriate party, where the seat is one of the second 4 seats).

(9) The degree of success of a party shall, for the purposes of allocating any of the 8 seats at any general election of members of the Assembly, be assessed by reference to the number of candidates belonging to that party returned as members to represent constituencies at that election as compared with the respective numbers of candidates of other parties so returned, no account being taken of a party that had no candidates so returned or of any change in the membership of the Assembly occurring because the seat of a member so returned becomes vacant for any cause, and the degree of success of an unreturned candidate of a particular community (or of a particular party and community) at any general election shall be assessed by comparing the percentage of all the valid votes cast in the constituency in which he stood for election secured by him at that election with the percentages of all the valid votes cast in the respective constituencies in which they stood for election so secured by other unreturned candidates of that particular community (or as the case may be, of that particular party and that particular community), no account being taken of the percentage of votes secured by any unreturned candidate who has already been allocated one of the 8 seats at that election or by any unreturned candidate who is not a member of a party:

Provided that if, in relation to the allocation of any seat, any 2 or more parties have the same number of candidates returned as members elected to represent constituencies, preference shall be given to the party with an appropriate unreturned candidate who was more successful than the appropriate unreturned candidate or candidates of the other party or parties.

(10) Any number required for the purpose of subparagraph (8) or any percentage required for the purposes of subparagraph (9) shall be calculated to not more than 3 places of decimals where it cannot be expressed as a whole number.

[Amended 2/82; 36/82; 48/91]

**National Assembly
Parliament House**

30 June 2014