

## HUMAN RIGHTS COMMITTEE

### Mauritian women v. Mauritius

Communication No. 35/1978

9 April 1981

#### VIEWS

*Submitted by: Shirin Aumeeruddy-Cziffra and 19 other Mauritian women on 2 May 1978*

*Alleged victims: The author and other Mauritian women*

*State party: Mauritius*

*Date of adoption of views: 9 April 1981 (twelfth session)*

#### **Views under article 5 (4) of the Optional Protocol\***

1.1 The authors of this communication (initial letter dated 2 May 1978 and a further letter dated 19 March 1980) are 20 Mauritian women, who have requested that their identity should not be disclosed to the State party.<sup>1</sup> They claim that the enactment of the Immigration (Amendment) Act, 1977, and the Deportation (Amendment) Act, 1977, by Mauritius constitutes discrimination based on sex against Mauritian women, violation of the right to found a family and home, and removal of the protection of the courts of law, in breach of articles 2, 3, 4, 17, 23, 25 and 26 of the International Covenant on Civil and Political Rights. The authors claim to be victims of the alleged violations. They submit that all domestic remedies have been exhausted.

1.2 The authors state that prior to the enactment of the laws in question, alien men and women married to Mauritian nationals enjoyed the same residence status, that is to say, by virtue of their marriage, foreign spouses of both sexes had the right, protected by law, to reside in the country with their Mauritian husbands or wives. The authors contend that, under the new laws, alien husbands of Mauritian women lost their residence status in Mauritius and must now apply for a "residence permit" which may be refused or removed at any time by the Minister of Interior. The new laws, however, do not affect the status of alien women married to Mauritian husbands who retain their legal right to residence in the country. The authors further contend that under the new laws alien husbands of Mauritian women may be deported under a ministerial order which is not subject to judicial review.

2. On 27 October 1978, the Human Rights Committee decided to transmit the

communication to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

3. The State party, in its reply of 17 January 1979, informed the Committee that it had no objection to formulate against the admissibility of the communication.

4. On 24 April 1979, the Human Rights Committee,

(a) Concluding that the communication, as presented by the authors, should be declared admissible;

(b) Considering, however, that it might review this decision in the light of all the information which would be before it when it considered the communication on the merits;

Therefore decided:

(a) That the communication was admissible;

(b) That in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements on the substance of the matter under consideration;

(c) That the State party be requested, in this connection, to transmit copies of any relevant legislation and any relevant judicial decisions.

5.1 In its submission dated 17 December 1979, the State party explains the laws of Mauritius on the acquisition of citizenship and, in particular on the naturalization of aliens. The State party further elaborates on the deportation laws, including a historical synopsis of these laws. It is admitted that it was the effect of the Immigration (Amendment) Act, 1977 and of the Deportation (Amendment) Act, 1977 to limit the right of free access to Mauritius and immunity from deportation to the wives of Mauritian citizens only, whereas this right had previously been enjoyed by all spouses of citizens of Mauritius irrespective of their sex. Both Acts were passed following certain events in connection with which some foreigners (spouses of Mauritian women) were suspected of subversive activities. The State party claims, however, that the authors of the communication do not allege that any particular individual has in fact been the victim of any specific act in breach of the provisions of the Covenant. The State party claims that the communication is aimed at obtaining a declaration by the Human Rights Committee that the Deportation Act and the Immigration Act, as amended, are capable of being administered in a discriminatory manner in violation of articles 2, 3, 4, 17, 23, 25 and 26 of the Covenant.

5.2 The State party admits that the two statutes in question do not guarantee similar rights of access to residence in Mauritius to all foreigners who have married Mauritian nationals, and it is stated that the "discrimination", if there is any, is based on the sex of the spouse. The State party further admits that foreign husbands of Mauritian citizens no longer have the

right to free access to Mauritius and immunity from deportation therefrom, whereas prior to 12 April 1977, this group of persons had the right to be considered, de facto, as residents of Mauritius. They now must apply to the Minister of the Interior for a residence permit and in case of refusal of the permit they have no possibility to seek redress before a court of law.

5.3 The State party, however, considers that this situation does not amount to a violation of the provisions of the Covenant which--in the State party's view--does not guarantee a general right to enter, to reside in and not to be expelled from a particular country or a certain part of it and that the exclusion or restriction upon entry or residence of some individuals and not others cannot constitute discrimination in respect of a right or freedom guaranteed by the Covenant. The State party concludes that if the right "to enter, reside in and not to be expelled from" Mauritius is not one guaranteed by the Covenant, the authors cannot claim that there has been any violation of articles 2 (1), 2 (2), 3, 4 or 26 of the Covenant on the grounds that admission to Mauritius may be denied to the authors' husbands or prospective husbands or that these husbands or prospective husbands may be expelled from Mauritius, and that such exclusion of their husbands or prospective husbands may be an interference in their private and family life.

5.4 As far as the allegation of a violation of article 25 of the Covenant is concerned, the State party argues that if a citizen of Mauritius chooses to go and live abroad with her husband because the latter is not entitled to stay in Mauritius, she cannot be heard to say that she is thus denied the right to take part in the conduct of public affairs and to have access on general terms of equality to public service in her country. The State party claims that nothing in the law prevents the woman, as such, from exercising the rights guaranteed by article 25, although she may not be in a position to exercise the said rights as a consequence of her marriage and of her decision to live with her husband abroad. The State party mentions, as an example of a woman who has married a foreign husband and who is still playing a prominent role in the conduct of public affairs in Mauritius, the case of Mrs. Aumeeruddy-Cziffra, one of the leading figures of the Mouvement Militant Mauricien opposition party.

5.5 The State party further argues that nothing in the laws of Mauritius denies any citizen the right to marry whomever he may choose and to found a family. Any violation of articles 17 and 23 is denied by the State party which argues that this allegation is based on the assumption that "husband and wife are given the right to reside together in their own countries and that this right of residence should be secure". The State party reiterates that the right to stay in Mauritius is not one of the rights guaranteed by the provisions of the Covenant, but it admits that the exclusion of a person from a country where close members of his family are living can amount to an infringement of the person's right under article 17 of the Covenant, i.e. that no one should be subjected to arbitrary and unlawful interference with his family. The State party argues, however, that each case must be decided on its own merits.

5.6 The State party recalls that the Mauritian Constitution guarantees to every person the right to leave the country, and that the foreign husband of a Mauritian citizen may apply for a residence permit or even naturalization.

5.7 The State party is of the opinion that if the exclusion of a non-citizen is lawful (the right to stay in a country not being one of the rights guaranteed by the provisions of the Covenant), then such an exclusion (based on grounds of security or public interest) cannot be said to be an arbitrary or unlawful interference with the family life of its nationals in breach of article 17 of the Covenant.

6.1 In their additional information and observations dated 19 March 1980, the authors argue that the two Acts in question (Immigration (Amendment) Act, 1977 and Deportation (Amendment) Act, 1977) are discriminatory in themselves in that the equal rights of women are no longer guaranteed. The authors emphasize that they are not so much concerned with the unequal status of the spouses of Mauritian citizens--to which the State party seems to refer--but they allege that Mauritian women who marry foreigners are themselves discriminated against on the basis of sex, and they add that the application of the laws in question may amount to discrimination based on other factors such as race or political opinions. The authors further state that they do not claim "immunity from deportation" for foreign husbands of Mauritian women but they object that the Deportation (Amendment) Act, 1977 gives the Minister of the Interior an absolute discretion in the matter. They argue that, according to article 13 of the Covenant, the alien who is lawfully in the country has the right not to be arbitrarily expelled and that, therefore, a new law should not deprive him of his right of hearing.

6.2 As has been stated, the authors maintain that they are not concerned primarily with the rights of noncitizens (foreign husbands) but of Mauritian citizens (wives). They allege:

(a) That female citizens do not have an unrestricted right to married life in their country if they marry a foreigner, whereas male citizens have an unrestricted right to do so;

(b) That the law, being retroactive, had the effect of withdrawing from the female citizens the opportunity to take part in public life and restricted, in particular, the right of one of the authors in this respect;

(c) That the "choice" to join the foreign spouse abroad is only imposed on Mauritian women and that only they are under an obligation to "choose" between exercising their political rights guaranteed under article 25 of the Covenant, or to live with their foreign husbands abroad.

(d) That the female citizen concerned may not be able to leave Mauritius and join her husband in his country of origin for innumerable reasons (health, long-term contracts of work, political mandate, incapacity to stay in the husband's country of origin because of racial problems, as, for example, in South Africa);

(e) That by rendering the right of residence of foreign husbands insecure, the State party is tampering with the female citizens' right to freely marry whom they choose and to found a family.

The authors do not contest that a foreign husband may apply for a residence permit, as the

State party has pointed out in its submission; but they maintain that foreign husbands should be granted the rights to residence and naturalization. The authors allege that in many cases foreign husbands have applied in vain for both and they claim that such a decision amounts to an arbitrary and unlawful interference by the State party with the family life of its female citizens in breach of article 17 of the Covenant, as the decision is placed in the hands of the Minister of the Interior and not of a court of law, and as no appeal against this decision is possible.

6.3 The authors enclose as an annex to their submission a statement by one of the co-authors, Mrs. Shirin Aumeeruddy-Cziffra, to whose case the State party had referred (see para. 5.4 above). She states *inter alia* that on 21 April 1977, in accordance with the new laws, her foreign husband applied for a residence permit and later for naturalization. She alleges that during 1977 her husband was twice granted a one-month visa and that an application for a temporary work permit was refused. She states that when returning to Mauritius, after a oneweek stay abroad, her husband was allowed to enter the country on 24 October 1978 without question and that he has been staying there since without a residence or work permit. She remarks that her husband is slowly and gradually giving up all hope of ever being naturalized or obtaining a residence permit. The author, an elected member of the legislative assembly, points out that this situation is a cause of frustration for herself and she alleges that the insecurity has been deliberately created by the Government to force her to abandon politics in view of the forthcoming elections in December 1981. She stresses that she does not want to leave Mauritius, but that she intends, after the expiry of her present mandate, to be again a candidate for her party.

7.1 The Human Rights Committee bases its view on the following facts, which are not in dispute:

7.2 Up to 1977, spouses (husbands and wives) of Mauritian citizens had the right of free access to Mauritius and enjoyed immunity from deportation. They had the right to be considered *defacto* as residents of Mauritius. The coming into force of the Immigration (Amendment) Act, 1977, and of the Deportation (Amendment) Act, 1977, limited these rights to the wives of Mauritius citizens only. Foreign husbands must apply to the Minister of the Interior for a residence permit and in case of refusal of the permit they have no possibility to seek redress before a court of law.

7.3 Seventeen of the co-authors are unmarried. Three of the co-authors were married to foreign husbands when, owing to the coming into force of the Immigration (Amendment) Act, 1977, their husbands lost the residence status in Mauritius which they had enjoyed before. Their further residence together with their spouses in Mauritius is based under the statute on a limited, temporary residence permit to be issued in accordance with section 9 of the Immigration (Amendment) Act, 1977. This residence permit is subject to specified conditions which might at any time be varied or cancelled by a decision of the Minister of the Interior, against which no remedy is available. In addition, the Deportation (Amendment) Act, 1977, subjects foreign husbands to a permanent risk of being deported from Mauritius.

7.4 In the case of Mrs. Aumeeruddy-Cziffra, one of the three married co-authors, more than

three years have elapsed since her husband applied to the Mauritian authorities for a residence permit, but so far no formal decision has been taken. If her husband's application were to receive a negative decision, she would be obliged to choose between either living with her husband abroad and giving up her political career, or living separated from her husband in Mauritius and there continuing to participate in the conduct of public affairs of that country.

8.1 The Committee has to consider, in the light of these facts, whether any of the rights set forth in the Covenant on Civil and Political Rights have been violated with respect to the authors by Mauritius when enacting and applying the two statutes in question. The Committee has to decide whether these two statutes, by subjecting only the foreign husband of a Mauritian woman--but not the foreign wife of a Mauritian man--to the obligation to apply for a residence permit in order to enjoy the same rights as before the enactment of the statutes, and by subjecting only the foreign husband to the possibility of deportation, violate any of the rights set forth under the Covenant, and whether the authors of the communication may claim to be victims of such a violation.

8.2 Pursuant to article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, the Committee only has a mandate to consider communications concerning individuals who are alleged to be themselves victims of a violation of any of the rights set forth in the Covenant.

9.1 The Human Rights Committee bases its views on the following considerations:

9.2 In the first place, a distinction has to be made between the different groups of the authors of the present communication. A person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected. It is a matter of degree how concretely this requirement should be taken. However, no individual can in the abstract, by way of an *actio popularis*, challenge a law or practice claimed to be contrary to the Covenant. If the law or practice has not already been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility.

9.2 (a) In this respect the Committee notes that in the case of the 17 unmarried co-authors there is no question of actual interference with, or failure to ensure equal protection by the law to any family. Furthermore there is no evidence that any of them is actually facing a personal risk of being thus affected in the enjoyment of this or any other rights set forth in the Covenant by the laws complained against. In particular it cannot be said that their right to marry under article 23 (2) or the right to equality of spouses under article 23 (4) are affected by such laws.

9.2 (b) I The Committee will next examine that part of the communication which relates to the effect of the laws of 1977 on the family life of the three married women.

9.2 (b) 2 The Committee notes that several provisions of the Covenant are applicable in this respect. For reasons which will appear below, there is no doubt that they are actually

affected by these laws, even in the absence of any individual measure of implementation (for instance, by way of a denial of residence, or an order of deportation, concerning one of the husbands). Their claim to be "victims" within the meaning of the Optional Protocol has to be examined.

9.2 (b) 2 (i) 1 First, their relationships to their husbands clearly belong to the area of "family" as used in article 17 (1) of the Covenant. They are therefore protected against what that article calls "arbitrary or unlawful interference" in this area.

9.2 (b) 2 (i) 2 The Committee takes the view that the common residence of husband and wife has to be considered as the normal behaviour of a family. Hence, and as the State party has admitted, the exclusion of a person from a country where close members of his family are living can amount to an interference within the meaning of article 17. In principle, article 17 (1) applies also when one of the spouses is an alien. Whether the existence and application of immigration laws affecting the residence of a family member is compatible with the Covenant depends on whether such interference is either "arbitrary or unlawful" as stated in article 17 (1), or conflicts in any other way with the State party's obligations under the Covenant.

9.2 (b) 2 (i) 3 In the present cases, not only the future possibility of deportation, but the existing precarious residence situation of foreign husbands in Mauritius represents, in the opinion of the Committee, an interference by the authorities of the State party with the family life of the Mauritian wives and their husbands. The statutes in question have rendered it uncertain for the families concerned whether and for how long it will be possible for them to continue their family life by residing together in Mauritius. Moreover, as described above (para. 7.4) in one of the cases, even the delay for years, and the absence of a positive decision granting a residence permit, must be seen as a considerable inconvenience, among other reasons because the granting of a work permit, and hence the possibility of the husband to contribute to supporting the family, depends on the residence permit, and because deportation without judicial review is possible at any time.

9.2 (b) 2 (i) 4 Since, however, this situation results from the legislation itself, there can be no question of regarding this interference as "unlawful" within the meaning of article 17 (1) in the present cases. It remains to be considered whether it is "arbitrary" or conflicts in any other way with the Covenant.

9.2 (b) 2 (i) 5 The protection owed to individuals in this respect is subject to the principle of equal treatment of the sexes which follows from several provisions of the Covenant. It is an obligation of the State parties under article 2 (1) generally to respect and ensure the rights of the Covenant "without distinction of any kind, such as ... (inter alia) sex", and more particularly under article 3 "to ensure the equal right of men and women to the enjoyment" of all these rights, as well as under article 26 to provide "without any discrimination" for "the equal protection of the law".

9.2 (b) 2 (i) 6 The authors who are married to foreign nationals are suffering from the adverse consequences of the statutes discussed above only because they are women. The

precarious residence status of their husbands, affecting their family life as described, results from the 1977 laws which do not apply the same measures of control to foreign wives. In this connection the Committee has noted that under section 16 of the Constitution of Mauritius sex is not one of the grounds on which discrimination is prohibited.

9.2 (b) 2 (i) 7 In these circumstances, it is not necessary for the Committee to decide in the present cases how far such or other restrictions on the residence of foreign spouses might conflict with the Covenant if applied without discrimination Of any kind.

9.2 (b) 2 (i) 8 The Committee considers that it is also unnecessary to say whether the existing discrimination should be called an "arbitrary" interference with the family within the meaning of article 17. Whether or not the particular interference could as such be justified if it were applied without discrimination does not matter here. Whenever restrictions are placed on a right guaranteed by the Covenant, this has to be done without discrimination on the ground of sex. Whether the restriction in itself would be in breach of that right regarded in isolation, is not decisive in this respect. It is the enjoyment of the rights which must be secured without discrimination. Here it is sufficient, therefore, to note that in the present position an adverse distinction based on sex is made, affecting the alleged victims in their enjoyment of one of their rights. No sufficient justification for this difference has been given. The Committee must then find that there is a violation of articles 2 (1) and 3 of the Covenant, in conjunction with article 17 ( 1 ).

9.2 (b) 2 (ii) I At the same time each of the couples concerned constitutes also a "family" within the meaning of article 23 (1) of the Covenant, in one case at least--that of Mrs. Aumeeruddy-Cziffra--also with a child. They are therefore as such "entitled to protection by society and the State" as required by that article, which does not further describe that protection. The Committee is of the opinion that the legal protection or measures a society or a State can afford to the family may vary from country to country and depend on different social, economic, political and cultural conditions and traditions.

9.2 (b) 2 (ii) 2 Again, however, the principle of equal treatment of the sexes applies by virtue of articles 2 (1), 3 and 26, of which the latter is also relevant because it refers particularly to the "equal protection of the law". Where the Covenant requires a substantial protection as in article 23, it follows from those provisions that such protection must be equal, that is to say not discriminatory, for example on the basis of sex.

9.2 (b) 2 (ii) 3 It follows that also in this line of argument the Covenant must lead to the result that the protection of a family cannot vary with the sex of the one or the other spouse. Though it might be justified for Mauritius to restrict the access of aliens to their territory and to expel them therefrom for security reasons, the Committee is of the view that the legislation which only subjects foreign spouses of Mauritian women to those restrictions, but not foreign spouses of Mauritian men, is discriminatory with respect to Mauritian women and cannot be justified by security requirements.

9.2 (b) 2 (ii) 4 The Committee therefore finds that there is also a violation of articles 2 (1), 3 and 26 of the Covenant in conjunction with the right of the three married co-authors under

article 23 (1).

9.2 (c) 1 It remains to consider the allegation of a violation of article 25 of the Covenant, which provides that every citizen shall have the right and the opportunity without any of the distinctions mentioned in article 2 (inter alia as to sex) and without unreasonable restrictions, to take part in the conduct of public affairs, as further described in this article. The Committee is not called upon in this case to examine any restrictions on a citizen's right under article 25. Rather, the question is whether the opportunity also referred to there, i.e. a de facto possibility of exercising this right, is affected contrary to the Covenant.

9.2 (c) 2 The Committee considers that restrictions established by law in various areas may prevent citizens in practice from exercising their political rights, i.e. deprive them of the opportunity to do so, in ways which might in certain circumstances be contrary to the purpose of article 25 or to the provisions of the Covenant against discrimination, for example if such interference with opportunity should infringe the principle of sexual equality.

9.2 (c) 3 However, there is no information before the Committee to the effect that any of this has actually happened in the present cases. As regards Mrs. Aumeeruddy-Cziffra, who is actively participating in political life as an elected member of the legislative assembly of Mauritius, she has neither in fact nor in law been prevented from doing so. It is true that on the hypothesis that if she were to leave the country as a result of interference with her family situation, she might lose this opportunity as well as other benefits which are in fact connected with residence in the country. The relevant aspects of such interference with a family situation have already been considered, however, in connection with article 17 and related provisions above. The hypothetical side-effects just suggested do not warrant any finding of a separate violation of article 25 at the present stage, where no particular element requiring additional consideration under that article seems to be present.

10.1 Accordingly, the Human Rights Committee acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts, as outlined in paragraph 7 above, disclose violations of the Covenant, in particular of articles 2 (1), 3 and 26 in relation to articles 17 (1) and 23 (1) with respect to the three co-authors who are married to foreign husbands, because the coming into force of the Immigration (Amendment) Act, 1977, and the Deportation (Amendment) Act, 1977, resulted in discrimination against them on the ground of sex.

10.2 The Committee further is of the view that there has not been any violation of the Covenant in respect of the other provisions invoked.

10.3 For the reasons given above, in paragraph 9 (a), the Committee finds that the 17 unmarried coauthors cannot presently claim to be victims of any breach of their rights under the Covenant.

11. The Committee, accordingly, is of the view that the State party should adjust the provisions of the Immigration (Amendment) Act, 1977 and of the Deportation (Amendment) Act, 1977 in order to implement its obligations under the Covenant, and should provide

immediate remedies for the victims of the violations found above.

---

\*/ Pursuant to rule 85 of the provisional rules of procedure, Mr. Rajsoomer Lallah did not participate in the consideration of this communication or in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

1/ Subsequently one of the authors agreed to the disclosure of her name.