Celebrating our 100th issue

Office of the Director of Public Prosecutions

‘To No One Will We Sell, To No One Deny or Delay Right or Justice’
Chapter 40, Magna Carta 1215
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The views expressed in the articles are those of the particular authors and should under no account be considered as binding on the Office.
Dear Readers,

Our newsletter celebrates its 100th issue.

We have come through 9 years in our ODPP newsletter journey, filled with successes and challenges. Over these years, our newsletter has undergone a rapid evolution to become a widely read legal publication. Our readership has expanded all over Mauritius as well as across the globe to reach out to prosecutors and lawyers throughout the world. The ODPP newsletter is a compilation of articles representing the breadth of the legal field—ranging from topical criminal law issues to human rights, and much more. For the edification of our readers, we have, over the past year, innovated by incorporating videos, whereby law officers discuss recent judgments and the legal issues arising. From our coverage of local and international cases, legal issues, conferences and more, we strive to be your most trusted, local source for legal articles.

As 2019 fades into memory, and as we mark the 100th issue of this newsletter, we thank our Editorial team for their constant effort and dedication in making this newsletter a success. We also thank our readers for their support.

In this 100th issue, you will read an article by the Director of Public Prosecutions, Mr Satyajit Boolell, SC. In the ‘ODPP Video section’ you will listen to our law officer discussing a case on ‘domestic violence’ and its consequences under the law. Furthermore, Mr Jaganaden Munesamy, Principal State Counsel, who worked as a trial lawyer for the prosecutor to the International Criminal Court (ICC), discusses the procedure to refer cases to the ICC. Moreover, our readers will benefit from two riveting articles on the topical issues of ‘Child marriage’ and ‘Climate Change’, respectively. In our ‘Quick Facts’ section, we address relevant provisions of the ‘Road Traffic Act’ pertaining to the legal obligations on drivers under our law. We also seize this opportunity to congratulate the new callees to the Mauritian bar. Finally, you will read the summaries of recent Supreme Court judgments.

The ODPP is immensely aggrieved by the demise of Hon. Oomeshwarnath Ben Bobby Madhub who was serving Puinsne Judge at the Supreme Court, and who passed away on 4th February. We express our sincere condolences to the family and closed ones of the deceased.

On another note, we pay tribute to a great civil rights leader, Martin Luther King Jr. January 15 marked, what would have been, the 91st birthday of King. King’s “I have a dream” speech in August 1963 made him one of the emblematic figures in the fight against segregation and racism. King’s dream was that of ending racial discrimination in the United States, but his wise words, no doubt, have universal application. We pay tribute to this civil rights icon.

We wish you a pleasant read and always welcome your comments on odppnewsletter@govmu.org.

“A genuine leader is not a searcher for consensus but a molder of consensus.”

—Martin Luther King Jr. (1929–68)
Noisy Neighbours

An Englishman’s home is his castle. As for us, the Mauritian home, is about to become a nightmare if we do not respond to the harmful consequences of noise pollution from fireworks, which afflict us at any time of the day or night. These days no celebration is complete without a good firework display.

As a nation and in the name of “bon voisinage”, we generally turn a deaf ear to the persistent barking of dogs or to music blasted from loudspeakers on wedding occasions. We have found wisdom in communal sharing and tolerance and agreeably uphold the principle: “La vie en communauté implique une tolérance nécessaire dans les rapports humains; chacun doit, par une sorte de compensation, supporter les inconvénients normaux du voisinage”.

But how tolerant should we be and when ‘enough is enough?’

The Environment Protection Act and the regulations thereto set the level of noise tolerable in a neighbourhood and as a rule, the noise level is pitched at a very low threshold. Neighbourhood noise should not be above 60 decibels during daytime and 50 decibels between 09.00 pm to 07.00 am. Under the same Act, the noise that can be emitted from a place of worship can be no more than 55 decibels. The Noise Prevention Act 1938 (repealed by the Environment Protection (Amendment) Act 2008), provided that a Municipal Council or District Council could make regulations to prohibit level of noises that could cause public discomfort.

Our laws and regulations are regrettably inadequate, too general and unresponsive to meet the demands of a fast evolving society. Enforcement is lacking due to a lack of resources.

When fireworks are lit or the crackers burst, the onlooker is easily dazzled by the bright colours and effects of what he or she sees. He or she naively forgets the obscure side of the fireworks, which in effect, produce a cocktail of chemicals and emit carbon dioxide and toxic gases such as sulphur. But there is more to it, fireworks can frighten children and the noise can intimidate and scare the elderly. As regards domestic pets, especially dogs, they panic, startle and bolt away at the risk of injuring themselves or causing accidents to others. Too often, we ignore the dangers associated with fireworks which are in fact explosives. Around the world, several thousands are killed and injured yearly.

I would personally advocate a total ban on all types of fireworks. Shanghai has banned firework displays on new year’s eve and prefers to welcome the new year with an artistic display using thousand of drones. As a first step, our authorities should curtail its use by providing for strict regulations. Our neighbor, South Africa, is a good example and its regulations provide nine sacrosanct rules from which we could be inspired:
1. Fireworks may not be set off in any public place. This includes in parks, on the pavement or the streets. Do note, shopping malls, restaurants, liquor stores and clothing retailers are also off limits.

2. Fireworks may not be sold by street vendors, hawkers or at any informal open-air facilities.

3. Anyone who wishes to sell fireworks, must be in possession of a valid licence, which is issued by the Chief Inspector of the Department of Explosives.

4. It is illegal to detonate fireworks within 200 metres of any hospital, clinic, petrol station and old-age home, nursing home or animal welfare organisation or institution.

5. No one under the age of 16, is allowed to purchase or set off fireworks.

6. It is unlawful for any person to point or direct a firework at any other person, animal, building or motor vehicle.

7. No person or organisation is allowed to present a fireworks display unless formally authorised to do so by the Council (at least 14 days, notice). Authorisation is also required from the Civil aviation Authority and the Chief Inspector of Explosives. What is more, a pyrotechnician and South African Police Services explosives expert must be present at all times.

8. Fireworks may only be set off in designated areas between 7pm and 10 pm on Guy Fawkes.

9. Failure to comply with any of the above could result in a hefty fine or even jail time.

It is high time to remind the lovers of pyrotechnics that as neighbours, we have been considerate, but we are no longer deaf.
ODPP VIDEO – ‘Domestic Violence’

Click on the ‘Play’ icon below to view the video or view video on https://youtu.be/reWM9pDfgcw

Ms Bhavna Bhagwan
State Counsel
Referral of a case to the ICC

The International Criminal Court (ICC) is the court of last resort for trying cases of Crimes Against Humanity, War Crimes, Genocide and Crime of Aggression. There has been much talk recently about referring the Chagossian case to the ICC. The plight of the Chagossians bear certain legal similarities to that of the Rohingya people. As a reminder, in 2018, the Pre-Trial Chamber of the ICC (PTC) found inter alia that the deportation of the Rohingya and preventing their return to Myanmar constituted inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health. The PTC found:

“Under international human rights law, no one may be arbitrarily deprived of the right to enter one’s own country. Such conduct would, thus, be of a character similar to the crime against humanity of persecution, which “means the intentional and severe deprivation of fundamental rights contrary to international law”. Furthermore, preventing a person from returning to his or her own country causes “great suffering, or serious injury […] to mental […] health”. In this manner, the anguish of persons uprooted from their own homes and forced to leave their country is deepened. It renders the victims’ future even more uncertain and compels them to continue living in deplorable conditions.”

In theory, the Crime Against Humanity of deportation or forcible transfer of population, the Crime Against Humanity of persecution could also have been committed. However, the aim of this article is not to go into the merits of the Chagossian case before the ICC but rather to set out the referral and admissibility process. As opposed to domestic jurisdictions, not all criminal cases are admissible before the ICC. Admissibility depends on a number of factors including jurisdiction, complementarity and gravity.

Referrals to the Prosecutor

At the outset, it is important to understand how cases are referred to the ICC. Cases are actually referred to its Prosecutor. There are three ways by which these referrals can be made: (i) by a State Party, (ii) by the United Nations Security Council and (iii) where the Prosecutor initiates an investigation on her own initiative (proprio motu).

In the case of a referral by a State Party, the crimes must have been committed on the territory of that State or by one of its nationals. Such referrals were made by the Democratic Republic of Congo, Uganda, the Central African Republic, Mali and Gabon. It is interesting to note that both Mauritius and the United Kingdom are State Parties.

About the author

Mr J Munesamy worked as a Trial Lawyer for the Prosecutor of the International Criminal Court. In 2016, he appeared in the landmark case of Prosecutor v Al Faqi Al Mahdi, the first case focusing on the War Crime of Cultural Destruction. More recently in 2019, he appeared in the proceedings Prosecutor v Al Hassan charged with War Crimes and Crimes against Humanity (including persecution, torture, extrajudicial punishments, rapes and sexual slavery) that occurred during the occupation of Timbuktu by the armed terrorist groups Ansar Dine and Al-Qaeda in the Islamic Maghreb. Mr Munesamy has recently returned to Mauritius where he currently holds the post of Principal State Counsel within the Office of the DPP.
Referral of a case to the ICC

The United Nations Security Council can refer any situation to the Prosecutor regardless of whether the country is a State Party or not. Such referrals were made in the situation in Darfur (Sudan) and Libya. Permanent members of the Security Council can veto a referral as was the case in 2014 when Russia and China vetoed the referral of the situation in Syria to the ICC.

The Prosecutor can also initiate an investigation *proprio motu* as was the case in the situation of Kenya, Georgia and Burundi. However, this is only as long as the crimes occurred on the territory of a State Party or have been committed by a national of a State Party. Alternatively, the Prosecutor can also request an investigation into crimes committed on the territory of a non-State Party or by a national of a non-State Party that has accepted the jurisdiction of the ICC (as was the case in the situation of the Ivory Coast).

**Jurisdiction**

The ICC can only try Crimes Against Humanity, War Crimes, Genocide and Crime of Aggression (*jurisdiction ratione materiae*). The crimes must have been committed after the entry into force of the Rome Statute or after a state becomes a party to the Statute (*jurisdiction ratione temporis*). Additionally, the crimes must have been committed on the territory of a State Party or by a national of that State, or must have been committed on the territory of a State or by nationals of a state which has accepted the jurisdiction of the ICC (*jurisdiction ratione loci and jurisdiction ratione personae*).

**Complementarity**

“Complementarity is a principle which represents the idea that states, rather than the International Criminal Court (ICC), will have priority in proceeding with cases within their jurisdiction.” The ICC is a court of last resort and seeks to complement and not replace domestic courts. The ICC will only step in if the State in question is not willing or is unable to prosecute the crimes. Hence, a case will not be admissible if it is being investigated or prosecuted by a State which has jurisdiction over it, unless that State is unwilling or unable to genuinely carry out the investigation and prosecution. Similarly, the case will not be admissible if the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of that State to prosecute genuinely.

The ne bis in idem principle also applies. In other words, no person will be tried anew for a conduct which formed the basis of crimes for which he or she was convicted or acquitted. However, this principle will not apply if the purpose of the trial was to shield the person The Principle of Complementarity and the International Criminal Court: *The Role of Ne Bis in Idem, Linda E. Carter, 8 Santa Clara Journal of International Law 1 (2010).*
Referral of a case to the ICC

cerned from criminal responsibility. The principle will equally not apply if the trial was not conducted independently or impartially.

Gravity

According to Article 17(1)(d) of the Rome Statute, crimes brought before the ICC need to be of sufficient gravity. Otherwise, a case will not be admissible. In Prosecutor v Abu Garda, the PTC held that “the gravity of a given case should not be assessed only from a quantitative perspective, i.e. by considering the number of victims; rather, the qualitative dimension of the crime should also be taken into consideration when assessing the gravity of a given case.” Rule 145(1)(c) of the Rules of the ICC give further indications as to relevant factors in assessing gravity:

The rule refers to, inter alia, the extent of the damage caused […] to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location.

Recently, in dealing with the issue of gravity in the case of Prosecutor v Al Hassan, the PTC took into consideration the nature and extent of the crimes charged. In particular, the PTC noted that the crimes were committed against the whole population of Timbuktu and surrounding region; the crimes occurred during a period of around 10 months; there were tragic consequences for the victims such as those who suffered from rape, sexual slavery and other inhumane acts such as forced marriage. The PTC also noted the high number of victims (amounting to 882).

Conclusion

If there is a referral in the Chagossian case, the ICC will look at the abovementioned factors of jurisdiction, complementarity and gravity. These factors all need to align to render a case admissible. Criminal cases, be it domestically or internationally, are all different and come with various challenges. Cases at the ICC are no exception. At the end of the day, the Prosecutor, upon investigating, may find that there is no sufficient basis to proceed with a case “taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrators, and his or her role in the alleged crime.”
Condemning Marriage under 18- Time to Act Now!

Did you know that globally around 650 million women alive today were married before their 18th birthday? United Nations Children’s Fund (UNICEF) defines child marriage as any formal marriage or informal union between a child under the age of 18 and an adult or another child. Many countries are already taking initiatives to end child marriage, however UNICEF warns that, if efforts are not accelerated, an additional 150 million girls around the world are at a risk of ending as child brides by 2030. According to a report from the same UN agency, the top five countries with the highest rate of child marriage before the age of 18 are Niger, Central African Republic, Chad, Bangladesh and Mali.

Child marriage affects both boys and girls but girls remain the primary target. According to the international NGO “Girls Not Brides”, around 12 million girls around the world are married before the age of 18 annually. Child brides are scarred for life be it physically or mentally. Most of them drop school, are separated from their family and at a very young age have new responsibilities as wife and mother. They become more exposed to domestic violence and face life threatening health complications associated with early pregnancies and childbirth. That is why the UNICEF believes that marriage before the age of 18 is a violation of fundamental human rights.

The most common factors leading to child marriage include poverty, family honor, teen pregnancy, gender inequality, failure to enforce laws and customs and traditions. Some children are married because they want to and some because they are forced by their families. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) condemns child marriages by stating in its Article 16(2) that the betrothal and marriage of a child shall have no effect.

Child marriage is a practice happening in many parts of the world. It is more prevalent in low income countries, where according to the UN, 26.7 per cent of young women were child brides. However, it is also a growing concern in developed countries. According to Forbes, more than 200,000 minors were married between 2000 and 2015 in the U.S.

Unfortunately, Mauritius which is aspiring to become a high income economy, is also concerned by the issue of child marriage. A recently published report by Statistics Mauritius reveals that in the year 2018, 572 girls in Mauritius were married between the age of 15 and 19 while there were 115 bridegrooms between the age of 15 and 19. Therefore we cannot deny the existence of the high number of marriages below the age of 18 in Mauritius, especially for girls.

The proposed Children’s bill, which aims to reinforce Mauritius’ objective in protecting and promoting children’s rights has reopened the debate on child marriage. It is high time that Mauritius amends its laws to promote compliance.
with the various international instruments it has signed condemning marriage below 18. Marriages in Mauritius are regulated by our Code Civil Mauricien (CCM). The minimum legal age of marriage provided therein is 18 years; however minors who have attained the age of 16 can also enter into civil marriage with the consent of both or either parents. In the absence of the mother or father, or whoever exercises parental authority, authorization may be sought from the Judge in Chambers. This is provided for in Articles 144 and 145 of the CCM which state that:

144. Nul ne peut contracter mariage avant dix-huit ans révolus

145. Néanmoins le mineur de 18 ans mais âgé de plus de 16 ans pourra contracter mariage avec le consentement de ses père et mère ou de celui des deux qui exerce exclusivement l’autorité parentale. Ce consentement s’exprime en toutes formes, soit devant l’officier d’état civil, soit devant le notaire, soit devant la personne autorisée à célébrer le mariage.

A défaut de père et mère ou de celui qui exerce l’autorité parentale, il est loisible au Juge en Chambre d’accorder une dispense d’âge au mineur lorsqu’elle est nécessaire à l’intérêt de celui-ci.

It should be recalled that the CEDAW in its concluding observations in the eighth periodic report on Mauritius notes with concern the provisions on child marriage in the CCM. The report recommends that Article 145 of the CCM be repealed or amended so as to completely preclude consent by parents or guardians as a sufficient requirement to allow marriage below the age of 18, and to allow court approval, only under exceptional circumstances, for marriages of those between 16 and 18 years of age.

As a matter of fact the Committee on the Rights of the Child has also, in its General Comment No.4, strongly recommended that State parties review and where necessary reform their legislation and practice to increase the minimum age of marriage with and without parental consent to 18 years, for both girls and boys.

The Universal Declaration of Human Rights provides in Article 16 that marriage shall be entered into only with the free and full consent of the intending spouses. The UNICEF argues that consent cannot therefore be free and full when one or both of the parties involved are not sufficiently mature to make an informed decision about their life partner.

Many countries are already taking steps to criminalise child marriage before 18. The Indonesian government for instance has recently announced that it is amending its laws to raise the minimum age for child marriage to 19 years. This came after their Constitutional Court ruled that the minimum age requirement of 16 years for marriage was unconstitutional and ordered law makers to revise the minimum age of marriage. The minimum age of marriage has also been reviewed in many African countries.
In Zimbabwe, under the previous Marriage Act, a child could get married at the age of 16 with parental consent. In 2016, the Constitutional Court of Zimbabwe ruled child marriage as unconstitutional, raising the minimum age of marriage to 18 years. Likewise, recently the Court of Appeal of Tanzania upheld a 2016 ruling barring child marriage before 18, directing the government to raise the legal age of marriage to 18 for both boys and girls.

Mauritius which prides itself as a modern country should therefore not lag behind and accelerate efforts to harmonise its laws with international legal instruments in order to eliminate child marriage. One option as proposed earlier is to raise the minimum age of marriage provided in the CCM to 18 years with or without parental consent. This will reinforce the country’s commitment to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the 2030 Agenda for Sustainable Development: Transforming our world. In the same vein the definition of “child” in our Child protection Act must also be reviewed. The current definition of child is “any unmarried person under the age of 18”. As per this definition a child will attain adulthood once he/she is married, despite being below the age of 18.

Legislative changes on their own may not suffice and should be accompanied by continuous enforcement and scrutiny by the relevant authorities. These should also be supported by educational and public awareness campaigns on the negative impact of child marriage before 18. Child marriage victims must be empowered to know their rights and raise their voice against such practices. Witnesses should be encouraged to denunciate child marriage cases. Sure there is a long way to go before child marriage can be completely eliminated, but quoting from a famous Chinese proverb, “a journey of a thousand miles begins with a single step” and for Mauritius it may start with criminalising marriage before 18.
Climate change is an existential threat that is affecting everyone, everywhere. There is already devastating, irreversible damage happening. From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale. Clear example of the adverse effect of the climate change is the Australian bushfire which has impacted life and property, the survival of fauna populations, water resources, and indirectly on government budgets and insurance costs. While the whole world is praying for the recovery of the country, it is important to understand that climate change is real and it is a crisis which needs immediate and urgent attention. In Mauritius as well, we note the changing pattern of the weather, with recurrent torrential rains leading to flash floods.

How can the lawmakers in Mauritius help in tackling climate change?

It is essential that severe action is taken against environment offenders. In environmental law, criminal sanctions (such as prison sentences) have traditionally been unusual as can be seen in the below mentioned table, but gradually maybe this must change.

<table>
<thead>
<tr>
<th>OFFENCES</th>
<th>Fine</th>
<th>Imprisonment</th>
</tr>
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<tbody>
<tr>
<td>Acts against the natural environment</td>
<td></td>
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</tr>
<tr>
<td>Environment Protection Act (breach of)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offences under the Fisheries and Marine Resources Act</td>
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<td>Offences under The Wild Life and National Parks Act</td>
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<tr>
<td>Offences under Forest and Reserve Act</td>
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<th>2017</th>
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<td>1</td>
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<tr>
<td>645</td>
<td>970</td>
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<tr>
<td>16</td>
<td>9</td>
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*Table 1 - Convicted offences according to United Nations classification of Offences, Republic of Mauritius, 2017 & 2018*

Source- Supreme Court Annual Report 2018

Section 85 of the Environment Protection Act (“EPA”) sets out the offences that are punishable by law. Failure to comply with any requirement, notice, order or direction issued, or condition imposed, under an environmental law shall
(i) on a first conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years;

(ii) on a second or subsequent conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 8 years.

In Mauritius, we have the Environmental Law and Prosecution Division which conducts prosecution against contraveners of EPA and other environmental laws under Section 87 of the said Act. Accordingly, the Division is required to carry out enquiries in respect of environmental offences in consultation with relevant stakeholders and the Police de L’Environnement prior to referring the case to the Director of Public Prosecutions’ Office for advice on prosecution.

Environmental crime is a serious problem for Mauritius, like in any other country. Although the immediate consequences of an individual offence may not be obvious or serious, environmental crimes do have victims. The public and the Nation’s environment have suffered and will continue to suffer serious harm from the acts of polluters: death, serious illness, injury, and property damage all result from the acts of environmental violators. A comprehensive and balanced approach to environmental offences is needed. Local law enforcement and prosecutorial authorities represent critical resources in the battle against environmental crime.

World leaders from various countries, including Mauritius recently gathered at the Conference of the Parties (COP) 25 at Madrid under the aegis of the United Nations Climate Change where areas including oceans, finance, the transparency of climate action, forests and agriculture, technology, capacity building, loss and damage, indigenous peoples, cities and gender were the focal point of debate and discussion. 16-year-old environment activist Greta Thunberg also addressed the world leaders with a strong word plea “to lead to something concrete, an increase in awareness, and for people in power to grasp the urgency of the climate crisis - because right now it doesn’t seem like they are”.

In the same vein, prosecutors can play a key role in mobilizing public involvement in the detection and reporting of environmental crime and in orchestrating an aggressive multi-agency approach to investigation and prosecution. 3 Ps that are important to combat environment related crimes are Prosecution, Protection and Preservation. Possible ways to do so are:

1. Setting clear definition of environment crimes;

2. Setting up of environment related crime courts on national, regional and international level for speedy justice;

3. Strengthening institutions for the enforcement of environmental law and policy;
Climate Change- Can it change?

4. Sensitisation of judges, lawyers, NGOs, pollution control authorities, senior officials, and legislators on emerging threat of national and international environmental crime, and solutions thereto; and

5. Drafting laws related to environment and climate change

Australia is burning, Indonesia is suffering record flooding, droughts are spread through the Middle East, and island nations are disappearing under the oceans or catastrophic extinction, among others. Mauritius has signed and ratified the Paris Agreement under the United Nations Framework Convention on Climate Change 22 April 2016 which is a broad framework designed to nudge nations to prevent catastrophic climate change. Alongside, climate change should also be addressed from a criminal dimension and it is important that severe actions are taken against the offenders and concrete steps are taken by law makers, world leaders, citizens in order to make every possible effort to tackle climate change.

Can we bring a climate of change to the phenomenon of climate change and stop climate change denial? With a concerted attempt by various stakeholders and responsible behavior of the citizens towards environment, it is achievable!
Celebrating our 100th issue

OFFICE OF THE DPP MAURITIUS

QUICK FACTS

E-newsletter - Issue 100

January 2020
Quick Facts

The Road Traffic Traffic Act 1962

Under section 124(4)(a), it is an offence for any person to drive a motor vehicle on a road at a speed exceeding a prescribed speed limit, or the speed limit indicated on a traffic sign erected under subsection (2).

In case a driver exceeds the speed limit, (s) he will be liable to a fine not exceeding 50,000 rupees.

For a second or subsequent conviction, the offender shall be liable to a fine not exceeding 75,000 rupees.

Under section 125, it is an offence for any person, who without the consent of the Commissioner of Police and not acting in accordance with any conditions imposed by the Commissioner of Police, to promote or take part in any race or trial of speed between motor vehicles on a road.

The offender shall on conviction be liable to a fine not exceeding 1,000 rupees.

Source: www.mapleridgenews.com
Source: www.patch.com
Source: www.forbes.com
Section 140 - Duty of a driver in case of accident:

S140 (5) - Any person who fails to comply with any provisions of this section shall commit an offence and shall on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 3 years.

S140 (1) Where an accident occurs and damage or injury is caused to any person, vehicle, structure or animal, the driver of the motor vehicle shall -

(a) Unless it is not practicable to do so on account of mob fury or any other reason beyond his control, stop his vehicle and remain at the scene of the accident until he has complied with paragraphs (b) and (c).

(b) Take all reasonable steps to render reasonable assistance to any person injured in the accident, and if necessary, arrange for the latter’s conveyance to the nearest hospital for medical treatment, unless the injured person or his guardian (in case of a minor), desires otherwise.

(c) Give his name and address; the name of the owner of the vehicle driven by him and the registration mark of the motor vehicle if required to do so by any person having reasonable grounds for so requiring.

(d) Report the accident at the nearest police station or to a police officer as soon as is reasonably practicable, and in any case within one hour after the occurrence of such accident and produce his driving license and furnish such other information as may be required by him.
(e) Report the accident to his insurer as soon as is reasonably practicable, and in any case not later than 24 hours of the state of the insurer’s next working day.

S140 (2) - Where, resulting from an accident, a person is killed, injured or damage is caused to any vehicle or structure, no person shall unless under the authority of a police officer, move or interfere with any vehicle involved in the accident or to do any other act so as to destroy any evidence of the accident.

S140 (3) - Where an accident causes complete obstruction of a road, any vehicle involved may, without the authority of a police officer and after its position has been clearly marked on the surface of the road by any person moving it, be moved sufficiently to allow the passage of traffic.

S140 (4) - Where a person is seriously injured in an accident and there is no suitable means of transport other than the one involved in the accident, such vehicle may, after its position has been clearly marked on the surface of the road by any person moving it, be used to convey the injured person to a hospital.
List of new callees to the Mauritian Bar: January 2020

The Mauritius Bar Association has, since the 24th January 2020, 52 new members. They are:

1. GALAMALI Beebee Waseemah
2. LECORDIER Marie Virginie Ingrid
3. MERLE Louis Marie Alexis
4. BUDHOO Ekant Bhavishya
5. JEETAH Meghna
6. BANSOODEB Kooshal
7. HARNARAN Deephallee Krishnee
8. ROOPUN Darshan Binayesingh
9. AKSENER Suleikha Yusuf Abhasakoor
10. SAUZIER Emmanuel Clément
11. AUBEELUCK Bibi Adilah Zohrah
12. JEETAH Vandana
13. MAUNICK Maelya Diya
14. CHOONUCKSING Pawan Kumar
15. GREEDHARRY Raajkamal
16. BAYJOU Yushrah Bibi Maryam
17. HARDY Claude Eric Valentin
18. MUKAN Madhini
19. BHUDOYE Yashraj
20. LUKEA Drushka
21. VEERAPATREN Letizia Yovila
22. AHMED Najah Abdulla
23. NUNNOO Nabiilah
24. SEENAUTH Prasanjeet
25. BARBE Philippe Gad-Olivier
26. PEERMAHOMED Raida Banoo
27. ROOPUN Ashutosh Ranveersing
28. RAMPAT Laksh
29. SANGLÉ-FERRIÈRE Séverine Olga Marie
30. DURSUN- REMILLARD Indranee
31. LALLMAHOMED Zeinab Hassan
32. SOREEFAN Noor Mohammad Ackthar Faarzaad
33. KOONJUL Elvind
34. SAYED-HOSSEN Sarah Hanna
35. ROSA-HOTENTOTE Quinn Ozita
36. BOKHOREE Rohan Jayesh Pratik
37. NASARI Bibi Faarzine Banon
38. CHUNG KOW CHEONG Mary Donna
39. LUCHMUN Doyel Kiran
40. RAMSOOROOP Sweta
41. JEERASOO Yanish Rao
42. OOZEERALLY Muhammad Djuanaid Hamza
43. SOLIM Suhailah Bibi Nahaboo
44. SEEBORUTH Sai Shirr Yudhisthir
45. MITTOO Mohammad Irfian
46. SOODEEN Sadia Ismael
47. CHOOROMONEY Mridula
48. DAYAL-GOPEE Kalyanee
49. RAMSEWAK Bhupendre
50. CANGY Annabelle Brigitte
51. BAULACKEY Nabeelah Begum
52. ACKBURALLY Bibi Oursha Jehane
SUMMARY OF SUPREME COURT JUDGMENTS:
January 2020

LUTCHIGADOO V THE PRESIDING MAGISTRATE OF THE BAIL AND REMAND COURT 2020 SCJ 1
By Hon. Judge Ms. K. D. Gunesh-Balaghee

Bail application before the Supreme Court-Application under sections 3 and 3 (A) of the Bail Act 2000 coupled with sections 1, 2, 3, 5, 6, 7, 76, 82, 93, 84 of the Constitution- Applicant on remand on a provisional charge- Unsuccessful applications before the Bail and Remand Court- Heading of the Application- Annexations to the Application- Fresh bail application- Not a bail review- Jurisdiction of the Supreme Court

An interlocutory judgment was delivered in this case. The Applicant was on remand on a provisional charge of drug dealing with aggravating circumstances. He had previously made three applications for his release on bail before the Bail and Remand Court but these were set aside. He then made an application to the Supreme Court and in the affidavit in support of it, annexed the three rulings delivered by the Bail and Remand Court.

The Application was made “under Sections 3 and 3A of the Bail Act 2000 coupled with Sections 1, 2, 3, 5, 6, 7, 76, 82, 83, 84 of the Constitution”. The Court therefore requested clarification from the Applicant as to whether he was seeking a bail review or contending that his constitutional rights had been breached, therefore entitling him to bail. Counsel for the Applicant stated that it was a fresh bail application.

Taking into account section 19 of the Bail Act and given that no new facts and circumstances had arisen, the Court then asked Counsel whether it had jurisdiction to entertain this application.

Counsel for the Applicant relied on section 82 of the Constitution to say that the Supreme Court does have a supervisory jurisdiction, hence the power to entertain the application. He further cited from the case of Labonne v DPP and Anor [2005 SCJ 38] where it was said that “when a Magistrate has refused bail, it is possible to make a fresh application to the Supreme Court”. He thus argued that the Supreme Court could grant bail.

On the other hand, Counsel for the Respondent argued that, by virtue of section 19 of the Bail Act, the Bail and Remand Court has exclusive jurisdiction. Counsel for the Co-Respondent argued that since the application is alleging a breach of section 5 (3) of the Constitution, proper procedure would require that the application be made by way of plaint with summons under section 17 of the Constitution.

The Court took the view that a “scatter-gun approach” had been adopted in this application. There was no understandable reason for the reliance on sections 1 and 2 of the Constitution for this application. Furthermore, sections 3 to 7 of the Constitution, which fall under Chapter II of the Constitution, had been referred to in a blanket manner. It was also noted that the application was made under Section 83 of the Constitution but that this specifically does not concern contraventions of provisions of the Constitution which fall under Chapter II.
The Application was also made under section 84 of the Constitution, pursuant to which constitutional questions are referred to the Supreme Court by any court of law. The Court remarked that “clearly the present application is not one where a lower court has referred a question regarding the interpretation of the Constitution to the Supreme Court”.

It was held that “section 19 of the Bail Act is very clear. Pursuant to the said section, a defendant or detainee must, where he is remanded in custody, as a rule make his application before the Bail and Remand Court”. The two exceptions are, firstly, where the defendant or detainee is being tried before the Supreme Court and secondly, where it would be impractical to make the application before the Bail and Remand Court. Since the Supreme Court is the guardian of the Constitution, an Accused not being tried before it may still apply for a bail review of rulings delivered by the Bail and Remand Court and any other court, under section 82 of the Constitution. The Accused may also make a fresh application before the Supreme Court as stated in Rangasamy v DPP & Anor [2005 SCJ 249]. The Court, however, clarified what Rangasamy provided for, as follows:

“An accused person who wants to be admitted to bail must in the first place apply to the Court before which he is remanded;

a) If there are new facts available, he must make a new application before that Court;

b) If he is dissatisfied with the decision of that Court, he can apply for a review of that decision and must in his application for review annex a copy of the Court record and his legal advisers must make it clear that the application is indeed a review of the decision of the subordinate court not to grant him bail;

c) In the case of a review, the Supreme Court will be bound by the record of the subordinate Court and will not consider any new evidence.

The case of Rangasamy also provides that the same procedure will apply in the case of a new hearing of a bail application before the Supreme Court, except that the record of the subordinate court must not be annexed to the application. It follows from the case of Rangasamy that an accused person may make an application for a fresh hearing before the Supreme Court. However, before doing so, he must first make an application to the court before which he is remanded. Where his application is rejected, he may only make a fresh application to the Supreme Court where there are new facts and circumstances which justify his bail application. If the applicant fails to show in his application that there are new facts and circumstances justifying his bail application, it will be rejected.

It was held that the Applicant did not fall within the two abovementioned exceptions and that he had not stated whether there were new facts and circumstances to justify a fresh bail application before the Supreme Court.

“Every morning we are born again. What we do today is what matters most.”

–Buddha
Celebrating our 100th issue

“TO NO ONE WILL WE SELL, TO NO ONE DENY, OR DELAY RIGHT OR JUSTICE”

Chap 4, Magna Carta 1215