

Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

The roles and responsibilities of non-state actors in transitional justice processes

1.0 Introduction

Mauritius is a secular country. It has ratified most of the Human Rights instruments. Mauritius does not have any non-state actors who have been directly or indirectly involved in serious violations of human rights and international humanitarian law committed in conflict and authoritarian settings.

1.1 The Constitution and Human Rights

Since its independence in 1968, Mauritius has been relentlessly committed to the universal values of democracy, good governance, the rule of law, and the promotion and protection of human rights and fundamental freedoms. The Constitution, which is the supreme law of the country, prohibits discrimination and advocates equality for all.

The Constitution of Mauritius provides an unequivocal right for every citizen to be treated equally and to live a life free from discrimination. In this vein, from a human rights perspective, the State of Mauritius does not discriminate between citizens, including vulnerable and disenfranchised segments of the populations and migrants.

Moreover, Chapter II of the Mauritius Constitution guarantees the enjoyment of fundamental rights and freedoms which include the right to life, the right to personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection for privacy of home and other property, protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and prevention from discrimination.

Under Section 3 of the Constitution, recognition is given to the right of an individual to life, liberty, security of the person and protection of the law.

Furthermore, Section 17 of the Constitution provides that a citizen, who alleges that his right under, *inter alia*, Section 16 of the Constitution is being or is likely to be contravened may apply to the Supreme Court for redress. Any victim and/or affected community may enter a case in damages against any alleged perpetrator of a racial discrimination based on this Section.

2.0 Violations of Human Rights

2.1 There is no specific law providing for “apologies” under our legal framework. There are however many legal avenues for a person alleging a violation of his human rights to seek redress before the Courts and other instances. These would also cover cases of alleged police brutality. But these relate more to individual complaints and alleged violations that do not appear to reflect the envisaged situations mentioned in the questionnaire.

2.2 In an attempt to examine the history of slavery and indentured labour and their consequences, the State of Mauritius set up the Truth and Justice Commission under the Truth and Justice Commission Act in Feb-March 2009.

2.3 An example of an instance of Apology in Transitional Justice, is that: there is no legal obligation to present apology. However, accused parties do present apology to Victims, the Courts and the society to expect some leniency as regards sentencing and may show repentance.

2.4 Slavery and cheap indentured labour were amongst other things nurtured by the French and British Colonialisms in Mauritius to serve their economic interests. Slavery, however, was the most exploitative and socially and culturally oppressive of all economic and social systems. Indentured labour imported from British India and elsewhere was part and parcel of the transformation of the slave system into the new emerging capitalist system whereby the exploitative and oppressive means was to a lesser extent than slavery but still against fundamental rights, and with wages, albeit very minimal.

2.5 The labour practices during the colonial periods brought along severe violations of human rights including, *inter alia*;

- i. the right to life, whereby a slave would be punished by death if he had struck his master in the face or has drawn blood or has similarly struck the wife of his master, his mistress or their children;
- ii. the freedom from cruel, inhuman or degrading treatment or punishment, whereby if found guilty of theft of any animal farm, the slave was liable to severe flogging on even death in case of previous offences;
- iii. the right to just and favourable conditions of work, whereby under the Code Colbert also known as the Code Noir which was promulgated in all French Colonies in the world, slaves had no right to any pay for their labour;
- iv. the right to liberty and security of person;
- v. the right to fair treatment; and
- vi. the basic freedoms and rights such as freedom of expression and movement and rights to participation, justice and social order.

2.6 The Truth and Justice Commission had, as its mandate, to make an assessment of the consequences of slavery and indentured labour during the colonial period up to the present and for that purpose conduct as complete as possible an analysis on slavery and indentured labour. The Commission was also tasked to make recommendations on measures to be taken following its assessment and its findings with a view to achieving social justice, national unity and reconciliation.

2.7 The Commission submitted its report after its tenure which was published in 2011. The Report of the Truth and Justice Commission contained the following **main** recommendations based on principles of equality, fairness and justice and which are of significance to the list of questions put by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence:

- (i) memorializing slavery and slave trade in visible and strategic locations;
- (ii) a better understanding and more inclusive, Mauritian history and culture;
- (iii) a better and increased protection of Mauritian heritage;
- (iv) a less racist and elitist society;
- (v) a more democratic public life, and;
- (vi) empower Mauritians of African and Malagasy origin.

2.8 The Commission also submitted recommendations to increase economic and social justice, particularly related to land issues and equitable and judicious use of the environment.

2.9 The State of Mauritius subsequently set up appropriate frameworks for consideration and implementation of the recommendations of the report of the Truth and Justice Commission, including:

- i. A Ministerial Committee to look into the recommendations of the report.
- ii. A High Powered Committee comprising several Ministries and a dedicated Unit comprising members of the National Heritage Fund, Aapravasi Ghat Trust Fund, Nelson Mandela Centre for African Culture and the Le Morne Heritage Trust Fund at the level of the Ministry of Arts and Cultural Heritage.

2.10 It is believed that the State of Mauritius is among the rare countries in the world to have succeeded in establishing a Truth and Justice Commission which has investigated the history and consequences of Slavery and Indenture.

2.11 Progress made towards implementation of the recommendations of the Truth and Justice Commission

2.11.1 The State of Mauritius acknowledges the need to commemorate the dark era of colonial period and the contribution of the slaves and indentured labourers through the creation of memorials, monuments, museums, arts, artifacts and other relevant ways. A list of the measures taken by the State of Mauritius is as follows:

- (i) **Abolition of Slavery** is a public holiday celebrated in Mauritius on February 1st to commemorate the end of slavery in Mauritius, on this day in 1835. This event showcases the contribution of slaves and slaves' descendants to the economic development in Mauritius. Wreath laying ceremonies are organized at historical sites linked to slavery. Members of the public as well as local authorities are invited to participate in these events;

- (ii) the 2nd of November is also declared as a public holiday dedicated to the **Commemoration of indentured labourers**;

- (iii) the **Nelson Mandela Centre for African Culture** was set up and has as one of its missions to research and to reflect on the impact slavery has had in Mauritius;

- (iv) the **Le Morne Heritage Trust Fund** was established on 28th May 2004 to promote Le Morne as a national, regional and international memorial site to preserve and promote the historical, cultural, environmental and ecological aspects of Le Morne, to set up a museum and create public awareness in the history of Le Morne, amongst others;

- (v) the **Le Morne Cultural Landscape** which, is an exceptional testimony to maroonage and resistance to slavery in terms of the mountain being used as a fortress to shelter escaped slaves and the Le Morne, has been recognized by UNESCO as a World Heritage Site and is viewed as a symbol of the slaves' fight for freedom, their suffering and their sacrifice;

- (vi) the **International Slave Route Monument** at the foot of Le Morne Brabant Mountain was inaugurated on 1st February 2009, to highlight the importance of the country in the Slave Trade at the regional level;

- (vii) a replica of the Ancient Village of "Trou Chenille" was opened on 1st February 2020. This Open-Air Museum is an emblematic historical site that safeguards the memories of slavery in Mauritius and houses replicas of plants, utensils amongst others of that period;

- (viii) the Aapravasi Ghat located on the Bay of Trou Fanfaron in Port Louis was listed as a UNESCO World Heritage Site in 2006. This historical site served as an immigration depot by the colonial British government in 1849. It has played a pivotal role in the Mauritian history, as it is from this very instance that the Mauritian population became more diverse than ever;

- (ix) an **Indentured Labour Route Project (ILRP)** was set up to bring together all countries having experienced the migration of indenture and other forms of contract labour in the 19th and mid-20th centuries;

- (x) the **Genealogy Project** was initiated to enable Mauritians to trace their roots and find information on their immigrant ancestors. The Mahatma Gandhi Institute (MGI) Indian Immigration Archives consist of the largest repository of documentation on the international migration of Indian workers

in the 19th century. It holds nearly 2055 registers of original records that contain information for around 454,000 Indian Indentured Immigrants who came to Mauritius, from 1842-1910. The records represent a milestone in the history of migration in the 19th century and are of tremendous historical value;

(xi) the **National Heritage Fund (NHF)**, which was set up in 1997, has been actively promoting our tangible and intangible heritage. Following the ratification of the Convention on the Safeguarding of the Intangible Cultural Heritage and in its endeavour to safeguard the Intangible Cultural Heritage, the NHF has initiated research to inventory and document its Intangible Cultural Heritage. A list of the various Intangible Cultural Heritage inscribed on the UNESCO Representative List of Intangible Cultural Heritage of Humanity is as follows:

- a. The **‘Sega Tipik’** which was inscribed in December 2014. It comes mainly from the Creole community of African descent whose ancestors had been slaves on the Island of Mauritius and is a way of promoting and preserving our cultural rights.
- b. The **‘Geet Gawaii - Bhojpuri Folk Song and Music’** which was inscribed in December 2016.
- c. The **‘Sega Tambour’** of Rodrigues which was inscribed in 07 December 2017.
- d. The **‘Sega Tambour Chagos’** with origins of the Chagos Archipelagos was inscribed on the UNESCO Representative List of Intangible Cultural Heritage in Need of Urgent Safeguarding in December 2019.
- e. The enlistment of these Intangible Cultural Heritage entails several obligations among which to ensure that necessary measures are taken for the safeguarding of the Intangible Cultural Heritage present in its territory and this should be done with the participation of communities, groups and relevant NGOs; and

(xii) the **‘Intercontinental Slavery Museum’** was initiated to give more visibility to slavery and the slave trade in the Indian Ocean, promote slave history, and emphasise the contribution of the African Diaspora in the world development. The ‘Intercontinental Slavery Museum’ would link countries (e.g. Mauritius, Mozambique, Madagascar) which formed part of the slave trade network in the 18th and 19th centuries.

2.11.2 Moreover, the State of Mauritius has been looking into the structure that would be most appropriate to deal with cases of land dispossession and hear disputes regarding land. In this respect, a Land Research and Monitoring Unit has been set up under the aegis of the Ministry of Housing and Lands in July 2019. The Unit has taken possession of 355 files in July 2019, out of which 46 cases have already been entered in court. Further investigation and actions is required for the remaining 309 cases.

2.11.3 Pursuant to the recommendations of the Truth and Justice Commission, the State of Mauritius has also set up a Land Division under the Supreme Court which specializes in the resolution of land disputes and hear and determine matters regarding ownership of land, property rights. The Land Division became

operational as from January 2021 and 61 cases involving land disputes were scheduled before the Division, out of which 16 have been disposed as at end of March 2021.

3.0 Guarantee non-recurrence

3.1 The State of Mauritius has signed and ratified a series of regional and international human rights instruments namely to show its commitment to prevent any reoccurrence of such events in Mauritius.

3.2 Moreover, the State of Mauritius enacted the Equal Opportunities Act 2012 and also set up the Equal Opportunities Commission (EOC) as mentioned above and the Equal Opportunities Tribunal respectively to address cases of discrimination made on the basis of race, religion, status and sex amongst others so as to ensure greater equality in term of access to opportunities and life chances to all citizens.

3.3 Currently, there already exists also under the Mauritian Laws a wide array of legal guarantees seeking to ensure that the rights of every citizen are safeguarded from various forms of persecution. Moreover, several National Human Rights Institutions have been set up to prevent violations of human rights namely:-

- i. the National Human Rights Commission
- ii. the Equal Opportunities Commission
- iii. the Independent Police Complaints Commission
- iv. the Office of the Ombudsman
- v. the Ombudsperson for Children's Office
- vi. the Ombudsperson for Financial Services
- vii. the Ombudsperson for Sports

3.4 Furthermore, the Worker's Rights Act was enacted to reiterate the principle that all citizens of Mauritius are entitled the same rights in respect to access to income generating opportunities and terms and conditions of employment. The Worker's Rights Act provides that no worker shall be treated in a discriminatory manner by his employer in his employment or occupation and no person shall be treated in a discriminatory manner by a prospective employer in respect of access to employment or occupation.

3.5 The Act further defines discrimination as affording different treatment to different workers attributable wholly or mainly to their respective descriptions by age, race, colour, caste, creed, sex, sexual orientation, HIV status, impairment, religion, political opinion, place of origin, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

4.0 Conclusion

4.1 The State of Mauritius envisioned to nurture its deeply entrenched democratic values and human rights. Moreover, it has at heart its duty to ensure that such actions never occur again in whatever form and the justifications that were used to establish colonial slavery and the slave trade are not used to institute new forms of servitude.

4.2 As a welfare state, Mauritius has already achieved various measures that guarantee right to education, employment, social security to all its citizens including vulnerable / socially/ economic disadvantaged groups. It will pursue its efforts for the well-being at large if its citizens. It has, however, various challenges with the COVID-19 pandemic and its negative socio-economic impacts.

10 January 2022